

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2018-2641676
	:	
Advanced Limousine Coach Services, Inc.	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

The Public Utility Commission’s (Commission) Bureau of Investigation and Enforcement (I&E) filed a complaint against Advanced Limousine Coach Services, Inc. (Advanced Limousine or Respondent). The complaint alleges that Advanced Limousine has failed to pay its annual assessment for the fiscal year 2016-2017. I&E therefore seeks an order directing the payment of this assessment to the Commission and requests that Advance Limousine be subject to a civil penalty of 25% of the total assessment. This decision sustains the complaint.

HISTORY OF THE PROCEEDING

On January 8, 2018, I&E filed a complaint with the Commission alleging that Respondent, Advanced Limousine, had failed to pay its annual assessment for the July 1, 2016 through June 30, 2017 fiscal year. This assessment was based, in part, on revenues for the 2015 calendar year that Respondent reported to the Commission in its 2015 assessment report. Respondent's assessment was \$4,737. I&E further alleged that accompanying the assessment

invoice was a notice that informed Respondent that it was obligated to pay the amount listed on the assessment invoice within 30 days or file objections within 15 days. Respondent signed a certified mail card on September 10, 2016 confirming that it received the assessment invoice and notice of assessment for the 2016-2017 fiscal year. Despite raising no objections to the assessment amount set forth in the 2016-2017 fiscal year assessment invoice, Respondent failed to pay the assessment amount. I&E therefore seeks an order directing Respondent to pay this annual assessment amount and the imposition of a civil penalty in the amount of \$1,184, which is 25% of the total assessment amount. The complaint also requests that if Respondent fails to pay the assessments and civil penalty the Commission shall certify its automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation and refer the matter to the Pennsylvania Office of Attorney General for appropriate action.¹

On January 31, 2018, Respondent filed an answer to the complaint in which it admitted or denied the various averments of the complaint.

On January 17, 2019, a hearing notice was issued scheduling this matter for an initial hearing on February 14, 2019. Prior to the date of hearing, the parties indicated that they had reached a settlement in this matter and wished to have additional time to complete the terms of the settlement. The parties requested that the February 14, 2019 hearing be cancelled and rescheduled in the future should final settlement not occur. By April 4, 2019, I&E advised that the Respondent had not completed the terms of the settlement which had been reached between the parties. On April 4, 2019, a notice of hearing was issued scheduling this matter for hearing on April 11, 2019. By email dated April 10, 2019, counsel for the Respondent indicated that the Respondent would not be participating in the initial hearing.

The April 11, 2019 hearing was conducted as scheduled. The Respondent did not participate in the hearing. Appearing on behalf of I&E was Kourtney Myers, Esquire and one witness who sponsored eight exhibits which were admitted into the record. The hearing resulted

¹ In its complaint, I&E also sought to have the Respondent's certificates of public convenience cancelled. At the time of hearing, I&E indicated that this remedy was now moot as the certificates had already been cancelled as the result of the Respondent's failure to maintain or provide proof of motor vehicle insurance as required by the Commission.

in a transcript of 48 pages. The record closed on April 11, 2019 at the conclusion of the hearing. For the reasons discussed below, the complaint in this matter will be sustained in part.

FINDINGS OF FACT

1. The Complainant is the Commission's Bureau of Investigation and Enforcement.
2. The Respondent is Advanced Limousine Coach Services, Inc.
3. The Respondent maintains its principal place of business at 538 Durham Road, Newtown, PA 18940, Attention: Michael Chereisky.
4. The Respondent filed a 2015 assessment report with the Commission on March 31, 2016. I&E Ex. No. 1.
5. The 2015 assessment report was utilized by the Commission to calculate the Respondent's yearly assessment for the 2016-2017 fiscal year. N.T. 19.
6. On September 1, 2016, an assessment invoice in the amount of \$4,737 was issued to the Respondent for the July 1, 2016 to June 30, 2017 fiscal year. N.T. 21-23; I&E Ex. No. 2.
7. A notice of assessment was also sent to the Respondent for the July 1, 2016 to June 30, 2017 fiscal year. N.T. 25, I&E Ex. No. 3.
8. Both the assessment invoice and notice of assessment were sent to the Respondent by certified mail. N.T. 26.
9. The Respondent signed an electronic signature form acknowledging receipt of these documents by certified mail. N.T. 27; I&E Ex. No. 4.

10. The Respondent received the assessment invoice and notice of assessment on September 10, 2016. N.T. 29-30; I&E Ex. No. 4.

11. The Respondent had 30 days from the date of receipt of the assessment invoice and notice of assessment to pay the assessment. N.T. 29.

12. The Respondent's assessment payment was due on or before October 10, 2016. N.T. 30.

13. The Respondent never filed an objection to the 2016-2017 fiscal year assessment. N.T. 26.

14. The Respondent has never paid the 2016-2017 fiscal year assessment. N.T. 30.

DISCUSSION

Usually, as the participant seeking an order of the Commission, I&E would bear the burden of proof, pursuant to the provisions of 66 Pa.C. S. §332(a). However in this case Respondent has the burden of proving that it complied with the Commission's orders and regulations and the Public Utility Code. McQuaide v. Pennsylvania Pub. Util. Comm'n, 629 A.2d 272 (Pa. Cmwlth. 1993). Section 315(b) of the Public Utility Code, 66 Pa. C.S. §315(b), provides that in a case involving an alleged violation of a determination or order of the Commission by a public utility, the burden of proof shall be upon the public utility to show that it has complied with the determination or order of the Commission.

Section 510(c) of the Public Utility Code (Code) requires public utilities to pay the Commission's assessment invoices within thirty days of having received notice from the Commission of the amounts assessed. It also gives each public utility the opportunity to challenge its assessment within fifteen days after receiving notice of the assessment. Specifically, section 510(c) provides:

(c) Notice, hearing and payment.--The commission shall give notice by registered or certified mail to each public utility of the amount lawfully charged against it under the provisions of this section, which amount shall be paid by the public utility within 30 days of receipt of such notice, unless the commission specifies on the notices sent to all public utilities an installment plan of payment, in which case each public utility shall pay each installment on or before the date specified therefor by the commission. Within 15 days after receipt of such notice, the public utility against which such assessment has been made may file with the commission objections setting out in detail the grounds upon which the objector regards such assessment to be excessive, erroneous, unlawful or invalid. The commission, after notice to the objector, shall hold a hearing upon such objections. After such hearing, the commission shall record upon its minutes its findings on the objections and shall transmit to the objector, by registered or certified mail, notice of the amount, if any, charged against it in accordance with such findings, which amount or any installment thereof then due, shall be paid by the objector within ten days after receipt of notice of the findings of the commission with respect to such objections. If any payment prescribed by this subsection is not made as aforesaid, the commission may suspend or revoke certificates of public convenience, certify automobile registrations to the Department of Transportation for suspension or revocation or, through the Department of Justice, may institute an appropriate action at law for the amount lawfully assessed, together with any additional cost incurred by the commission or the Department of Justice by virtue of such failure to pay.

66 Pa. C.S. § 510(c).

The testimony and evidence presented by I&E has demonstrated that Respondent has violated 66 Pa. C.S. § 510(c). The Respondent filed a 2015 assessment report with the Commission on March 31, 2016. I&E Ex. No. 1. The 2015 assessment report was then utilized by the Commission to calculate the Respondent's yearly assessment for the 2016-2017 fiscal year. N.T. 19. On September 1, 2016 an assessment invoice in the amount of \$4,737 was issued to the Respondent for the July 1, 2016 to June 30, 2017 fiscal year. N.T. 21-23; I&E Ex. No. 2. At that same time, a notice of assessment was also sent to the Respondent for the July 1, 2016 to June 30, 2017 fiscal year. N.T. 25, I&E Ex. No. 3. These documents were sent to the Respondent by certified mail. N.T. 26. The Respondent received the assessment invoice and notice of assessment on September 10, 2016 and signed an electronic signature form acknowledging receipt of these documents. N.T. 27, 29-30; I&E Ex. No. 4.

From the time the documents were received, the Respondent had 30 days to pay the assessment. 66 Pa. C.S. § 510(c); N.T. 29. This means that Respondent's assessment payment was due on or before October 10, 2016. N.T. 30. The Respondent never filed an objection to, and has never paid, the 2016-2017 fiscal year assessment. N.T. 26, 30. Respondent has therefore violated 66 Pa. C.S. § 510(c).

Having concluded that Respondent has violated the Public Utility Code, I&E's request for a civil penalty must be addressed. To determine the amount of, and whether, a civil penalty should be imposed is governed by the considerations that the Commission first enunciated in Rosi v. Bell-Atlantic-Pennsylvania, Inc. and Sprint Communications Company, L.P., Docket No. C-00992409 (Order entered March 16, 2000). In Rosi, the Commission adopted standards to be applied to determine the amount of the civil penalty in slamming² cases. The Commission also considered these standards when evaluating settlement agreements in slamming cases. Pa. Pub. Util. Comm'n v. PEPCO Energy Services, Docket No. M-00001432 (Order entered November 9, 2000). Subsequently, the Commission determined that all violations of the Public Utility Code and the Commission's regulations would be subject to review under the standards set forth in Rosi. Pa. Pub. Util. Comm'n v. NCIC Operator Serv., Docket No. M-00001440 (Order entered Dec. 21, 2000).

The Commission, at 52 Pa. Code § 69.1201, has adopted a policy statement setting forth the standards it will consider in evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations based in part on the standards in Rosi. The standards in 52 Pa. Code § 69.1201(c) provide:

(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 "Slamming" refers to changing a customer's supply service without authorization. Rosi.

(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(c).

Here, I&E provided testimony and evidence regarding the Respondent's circumstances with the Commission as well as the seriousness of the Respondent's violations. I&E's witness credibly testified that Respondent's continued failure or refusal to pay the 2016-

2017 fiscal year assessment was conduct of a serious nature and could have serious consequences given the importance of such assessments to the Commission. The Commission relies solely on assessments for its funding and therefore its continued ability to perform its function as a regulatory agency rests with such payments. N.T. 32-33. Respondent's failure to pay the 2016-2017 assessment was intentional. In addition to the assessment invoice, the Commission made contact with the Respondent on several occasions to request payment of the assessment. N.T. 34. Despite repeated contact, the Respondent has failed or refused to pay the assessment.

I&E also presented testimony regarding Respondent's compliance history with the Commission. Respondent has been the subject of four other Commission complaints for failure to maintain evidence of insurance and has failed or refused to pay a \$600 fine which it previously received in another matter. N.T. 34-35.³ The witness also credibly testified that respondent had made no effort to modify its practices or procedures to ensure timely payment of annual assessments. In addition to the 2016-2017 assessment, respondent has failed or refused to pay its 2017-2018 and 2018-2019 annual assessments. N.T. 33.

Lastly, I&E has requested a civil penalty in the amount of \$1,184 which is 25% of the delinquent 2016-2017 assessment amount. I&E's witness again credibly testified that such an amount was consistent with civil penalties levied in other cases in which a utility has a substantial history of failure to comply with Commission regulations and the Public Utility Code. N.T. 34.

Under Section 3301 of the Code, 66 Pa. C.S. § 3301, the Commission is authorized to impose civil penalties of up to \$1,000 per violation on utilities that fail to file or pay their annual assessments on time. In Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. West Side Services, Inc., Docket No. C-2015-2494535 (Order entered August 3, 2017) (West Side Services), the Commission addressed circumstances where a civil penalty amount would be justified.

³ For the four other complaints, see, I&E Exhibits 5A-5C from Docket No. C-2015-2465195; I&E Exhibits 6A-6B from Docket No. C-2016-2556621; I&E Exhibits 7A-7D from Docket No. C-2016-2572192, and I&E Exhibits 8A-8B from Docket No. C-2018-3005560.

In West Side Services, the Commission noted that a utility's compliance history and the need to deter future violations were important considerations when weighing the amount of a civil penalty and that it was reasonable to review Commission records for a period of three years prior to the date of the filing of a complaint - up to and including the date of Commission action to determine whether a utility has a satisfactory compliance record. The Commission further held in West Side Services that violations including, but not limited to, the following should be considered: the Commission's assessment requirements in 66 Pa. C.S. § 510; the unauthorized provision of service under 66 Pa. C.S. §§ 1101 and 1102; the Commission's insurance requirements in 52 Pa. Code, Ch. 32; the Commission's tariff requirements in 52 Pa. Code, Chs. 23, 29, and 31; and the Commission's vehicle, service, and driver requirements in 52 Pa. Code, Ch. 29.

Here, Respondent's compliance history mirrors the same factors considered by the Commission in West Side Services. Respondent has been the subject of four other Commission complaints for failure to maintain evidence of insurance and has failed or refused to pay a \$600 fine which it previously received in another matter. N.T. 34-35.⁴ In addition to the 2016-2017 assessment, respondent has failed or refused to pay its 2017-2018 and 2018-2019 annual assessments. N.T. 33. This compliance history is very similar to the compliance history considered by the Commission in West Side Services when it determined that a civil penalty based on 25% of the outstanding assessment amount was appropriate.

It should be noted that while I&E has similarly requested a civil penalty in the amount of 25% of the Respondent's outstanding assessment amount in this case, this total penalty amount of \$1,184 would be in excess of the maximum civil penalty of \$1,000 permitted under 66 Pa. C.S. § 3301. While it is true that the civil penalty which I&E seeks in this matter is similar to those sought in other similar matters – 25% of the outstanding assessment amount such as in West Side Services – this fails to recognize the \$1,000 civil penalty limits imposed by 66 Pa. C.S. § 3301.

⁴ For the four other complaints, see, I&E Exhibits 5A-5C from Docket No. C-2015-2465195; I&E Exhibits 6A-6B from Docket No. C-2016-2556621; I&E Exhibits 7A-7D from Docket No. C-2016-2572192, and I&E Exhibits 8A-8B from Docket No. C-2018-3005560.

Based on a review of the testimony and evidence and the standards set forth above, a civil penalty in the amount of \$1,000 is appropriate for the violations set forth in the complaint. Respondent will be directed to pay its total outstanding 2016-2017 assessment in the amount of \$4,737.

If Respondent fails to pay the assessment and civil penalty within 30 days of the date of service of this order, its automobile registrations will be certified to the Pennsylvania Department of Transportation for suspension or revocation and the matter will be referred to the Pennsylvania Office of Attorney General for appropriate action.

CONCLUSIONS OF LAW

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

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

3. As the holder of a Commission-issued certificate of public convenience, Respondent has a duty to comply with Commission orders and regulations. 66 Pa. C.S. § 501(c).

4. A public utility is required to pay the Commission's assessment invoices within thirty days of having received notice from the Commission of the amounts assessed or challenge its assessment within fifteen days after receiving notice of the assessment. 66 Pa. C.S. § 510(c).

5. Respondent's failure to pay the 2016-2017 annual assessment in the amount of \$4,737 is a violation of 66 Pa. C.S. § 510(c).

6. Whether a civil penalty should be imposed is governed by the considerations enunciated in Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc. and Sprint Communications Company, L.P., Docket No. C-00992409 (Order entered March 16, 2000).

7. All violations of the Public Utility Code and the Commission's regulations are subject to review under the standards set forth in Rosi. Pennsylvania Pub. Util. Comm'n v. NCIC Operator Serv., Docket No. M-00001440 (Order entered Dec. 21, 2000).

8. The standards which will be considered in evaluating proceedings involving violations of the Public Utility Code and Commission regulations are set forth in the Commission's policy statement at 52 Pa. Code § 69.1201.

9. The Commission may impose a civil penalty of up to \$1,000 per violation for the failure of a utility to pay an annual assessment on time. 66 Pa. C.S. § 3301.

10. A civil penalty in the amount of \$1,000, is reasonable and appropriate. Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. West Side Services, Inc., Docket No. C-2015-249535 (Order entered August 3, 2017).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by the Bureau of Investigation and Enforcement against Advanced Limousine Coach Services, Inc. at Docket No. C-2018-2641676 is sustained in part.

2. That the complaint filed by the Bureau of Investigation and Enforcement against Advanced Limousine Coach Services, Inc. at Docket No. C-2018-2641676 is denied in part to the extent that it seeks a civil penalty in excess of \$1,000 per violation permitted by 66 Pa. C.S. § 3301.

3. That Advanced Limousine Coach Services, Inc. shall pay a civil penalty of \$1,000 for the violation set forth in the complaint, as provided for in the Public Utility Code, 66 Pa. C.S. § 3301, as well as its outstanding 2016-2017 assessment in the amount of \$4,737 for a total of \$5,737. Said amount is payable by certified check or money order, within 30 days after service of the Commission's order, forwarded and made payable to:

Rosemary Chiavetta Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg PA 17120

4. That following entry of a final Commission order a copy of this order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

5. That following entry of a final Commission order a copy of this order shall be served upon the Bureau of Technical Utility Services for monitoring of compliance.

6. That Advanced Limousine Coach Services, Inc. cease and desist from further violations of the Public Utility Code and the Public Utility Commission's regulations.

7. That if Advanced Limousine Coach Services, Inc. fails to pay the amount set forth in Ordering Paragraph No. 2 above within 30 days of the entry of a final Commission Order, that:

a. A copy of a final Commission order shall be served on the Pennsylvania Department of Transportation, pursuant to 75 Pa. C.S. §§ 1301-1379, requesting that the Pennsylvania Department of Transportation put an administrative hold on Advanced Limousine Coach Services, Inc.'s vehicle registrations. Advanced Limousine Coach Services, Inc. will not be able to register any new vehicles or renew any existing vehicle registrations until all past dues assessments are paid, all past due civil penalties are paid, all insurance filings are up to date, and it holds an active certificate of public convenience issued by this Commission; and

