**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

Bureau of Investigation and Enforcement :

 :

 v. : C-2015-2451749

 :

Daniel and Darlene Applegate :

t/a Independent Security Cab :

**INITIAL DECISION**

Before

Katrina L. Dunderdale

Administrative Law Judge

INTRODUCTION

 This decision sustains a formal complaint alleging Respondents operate as a taxi service without a Certificate of Public Convenience, and assesses $5,000 in civil penalties.

HISTORY OF THE PROCEEDING

 On February 13, 2015, the Bureau of Investigation and Enforcement (BIE or Complainant) filed a formal complaint with the Public Utility Commission (Commission) against Daniel and Darlene Applegate, t/a Independent Security Cab (Applegates or Respondents) at Docket No. C-2015-2451749, which alleged Respondents hold themselves out to transport persons for compensation without first obtaining operating authority from the Commission. BIE requested the Commission issue a fine against Respondents in the amount of $1,000.00 for illegal activity alleged within the formal complaint and suspend Respondents’ vehicle registrations with the Pennsylvania Department of Transportation.

On February 19, 2015, the Commission mailed a copy of the formal complaint to Respondents via certified mail, return receipt requested. On March 16, 2015, the United States Postal Service returned the formal complaint to the Commission as “refused” by Respondents. On March 27, 2015, the Commission re-served the complaint upon Respondents via first class mail. The re-served formal complaint was not returned to the Commission as undeliverable.

Respondents did not file an answer, however, on April 20, 2015, the Commission received unsigned correspondence written on the envelope mailed from the Commission on March 27, 2015. The response on the envelope indicated, “There are 5 companies in Johnstown area running undercover taxicabs. If you want me to report these, it will cost you 100 million per company. Also your informant, mildly mentally retarded, …, is also doing this against your back.”

On November 19, 2015, the Office of Administrative Law Judge notified the parties a Call-In Telephone Hearing would be conducted at 10:00 a.m. on Tuesday, January 12, 2016. On November 25, 2015, the presiding officer issued a Prehearing Order specifying some procedural matters and addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission policy encouraging settlements.

On January 12, 2016, the Administrative Law Judge (ALJ) attempted to conduct the initial hearing by telephone. Counsel for BIE was present and ready to proceed with the initial hearing. At 10:05 a.m., the ALJ attempted to conduct the initial hearing as scheduled but Applegates were not present. No written or oral request to continue was received from Respondents at any time during the pendency of this proceeding. No written or oral communication of any kind was received from Respondents by either the presiding officer or counsel for BIE. BIE made numerous attempts to speak with Respondents via telephone, leaving voicemail messages, but did not speak with Respondents and Respondents did not return the telephone calls.

The ALJ left the conference telephone line open and waited until 10:25 a.m., in order to provide time for Respondents to call into the hearing. Respondents never called into the conference call. The hearing proceeded because BIE carries the burden of proof when filing a formal complaint against a motor carrier.

 The presiding officer convened the initial hearing at 10:25 a.m. on January 12, 2016. Complainant BIE appeared represented by Kourtney L. Myers, Esquire. Respondents did not appear. Attorney Myers presented the testimony of one witness and offered nine (9) exhibits, which were marked BIE Exhibits 1, 2, 3, 4, 5, 6, 7, 8-A and 8-B, and were admitted into evidence. Complainant issued a final statement on the hearing record in lieu of filing a brief.

The initial hearing resulted in a transcript of forty-seven (47) pages. The transcript from the initial hearing was received on February 1, 2016. The hearing record closed on February 4, 2016 by the issuance of an Interim Order Closing the Record.

Findings of Fact

 1. Respondents, Daniel and Darlene Applegate, t/a Independent Security Cab Transportation, have their principal place of business at 1282 Frankstown Road, Johnstown, Pennsylvania 15902.

 2. The Commission has not issued a Certificate of Public Convenience to operate as a motor carrier of passengers to Respondents. (Tr. 12; BIE Exhibit 1).

 3. Respondents offer themselves out to the public as a taxi service, delivery service and cargo service. (Tr. 16-35; BIE Exhibit 2).

 4. Respondents advertise their services using imprinted contact information on their vehicle, and offering printed business cards which offer motor carrier services including taxi, delivery, cargo and other jobs. (Tr. 16-22; BIE Exhibits 2 & 3).

 5. Respondents own and operate a blue 1994 Chevrolet Geo Metro (Chevy Geo) with over 86,000 miles and license plate number HLD8679. (Tr. 24-26; BIE Exhibits 5 & 6).

 6. On May 11, 2000, the Commission issued an Order at Docket No.
C-00003359 which sustained a formal complaint filed against Daniel John Applegate, fined Daniel John Applegate $3,000, and ordered Daniel John Applegate to cease and desist from operating as a motor carrier with call and demand service as Independent Security Cab without having a certificate of public convenience. (Tr. 32-35; BIE Exhibit 7).

 7. On June 22, 2005, Daniel J. Applegate pled *nolo contendere* to one misdemeanor count of violating Section 3310 of Title 66 of the Pennsylvania Statutes in the Court of Common Pleas of Cambria County. On the same date, Daniel J. Applegate was sentenced to 12 months county probation, ordered to pay court costs and fined $200. (Tr. 36-39; BIE Exhibit 8A).

 8. On December 18, 2008, Daniel J. Applegate pled *nolo contendere* to one criminal count of insurance fraud (18 Pa.C.S.A. § 4117(b)(4)) and one count of violating the Commission’s motor carrier statute (66 Pa.C.S.A. § 3310). (Tr. 36-39; BIE Exhibit 8B).

 9. On February 9, 2009, Daniel J. Applegate was ordered to undergo a mental health evaluation, to not operate a cab, and to not wear a hat that says taxi cab or security cab. In addition, Daniel J. Applegate was ordered to pay court costs, fined $200 and ordered to pay $200 to the Special Administration fund. (BIE Exhibit 8A).

 10. Respondents were observed on November 13, 2014 driving and riding in the Geo Metro in Johnstown, Pennsylvania. (Tr. 16, 17).

 11. On November 13, 2014, the Chevy Geo registered to Respondents had printed advertising on both sides of the vehicle which advertised motor carrier services provided by Independent Security Cab. (Tr. 18-20, 29; BIE Exhibit 2).

Discussion

 The Commission is empowered and charged with the duty to enforce the requirements of the Public Utility Code.[[1]](#footnote-1) The Commission delegated authority to BIE to initiate prosecutions, such as in the instant case. BIE is the proponent of a rule or order and, therefore, as the party seeking an order from the Commission, BIE bears the burden of proof in this case. Provisions at 66 Pa.C.S.A. § 332(a) state, “[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.”[[2]](#footnote-2)

 The degree of proof to which the proponent must meet to establish its case before the Commission is preponderance of the evidence.[[3]](#footnote-3) The term “preponderance of the evidence” means BIE must present evidence that is more convincing, by even the smallest amount, than the evidence presented by Respondents.[[4]](#footnote-4) Respondents did not appear at the initial hearing. Respondents did not communicate with the presiding officer to explain their failure to appear. None of the correspondence mailed to Respondents by the Commission was returned as “undeliverable” by the United States Postal Service. The initial hearing proceeded without Respondents because BIE bore the burden of proving the truth of its allegations.

In its formal complaint filed on February 13, 2015, BIE alleged the following facts in Numbered Paragraphs 1, 2, 4 and 6:

1. That Daniel and Darlene Applegate, Respondents, maintain a principal place of business at 1282 Frankstown Road, Johnstown, Pennsylvania 15902.

 2. That on November 13, 2014, PUC Enforcement Officer Brian B. Mehus and Enforcement Manager Charles Bowser spoke with Daniel and Darlene Applegate and obtained information from Respondents regarding the vehicle they were driving, a 1994 Chevrolet Geo Metro, license no. HLD8679 and VIN 2C1MR246R6741172. Pictures were obtained of the vehicle with markings stating “Independent Multi-state Security Cab” with three phone numbers listed in addition to a listing of motor carrier transportation services available. Also obtained were two business cards with the same information listed. Respondents do not currently hold a certificate of public convenience issued by the Commission.

4. That Respondents are holding out to transport persons for compensation between points in Pennsylvania while not having operating authority with this Commission.

 6. That Respondents, while holding out to transport persons for compensation between points in Pennsylvania without holding a certificate of public convenience, violated the Public Utility Code, 66 Pa. C.S. §1101. The penalty for this violation is $1,000 and suspension of Respondents’ vehicle registration by the Pennsylvania Department of Transportation.

 BIE proved all material aspects of the formal complaint. Through the personal observations of its motor carrier enforcement officer, BIE proved the location of Respondents’ place of business, details about the vehicle used to provide motor carrier services, and details about the services which Respondents offer to the public. BIE also proved Respondents do not currently have a Certificate of Public Convenience. Lastly, BIE also proved Daniel Applegate has been criminally charged and sentenced on two separate occasions with operating as a taxi service without a Certificate of Public Convenience, plus being subject to the assessment of a civil penalty by the Commission on the same alleged violation in 2000.

 Respondents did not appear for the hearing, despite having been advised about the filing of the formal complaint and having been provided with notice of the scheduled initial hearing. However, the evidence through testimony provided by BIE’s witness exceeded the level of proof required. Respondents obviously knew they are not permitted to offer themselves to the public as providing motor carrier services. When considered *in toto*, the criminal costs and fines, coupled with the civil penalty imposed by the Commission, amounted to thousands of dollars. Despite the fines and court costs, Respondents continue to engage in behavior that shows a callous disregard to the statutes and regulations of the Commission and the Commonwealth. Therefore, having met and exceeded the requirements of proving the accuracy of its allegations, the formal complaint of BIE will be granted.

Civil Penalty

 BIE seeks a $1,000.00 civil penalty for the alleged illegal activity and requests the vehicle registration for the Geo Metro be suspended by the Pennsylvania Department of Transportation. BIE contends that, as a non-certificated carrier, the Commission cannot verify if Respondents have adequate liability insurance, or if the vehicle(s) they use are safe to be operated on the Commonwealth’s roads. BIE contends Respondents violate the Commission’s regulations each time they offer themselves out as providing motor carrier services to transport persons and goods in their 1994 Chevrolet Geo Metro.

Having concluded Respondents violated the Public Utility Code by failing to cease and desist from providing motor carrier services without a Certificate of Public Convenience from the Commission, it is appropriate to consider the assessment of a civil penalty. Section 3301 of the Public Utility Code provides that if any public utility fails to comply with any Commission regulation it shall forfeit and pay to the Commonwealth a sum not exceeding $1,000.00 per day of violation.[[5]](#footnote-5) To implement this section, the Commission has adopted certain standards that must be applied when imposing a civil penalty for violations of Commission directives and regulations.[[6]](#footnote-6)

A company or individual, which provides motor carrier transportation services to the public, is considered to be a public utility required to provide reasonable service to their customers pursuant to Section 1501 of the Code.[[7]](#footnote-7) The Commission has exclusive jurisdiction to determine the reasonableness, adequacy and sufficiency of a public utility’s services and

facilities.[[8]](#footnote-8) The term “service” should be “used in its broadest and most inclusive sense, including any and all acts done, rendered, or performed, and any and all things furnished or supplied…by public utilities…in the performance of their duties under the Public Utility Code.…”[[9]](#footnote-9)

Sections 3301(a) and (b) of the Public Utility Code, 66 Pa.C.S.A. § 3301(a) and (b), authorize the Commission to impose a maximum civil penalty of $1,000 per day for violations of its statutes, regulations and orders. The Commission has adopted certain standards that are to be applied in determining the amount of civil penalties when violations are admitted or determined to have occurred. There are ten standards which the Commission first articulated in Joseph A. Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communica­tions Company, Docket No. C‑00992409 (Order entered February 10, 2000) (Rosi) and which are now published at 52 Pa.Code § 69.1201 in the Commission’s Policy Statements and Guidelines.

 The first criterion to consider is whether the violation was of a serious nature or whether it was less egregious, such as an administrative or technical error. Respondents have known for at least the past sixteen years that they are not permitted to offer themselves out for motor carrier services to the public for compensation unless they first obtain a certificate of public convenience from the Commission. Respondent Daniel Applegate has been criminally charged at least two times since 2000 for operating as a taxi service without permission from the Commission, and he has paid thousands of dollars in penalties and court costs, in addition to being on probation for a period of years. Thus, I conclude this violation was serious in nature and warrants a higher penalty because the violation clearly is not a technical error, and has been repeated over many years despite criminal and administrative proceedings.

 The second criterion is whether the resulting consequences of the conduct were of a serious nature, such as personal injury or property damage. The consequence of Respondents’ conduct reaches the point of seriousness because of Respondents’ failure to seek approval from the Commission to operate as a motor carrier, and repeated defiance of past Court orders and directives. Fortunately, no individual is known to have been harmed by Respondents’ behavior. The possibility of serious consequences cannot be gauged because the Commission has no way of ascertaining if Respondents have appropriate insurance in case of accidents, or are operating a car that has the appropriate elements to be operated safely. Thus, I conclude the consequences are of a serious nature and warrant a higher penalty.

 The third criterion is whether the conduct at issue was deemed intentional or negligent. Respondents have been the subject of at least one Commission complaint proceeding and two known criminal proceedings in which the sole or primary issues were that Respondents were operating as a motor carrier without first obtaining (or even attempting to obtain) authority from the Commission to operate as a motor carrier. Knowing all these facts, Respondents’ behavior can only be described as intentional. Thus, I conclude the consequences are of a serious nature and warrant a higher penalty.

 The fourth criterion is whether the utility made efforts to modify internal practices and procedures to address the conduct and prevent similar conduct, and the amount of time it took for the implementation of these measures. Respondents refused to accept service of the formal complaint by certified mail. Respondents ignored the notices advising them to participate in the initial hearing. Daniel and Darlene Applegate sent a response to the formal complaint which maligned an alleged informant and offered to reveal other motor carriers operating in the area without authorization for the sum of $500 million. Thus I conclude a higher penalty is warranted.

 The fifth criterion is the number of customers affected. Because Respondents do not report their activity to the Commission, it is unknown how many individuals have paid Respondents in exchange for motor carrier services. Thus I conclude a higher penalty is warranted.

 The sixth criterion is a consideration of Respondents’ compliance history. The evidence in the hearing record clearly shows a pattern of violations by Respondents over the last sixteen years. Therefore, I conclude this criterion works to aggravate the penalty to be imposed.

 The seventh criterion is whether the regulated entity cooperated with the Commission’s investigation. The hearing record evidence clearly shows defiance and a refusal to cooperate with the Commission in its investigation or in its role as a regulator.

 The eighth criterion is the amount of the civil penalty or fine necessary to deter future violations, with consideration of the size of the utility. BIE requested the civil penalty equal $1,000, which is a standard penalty BIE requests when a motor carrier operates without approval from the Commission. In consideration of all relevant factors, I conclude BIE’s suggested penalty of $1,000.00 is not sufficient to deter future violations. Respondents were fined $3,000 by the Commission in 2000. Respondent Daniel Applegate was charged criminally and convicted, following pleas of *nolo contendere*, on two separate occasions after 2000 for violating the same corresponding criminal statutes to the violations noted in the Commission’s 2000 Final Order. Clearly, Respondents have no intention of complying with the statutes and regulations concerning operating as a motor carrier without first obtaining a Certificate of Public Convenience. In addition, if the fine of $3,000 sixteen years ago has not deterred Respondents from engaging in the same violations, a puny fine of $1,000 will have no deterrence effect in 2016. Accordingly, I conclude a more appropriate penalty to deter future violations is $5,000 based on the facts admitted into evidence at the initial hearing.

 The ninth criterion is past Commission decisions. As noted previously, the Commission fined Respondents in 2000 for engaging in the same practices and actions as were cited by BIE herein. This criterion works to aggravate the penalty to be imposed.

 The tenth criterion is other relevant factors. None have been suggested or considered other than those previously discussed.

In any case in which a civil penalty is assessed, these ten factors must be considered when calculating the amount of the penalty. The factors are meant to ascertain, in general, how serious was the conduct and intention of the utility, how the individual consumer was affected and how the utility’s conduct may bode for similar future situations. In this proceeding, Respondents’ actions – to offer themselves out to the public as motor carriers and to engage in providing motor carrier services without first obtaining a Certificate of Public Convenience from the Commission – were serious and warrant a higher penalty.

The evidence presented and taken as a whole proves a civil penalty is necessary to deter future violations. Therefore, I am assessing a Five Thousand Dollar ($5,000.00) civil penalty against Respondents. This penalty takes into consideration Respondents’ failure to stop continuing violations previously noted by the Commission as well as two criminal convictions during the intervening years.

It should be noted BIE requested to have the Pennsylvania Department of Transportation suspend Respondents’ vehicle registrations. Pursuant to 75 Pa.C.S.A. § 1375:

The [Pennsylvania Department of Transportation] shall suspend the registration of any vehicle upon the presentation to the department of a certificate of the [Commission] … setting forth, after hearing and investigation, that the commission … has found and determined that the vehicle has been operated as a common carrier or contract carrier by motor vehicle within this Commonwealth without the approval of the commission … and either that no appeal was filed from such determination in the manner and within the time provided by law or that the determination was affirmed on appeal.

 The request to suspend the registration only applies to the motor vehicle used by Respondents to operate as a common carrier without approval from the Commission. In this proceeding, that vehicle is the Chevrolet Geo referenced in Finding of Fact 5. Based on the evidence supplied by BIE, the Chevy Geo has been used in violation of 75 Pa.C.S.A. § 1375, despite Respondents having actual knowledge of their violation of the Commission’s statute at 66 Pa.C.S.A. § 1101. Therefore, the request of BIE to have the vehicle registration for the Chevy Geo rescinded will be granted.

Conclusion

Based on a review of the standards set forth in Rosi and since I have determined Respondents did not appear at the initial hearing to contest the formal complaint or the reasonableness of the civil penalties, I conclude a civil penalty in the amount of $5,000.00 is reasonable. Accordingly the formal complaint is sustained in the ordering paragraphs below, Respondents are ordered to pay a civil penalty and BIE’s request to have the Pennsylvania Department of Transportation rescind Respondents’ vehicle registration is granted.

CONCLUSIONS OF LAW

 1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 501 and § 701.

 2. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code, pursuant to 66 Pa.C.S.A. § 501(c).

 3. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is on the Bureau of Transportation Services as the proponent of a Commission Order.

 4. Daniel and Darlene Applegate, t/a Independent Security Cab Transportation, did begin to offer, render, furnish or supply motor carrier services within the Commonwealth without first filing an application and obtaining a certificate of public convenience, pursuant to 66 Pa.C.S.A. § 1101.

 5. Daniel and Darlene Applegate, t/a Independent Security Cab Transportation, did not comply with the provisions of 75 Pa.C.S.A. § 1375.

ORDER

THEREFORE,

 IT IS ORDERED:

 1. That the complaint filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Daniel and Darlene Applegate, t/a Independent Security Cab Transportation, at C-2015-2451749 is sustained.

 2. That Daniel and Darlene Applegate, t/a Independent Security Cab Transportation, shall pay a civil penalty of Five Thousand Dollars ($5,000.00) for violation of the Public Utility Code, 66 Pa. C.S.A. § 1101, by certified check or money order, within twenty (20) days after service of the Commission’s order, made payable to Commonwealth of Pennsylvania and forwarded to:

Secretary Rosemary Chiavetta

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

 3. That Daniel and Darlene Applegate, t/a Independent Security Cab Transportation, cease and desist from further violations of the Public Utility Code and the Public Utility Commission’s regulations.

4. That the Secretary’s Bureau shall request the Pennsylvania Department of Transportation to put an administrative hold on and suspend the registration of any vehicle registered to Daniel Applegate and/or Darlene Applegate. 75 Pa.C.S.A. § 1375.

5. That the record at Docket No. C-2015-2451749 shall be marked closed.

Date: March 17, 2016 /s/ Katrina L. Dunderdale

 Administrative Law Judge

1. 66 Pa.C.S.A. § 501(a). [↑](#footnote-ref-1)
2. Provisions at 66 Pa.C.S.A. § 315(a) do not apply in this proceeding because this matter did not arise upon the motion of the Commission, involve a proposed or existing rate of a public utility, or involve a complaint about a proposed increase in rates. [↑](#footnote-ref-2)
3. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n., 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. denied., 602 A.2d 863 (Pa. 1992). [↑](#footnote-ref-3)
4. Se‑Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). 66 Pa. C.S.A. §1303; 52 Pa.Code §§ 31.27; 31.122(2); and 31.134(c). [↑](#footnote-ref-4)
5. 66 Pa.C.S.A. § 3301. [↑](#footnote-ref-5)
6. *See* 52 Pa.Code § 69.1201; *see also,* Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communica­tions Company, Docket No. C‑00992409 (Order entered February 10, 2000) (Rosi). [↑](#footnote-ref-6)
7. 66 Pa.C.S.A. § 1501. [↑](#footnote-ref-7)
8. Elkin v. Bell of Pa.,491 Pa. 123, 420 A.2d 371 (1980). [↑](#footnote-ref-8)
9. 66 Pa.C.S.A. § 102. [↑](#footnote-ref-9)