

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2015-2479218
	:	
1 st Choice Limousine & Transportation Group LLC	:	

INITIAL DECISION

Before
Christopher P. Pell
Administrative Law Judge

INTRODUCTION

This Initial Decision sustains the Complaint filed by the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and imposes a \$500 civil penalty against 1st Choice Limousine & Transportation Group LLC for failing to maintain evidence of liability insurance with the Commission.

HISTORY OF THE PROCEEDING

On April 29, 2015, the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (I&E), filed a formal Complaint against 1st Choice Limousine & Transportation Group LLC (1st Choice Limousine or Respondent) with the Pennsylvania Public Utility Commission. In its Complaint, I&E alleged that 1st Choice Limousine failed to maintain evidence of insurance in violation of 66 Pa.C.S. § 512, 52 Pa.Code § 32.2(c), and 52 Pa.Code § 32.11(a), 32.12(a) or 32.13(a). The Complaint demanded that 1st Choice Limousine pay a civil penalty of \$500 and file evidence of insurance within twenty days of service of the Complaint or

face cancellation of its authority and any other remedies the Commission might think appropriate.

On May 28, 2015, 1st Choice Limousine filed an Answer to the Complaint denying the allegation and claiming that it did have insurance. However, no evidence of such coverage was filed with the Answer.

By Hearing Notice dated December 19, 2016, a hearing was scheduled for February 10, 2017 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on December 21, 2016. The Prehearing Order directed the parties to comply with various procedural requirements.

The hearing convened as scheduled on February 10, 2017. I&E was represented by Heidi Wushinske, Esq., who presented the testimony of Robert Bingaman, a Complaint Specialist with the Bureau of Technical Utility Services, as well as three exhibits which were all admitted into the record. Respondent appeared and was represented by David P. Temple, Esq. No witnesses testified on behalf of the Respondent.

The record in this case consists of a 12-page transcript and three exhibits. The record closed on February 21, 2017, the date I received a copy of the transcript.

FINDINGS OF FACT

1. Complainant is the Commission's Bureau of Investigation and Enforcement, an office created pursuant to the Public Utility Code, 66 Pa.C.S. § 308.2(a)(1), for the purpose of prosecuting complaints against jurisdictional public utilities.

2. Respondent is 1st Choice Limousine & Transportation Group LLC, a jurisdictional public utility.

3. Robert Bingaman is a Complaint Specialist with the Bureau of Technical Utility Services. Tr. 6.

4. Mr. Bingaman's job duties include supervising the compliance specialists who review all insurance filings that are made with the Commission. Tr. 6.

5. A Form E is a uniform document provided by insurance companies to the Commission advising that a motor carrier possesses the required insurance coverage. Tr. 7.

6. A Form K is a uniform document provided by insurance companies to the Commission advising of the date and time that the company is going to cancel insurance coverage for a motor carrier. Tr. 7.

7. On December 22, 2014, Northland Insurance Company filed a Form E, Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, advising the Commission that an insurance policy had been issued to 1st Choice Limousine & Transportation Group LLC effective December 18, 2014. I&E Exh. 1; Tr. 7-8.

8. On March 3, 2015, Northland Insurance Company filed a Form K, Uniform Notice of Cancellation of Motor Carrier Insurance Policies advising the Commission of the cancellation of the policy issued to 1st Choice Limousine & Transportation Group LLC effective April 6, 2015. I&E Exh. 2; Tr. 8.

9. On April 3, 2015, the Secretary of the Commission issued to 1st Choice Limousine & Transportation Group LLC a Notice of Suspension of PUC Limousine Operating Authority effective April 6, 2015 for expiration/cancellation of 1st Choice Limousine & Transportation Group LLC's liability insurance. I&E Exh. 3; Tr. 8-9.

10. As of the date of the hearing, no one from 1st Choice Limousine responded to the April 3, 2015 suspension notice. Tr. 9.

11. The Commission suspended 1st Choice Limousine's service authority effective April 6, 2015. Tr. 10.

DISCUSSION

As the proponent of a rule or order, a complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, a complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa.Cmwlth. 218, 221-222; 578 A.2d 600, 602 (1990), app. denied, 602 A.2d 863 (1992). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (1993), 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

Regarding passenger carrier insurance, the Commission's regulations provide, in pertinent part, the following:

A common carrier or contract carrier of passengers may not engage in intrastate commerce and a certificate or permit will not be issued, or remain in force, except as provided in § 32.15 (relating to applications to self-insure) until there has been filed with and approved by the Commission a certificate of insurance by an

insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service.

52 Pa.Code § 32.11(a).

I&E presented evidence in the form of exhibits and testimony that established that 1st Choice Limousine has not maintained evidence of insurance as required by the Commission. Although 1st Choice Limousine filed an Answer to I&E's Complaint maintaining that it has always maintained insurance, no witness appeared on its behalf to demonstrate that it actually possessed insurance coverage after April 6, 2015.¹ I&E has met its burden of proof, and I agree that 1st Choice Limousine should pay a civil penalty for its failure to maintain evidence of insurance.

Civil Penalty

Regarding civil penalties for violations, Section 3301 of the Public Utility Code provides that if any public utility fails to comply with any regulation or final direction, requirement, determination or order made by the Commission, it shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000.00 per day of violation. 66 Pa.C.S. § 3301(a).

Having established a violation of the Public Utility Code, the analysis turns to the appropriate remedy. I&E indicated that a \$500 penalty is the standard penalty amount imposed by the Commission for similar infractions.

The standard for civil penalties was developed in *Joseph A. Rosi v. Bell-Atlantic – Pennsylvania, Inc. and Sprint Communications, L.P.*, Docket No. C-00992409 (Order entered

¹ I will note that 1st Choice Limousine's attorney, Mr. Temple, informed me and Ms. Wushinske that the respondent was no longer operating and was not contesting the matter. Moreover, subsequent to the hearing, Mr. Temple emailed to me and Ms. Wushinske a copy of 1st Choice Limousine's "Application for Approval of Abandonment or Discontinuance of Service, in Whole or in Part" that he filed with the Commission on March 13, 2017.

March 16, 2000), and in *Pa. Publ. Util. Comm'n v. NCIC Operator Serv.*, Docket No. M-00001440 (Order entered December 21, 2000), where the Commission held that violations would be subject to the *Rosi* standards. Subsequently, the Commission adopted the policy statement enumerating the same standards. Through case law, the Commission has directed that litigated proceedings seeking to impose a civil penalty include an analysis of these standards:

§ 69.1201. Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy.

(a) The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa.C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.

(b) Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. The parties to a settlement should include in the settlement agreement a statement in support of settlement explaining how and why the settlement is in the public interest. The statement may be filed jointly by the parties or separately by each individual party.

(c) The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or

property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201.

As previously noted, the Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of the Public Utility Code. 52

Pa.Code § 69.1201. Accordingly, the factors set out in 52 Pa.Code § 69.1201(c) are addressed below.

Whether the conduct at issue was of a serious nature. The failure of a motor carrier to maintain insurance is a serious matter. The likelihood of serious or catastrophic injury in a motor vehicle accident requires that motor carriers maintain adequate insurance to protect their passengers and the public.

Whether the resulting consequences of the conduct at issue were of a serious nature. There is no evidence that any patrons of 1st Choice Limousine were directly harmed by the failure to maintain insurance, but it is foreseeable that harm could have occurred. A valid claim for loss must be paid, and a certificate holder must have the means to pay such a claim.

Whether the conduct at issue was deemed intentional or negligent. The Commission put 1st Choice Limousine on notice that its insurance had been cancelled. The conduct at issue, failure to maintain insurance coverage, was therefore intentional.

Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. Strictly speaking this factor is not relevant in that it is not an issue whether 1st Choice Limousine internal practices and procedures caused the lapse of insurance coverage.

The number of customers affected and the duration of the violation. While it is not known how many, or if any, customers were potentially affected, any customer could have been affected.

The compliance history of the regulated entity which committed the violation. There is no evidence of record of prior violations by 1st Choice Limousine.

Whether the regulated entity cooperated with the Commission's investigation. Though an extensive investigation was not necessary, the case having been established by notice

from 1st Choice Limousine's former insurance carrier, 1st Choice Limousine's Answer to the formal Complaint appears to have been misleading as proof of the claimed insurance coverage was never provided.

The amount of the civil penalty or fine necessary to deter future violations.

Although 1st Choice Limousine's attorney indicated that Respondent has not been operating, it is recommended that a \$500 civil penalty be imposed given the potentially serious consequences of a lapse in motor carrier insurance coverage.

Past Commission decisions in similar situations/Other relevant factors.

A review of past Commission decisions indicates that motor carriers with lapsed insurance coverage have been required to pay a civil penalty of \$500. *Pa. PUC, Bureau of Investigation and Enforcement v. Gholston Paratransit Service, LLC*, Docket No. C-2013-2354805 (Order entered July 24, 2014); *Pa. PUC, Bureau of Investigation and Enforcement v. Mountain High Transportation Group, Inc.*, Docket No. C-2012-2290725 (Order entered March 26, 2013).

Respondent's clear violation of Commission regulations by failing to maintain evidence of insurance justifies a penalty here. Considering the nature of the Respondent's violation, the provisions at 66 Pa.C.S. § 3301(a), as well as the factors set out at 52 Pa.Code § 69.1201(c), the \$500 penalty requested by I&E is reasonable and is granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. 66 Pa.C.S. §§ 701; 512.
2. It is the responsibility of a certificate holder to coordinate with its insurance carrier to see that the documents verifying proof of adequate insurance are filed with the Commission. 52 Pa.Code § 32.2(c).

3. A common carrier or contract carrier of passengers may not engage in intrastate commerce and a certificate or permit will not be issued, or remain in force, except as provided in § 32.15 (relating to applications to self-insure) until there has been filed with and approved by the Commission a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service. 52 Pa.Code § 32.11(a).

4. The present day standard of evaluating civil penalties in litigated proceedings was developed in *Joseph A Rosi v. Bell-Atlantic - Pennsylvania, Inc. and Sprint Communications, L.P.*, Docket No. C-00992409 (Order entered March 16, 2000).

5. The Commission has adopted a policy statement which enumerates the standards that it uses to evaluate civil penalties. 52 Pa.Code § 69.1201.

6. Respondent has violated the Public Utility Code by failing to maintain evidence of liability insurance with the Commission.

7. I&E's request for a \$500 civil penalty is reasonable under applicable standards.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the violation averred by the Commission's Bureau of Investigation and Enforcement in the Complaint filed against 1st Choice Limousine & Transportation Group LLC, at Docket No. C-2015-2479218, is sustained;

