



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE  
C-2018-2641676

July 15, 2019

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation  
and Enforcement v. Advanced Limousine Coach Services Inc.  
Docket No. C-2018-2641676  
**I&E Exceptions**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Exceptions of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Myers", written over a light gray background.

Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Prosecutor for the Bureau of  
Investigation and Enforcement

Enclosures

cc: ra-OSA@pa.gov  
Honorable Benjamin J. Myers  
As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	Docket No. C-2018-2641676
v.	:	
	:	
Advanced Limousine Coach Services Inc.,	:	
Respondent	:	

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EXCEPTIONS OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT

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Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Michael L. Swindler  
Deputy Chief Prosecutor  
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Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: July 15, 2019

## I. INTRODUCTION

The Initial Decision (“I.D.”) of presiding Administrative Law Judge (“ALJ”) Benjamin J. Myers sustains, in part, the Complaint of the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”) and denies, in part, I&E’s requested relief related to the imposition of a civil penalty of \$1,184.<sup>1</sup> Specifically, the presiding ALJ sustained I&E’s Complaint in finding that Advanced Limousine Coach Services, Inc. (“Respondent”) violated Section 510(c) of the Public Utility Code (“Code”), 66 Pa.C.S. § 510(c), by failing to pay its assessment for the July 1, 2016 to June 30, 2017 Fiscal Year (“2016-2017 Fiscal Year”) in the amount of \$4,737.<sup>2</sup> Despite finding that Respondent violated the Code, the ALJ modified I&E’s requested civil penalty of 25% of Respondent’s outstanding assessment or \$1,184 and ordered Respondent to pay a reduced civil penalty of \$1,000.<sup>3</sup>

I&E files these Exceptions to the June 12, 2019 Initial Decision of the ALJ with respect to the \$1,000 civil penalty imposed for Respondent’s continuing violation of 66 Pa.C.S. § 510(c). It is I&E’s position that the Code, past Commission decisions in similar situations, and the need to deter future violations of 66 Pa. C.S. § 510(c) support the imposition of the civil penalty of \$1,184 sought in the Complaint. If the Commission denies I&E’s Exceptions and does not modify the ALJ’s I.D., this will send the wrong message to other delinquent utilities that they can continue to ignore the Commission’s

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<sup>1</sup> I.D. at 11.

<sup>2</sup> Conclusion of Law No. 5.

<sup>3</sup> I.D. at 12.

assessment invoice and only receive a maximum civil penalty of \$1,000 for such violation.

## II. BACKGROUND

On September 1, 2016, the Commission mailed to Respondent an assessment invoice for the 2016-2017 Fiscal Year in the amount of \$4,737.<sup>4</sup> Respondent's assessment was based on its reported, gross intrastate operating revenues that Respondent reported to the Commission in its 2015 Assessment Report.<sup>5</sup> Accompanying the assessment invoice was a Notice of Assessment notifying Respondent that its assessment must be paid within thirty (30) days of receipt of the assessment invoice.<sup>6</sup> On September 10, 2016, Respondent received its 2016-2017 Fiscal Year Assessment Invoice and Notice of Assessment by certified mail.<sup>7</sup> Respondent was required to pay the assessment by October 10, 2016.<sup>8</sup> When it became apparent that such payment was not forthcoming, I&E filed a Complaint against Respondent on January 8, 2018 at Docket No. C-2018-2641676 alleging that Respondent violated Section 510(c) of the Code, 66 Pa.C.S. § 510(c), by failing to pay its assessment invoice for the 2016-2017 Fiscal Year totaling \$4,737. In addition to payment of the outstanding assessment, I&E seeks payment of a civil penalty in the amount of \$1,184, which is 25% of Respondent's outstanding assessment. I&E's Complaint also requests that if payment of the outstanding assessment and civil penalty is not made, that the Commission revoke Respondent's Certificates of

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<sup>4</sup> N.T. at 21-23; I&E Exhibit 2.

<sup>5</sup> N.T. at 23; I&E Exhibit 1.

<sup>6</sup> N.T. at 23-26; I&E Exhibit 3.

<sup>7</sup> N.T. at 29-30; I&E Exhibit 4.

<sup>8</sup> N.T. at 30.

Public Convenience (“Certificates”) at A-2014-2415200 and A-2014-2415198,<sup>9</sup> refer the matter to the Pennsylvania Office of Attorney General for collection, and certify Respondent’s automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation. On January 31, 2018, Respondent filed an Answer to I&E’s Complaint denying that it failed to pay its assessment.

A Hearing Notice was issued on January 16, 2019 scheduling an Initial Hearing in this matter for February 14, 2019. On February 13, 2019, I&E and Respondent reached a settlement and requested that the hearing be cancelled. That same day, a Cancellation Notice was issued cancelling the Initial Hearing. By April 4, 2019, I&E advised the assigned ALJ that Respondent had not met the agreed-upon terms of the settlement and requested that the hearing be rescheduled. A second Hearing Notice was issued scheduling this matter for a hearing to take place on April 11, 2019. One day before the hearing, on April 10, 2019, Respondent indicated that it would not be participating at the hearing.

The Initial Hearing was held in Harrisburg as scheduled. Respondent did not appear. At the hearing, I&E moved that its Complaint be sustained and default judgment be entered against Respondent because Respondent failed to appear at the hearing and otherwise inadequately defended against the allegations made against it in I&E’s Complaint.<sup>10</sup> The presiding ALJ denied I&E’s Motion explaining that there was no

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<sup>9</sup> Subsequent to the filing of I&E’s Complaint and prior to the Initial Hearing in this matter, Respondent’s Certificates were cancelled on March 29, 2019. At the Initial Hearing, I&E moved to modify the portion of its requested relief related to cancellation of Respondent’s Certificates since that relief was moot.

<sup>10</sup> N.T. at 7-8.

mechanism to allow him to issue a default judgment.<sup>11</sup> I&E proceeded to present uncontested testimony of PUC Assessment Supervisor, Amy Zuvich and proffered eight (8) exhibits into evidence. On June 24, 2019, the Commission's Office of Administrative Law Judge issued the I.D. of the presiding ALJ.

I&E's Exceptions follow.

### **III. SCOPE OF REVIEW**

The Commission has the power to disregard and supersede the I.D. Section 335(a) of the Code states that, "on review of the initial decision, the commission has all the powers which it would have in making the initial decision . . . ." 66 Pa.C.S. § 335(a). The Commonwealth Court has determined that, "a broader grant of power to the Commission in the disposition of initial decisions in cases it chooses to review can scarcely be imagined." *G.G. & C. Bus Co. v. Pa. Pub. Util. Comm'n*, 400 A.2d 941, 944 (Pa. Cmwlth 1979). *See also City of Philadelphia v. Pa. Pub. Util. Comm'n*, 458 A.2d 1026 (Pa. Cmwlth. 1983). Thus, under this broad scope of review, the Commission may substitute its own findings of fact and conclusions of law as it sees fit based upon the evidence and record before it. The Commission should exercise its powers under Section 335 of the Code and reject the I.D. with regard to the imposition of a reduced civil penalty of \$1,000 as such penalty fails to adequately consider 66 Pa.C.S. § 3301(b) related to civil penalties for continuing offenses, 52 Pa. Code § 69.1201(c)(9) regarding civil penalties imposed in prior Commission decisions in similar situations, and 52 Pa.

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<sup>11</sup> N.T. at 11-13.

Code § 69.1201(c)(8) related to the amount of civil penalties necessary to deter future violations.

#### **IV. I&E EXCEPTIONS**

##### **A. The Public Utility Code Supports the Imposition of a Civil Penalty of 25% of the Outstanding Assessment or \$1,184.**

I&E respectfully submits that Section 3301(b) of the Code, 66 Pa.C.S. § 3301(b), related to civil penalties for continuing offenses, was not adequately considered by the presiding ALJ.

Section 3301(a) of the Code authorizes the Commission to impose a civil penalty of up to \$1,000 per violation of the Code, Commission regulation or order. 66 Pa.C.S. § 3301(a). Additionally, under Section 3301(b) of the Code, the Commission may impose a civil penalty of up to \$1,000 **for each day** of a continuing offense. 66 Pa.C.S. § 3301(b).

In assessing the civil penalty in this matter, the presiding ALJ determined that “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” pursuant to 66 Pa.C.S. § 3301.<sup>12</sup> I&E respectfully submits that Respondent’s conduct in violating 66 Pa.C.S. § 510(c) should not be construed as a one-time violation, but as a continuing violation pursuant to 66 Pa.C.S. § 3301(a)-(b). As noted above, Respondent was required to pay its 2016-2017 Fiscal Year Assessment by October 10, 2016.<sup>13</sup> However, to this day, Respondent has still not paid its assessment to the Commission. Each day that Respondent fails to pay its

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<sup>12</sup> Conclusion of Law No. 9.

<sup>13</sup> N.T. at 30.

assessment to the Commission constitutes a continuing offense. At the time of the filing of I&E's Complaint in this matter, Respondent's 2016-2017 Fiscal Year Assessment was 455 days past due. Therefore, I&E could have sought a civil penalty of \$1,000 for each day that Respondent continued to fail to pay its assessment or \$455,000 pursuant to 66 Pa.C.S. § 3301(a)-(b). However, I&E sought a civil penalty of 25% of the outstanding assessment, which is the civil penalty that I&E consistently requests in assessment-related complaints when a utility has an unsatisfactory compliance history with the Commission.<sup>14</sup>

**B. Prior Commission Decisions Support the Imposition of a Civil Penalty of 25% of the Outstanding Assessment or \$1,184.**

For the reasons described in greater detail below, I&E respectfully submits that the ninth factor of the Commission's Policy Statement, 52 Pa. Code § 69.1201(c)(9), related to past Commission decisions in similar situations was not adequately considered by the presiding ALJ. Imposing a civil penalty of 25% of Respondent's outstanding assessment, even if the civil penalty exceeds \$1,000, is entirely consistent with past Commission decisions in similar situations.

The Commission promulgated a Policy Statement at 52 Pa. Code § 69.1201 as a guideline that sets forth ten factors that are to be considered when evaluating whether and to what extent a civil penalty for violating a Commission order, regulation or statute is warranted. While these factors are evaluated for both litigated and settled proceedings involving violations of the Code and Commission regulations, Section 69.1201(b) of the

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<sup>14</sup> N.T. at 34.

Policy Statement notes that these factors and standards are applied in a more strict fashion in a litigated proceeding and without the flexibility afforded in a settled proceeding. 52 Pa. Code § 69.1201(b).

In evaluating the ninth factor at 52 Pa. Code § 69.1201(c)(9) regarding previous Commission decisions in similar situations, the ALJ compared Respondent's compliance history to that of the respondent in *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. West Side Services, Inc.*, Docket No. C-2015-2494535 (Order entered August 3, 2017).<sup>15</sup> The ALJ found Respondent's compliance history to "mirror" and be "very similar" to the compliance history considered by the Commission in *West Side Services* where I&E sought and the Commission imposed a civil penalty of 25% of the respondent's outstanding assessment due to the respondent's unsatisfactory compliance history.<sup>16</sup> In concluding that Respondent's compliance history was unsatisfactory, the ALJ noted that Respondent was previously prosecuted by I&E for failing to maintain evidence of insurance on file with the Commission on four (4) separate occasions and that Respondent was ordered by the Commission to pay a \$600 civil penalty, which is still outstanding.<sup>17</sup>

However, the ALJ determined that the requested civil penalty in the instant matter of \$1,184 exceeds the maximum civil penalty of \$1,000 permitted in 66 Pa.C.S. § 3301.<sup>18</sup> The ALJ reiterated that while I&E's civil penalty of 25% of the assessment is similar to the civil penalties sought in similar cases, I&E's civil penalty fails to recognize the

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<sup>15</sup> I.D. at 9.

<sup>16</sup> *Id.*

<sup>17</sup> I.D. at 8; I&E Exhibits 5A-C, 6A-B, 7A-D, and 8A-B.

<sup>18</sup> I.D. at 9.

\$1,000 civil penalty limit of 66 Pa.C.S. § 3301 and the ALJ recommended that a civil penalty of \$1,000 be imposed.<sup>19</sup>

I&E submits that in considering this factor, the ALJ failed to compare the instant matter to prior Commission decisions involving a continuing violation of 66 Pa.C.S. § 510(c) where the Commission assessed a civil penalty that exceeded \$1,000. A review of past Commission decisions similar to the instant matter shows that the Commission routinely ordered the imposition of a civil penalty of 25% of the outstanding assessment when the respondent had an unsatisfactory compliance history, like Respondent in this matter, even though the calculation resulted in a civil penalty that was greater than \$1,000. *See, e.g., Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. William D. Mercer Jr.*, Docket No. C-2018-2641950 (Order entered February 7, 2019) (wherein the respondent was ordered to pay a civil penalty of 25% of its outstanding assessment or \$1,035 for failing to pay its 2016-2017 Fiscal Year Assessment of \$4,140); *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Dodds Associates, Inc. t/a Allied Limousine Serv. Inc.*, Docket No. C-2017-2634226 (Order entered October 4, 2018)(wherein the respondent was ordered to pay a civil penalty of 25% of its outstanding assessment or \$1,165 for failing to pay its 2016-2017 Fiscal Year Assessment of \$4,658); *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Wanish Limousine Serv., Ltd.*, Docket No. C-2015-2517056 (Order entered November 8, 2017)(wherein the respondent was ordered to pay a civil penalty of 25% of its

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<sup>19</sup> I.D. at 9-10.

outstanding assessment or \$1,263 for failing to pay its 2014-2015 Fiscal Year Assessment of \$5,052).

Similarly, when assessing civil penalties in cases involving a continuing violation of 66 Pa.C.S. § 510(c) where it was determined that the utility had a satisfactory compliance history, a review of past Commission decisions shows that the Commission ordered the imposition of a civil penalty of 15% of the outstanding assessment, even though the calculation resulted in a civil penalty that was greater than \$1,000. *See, e.g., Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Francis E. Criner t/a Mt. Pleasant Yellow Cab*, Docket No. C-2017-2634218 (Order entered May 9, 2019)(wherein the respondent was ordered to pay a civil penalty of 15% of its outstanding assessment or \$1,133 for failing to pay its 2016-2017 Fiscal Year Assessment of \$7,554); *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Quick Service Taxi Company, Inc.*, Docket No. C-2016-2558435 (Order entered September 13, 2017)(wherein the respondent was ordered to pay a civil penalty of 15% of its outstanding assessment or \$2,464 for failing to pay its 2015-2016 Fiscal Year Assessment of \$16,425); *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Erie Transportation Services Inc. t/a Erie Yellow Cab*, Docket No. C-2015-2498121 (Order entered September 1, 2016)(wherein the respondent was ordered to pay a civil penalty of 15% of its outstanding assessment or \$2,874 for failing to pay its 2014-2015 Fiscal Year Assessment of \$19,157).

**C. A Consideration of the Amount of the Civil Penalty Necessary to Deter Future Violations Supports the Imposition of a Civil Penalty of 25% of the Outstanding Assessment or \$1,184.**

The eighth factor at 52 Pa. Code § 69.1201(c)(8), which considers the amount of the fine or civil penalty necessary to deter future violations, was not considered by the presiding ALJ. I&E sought a civil penalty of 25% of Respondent's outstanding assessment, which is the standard penalty that I&E seeks when a utility has an unsatisfactory compliance history.<sup>20</sup> The civil penalty of \$1,184 that I&E requested in its Complaint was not sufficient to induce Respondent to cease and desist from its misconduct as I&E's witness credibly testified that Respondent had also failed to pay its assessments for the July 1, 2017 to June 30, 2018 and July 1, 2018 to June 30, 2019 Fiscal Years totaling \$6,600.<sup>21</sup> Therefore, Respondent's conduct in refusing or failing to pay its assessments to the Commission is a recurring event. I&E submits that a reduced civil penalty of \$1,000 for a continuing violation of 66 Pa.C.S. § 510(c) will not suffice in sending a message to delinquent utilities that the late or no payment of an assessment will not be tolerated, especially not to those delinquent utilities that owe substantial assessment amounts to the Commission.

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<sup>20</sup> N.T. at 34.

<sup>21</sup> N.T. at 30-31; I.D. at 8.

**V. CONCLUSION**

For the reasons set forth above, I&E respectfully submits that a civil penalty of 25% of Respondent's outstanding assessment for the 2016-2017 Fiscal Year or \$1,184 is permitted under 66 Pa.C.S. § 3301(a)-(b), consistent with civil penalties sought by I&E and approved by the Commission in prior, similar matters, and necessary to deter future violations.

Respectfully submitted,



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Dated: July 15, 2019

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement,  
Complainant

v.

Advanced Limousine Coach Services Inc.,  
Respondent

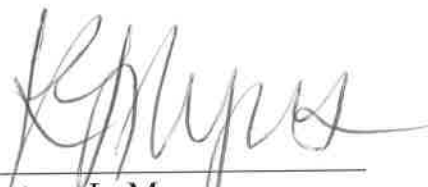
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### CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

#### Notification by First Class Mail and Electronic Mail:

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Dated: July 15, 2019