



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

October 23, 2019

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Phlat Rate Moving
Docket No. C-2019-
I&E Formal Complaint

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's (I&E) **Formal Complaint** for the above-captioned proceeding.

Copies are being served on all parties of record as evidenced in the attached Certificate of Service. Should you have any questions, or concerns, please do not hesitate to contact me.

Sincerely,

Christopher M. Andreoli
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 85676
(717) 705-4366
chandreoli@pa.gov

CMA/ac
Enclosure

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

Phlat Rate Moving,
Respondent

Docket No. C-2019-

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint.

The date of service is the mailing date as indicated at the top of the Secretarial Letter. See 52 Pa. Code §1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

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

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Christopher M. Andreoli, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Or, emailed to Mr. Andreoli at: chandreoli@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the requested relief.

- C. You may elect not to contest this Complaint by paying the civil penalty within 20 days. Send only a certified check or money order made payable to the "Commonwealth of Pennsylvania", with the docket number indicated, and mailed to:

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

- D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the requested relief set forth in this Complaint.
- E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.
- F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.
- G. Alternative formats of this material are available for persons with disabilities by contacting the Commissioner's ADA Coordinator at (717) 787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2019-
	:	
Phlat Rate Moving,	:	
Respondent	:	

FORMAL COMPLAINT

NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission, by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, and files this Formal Complaint (“Complaint”) against Phlat Rate Moving (“Phlat Rate,” “Company” or “Respondent”) alleging violations of the Public Utility Code and attending Regulations. In support of its Complaint, I&E respectfully avers as follows:

Parties and Jurisdiction

1. The Pennsylvania Public Utility Commission (“PUC” or “Commission”), with a mailing address of 400 North Street, Harrisburg, PA, 17120, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*

2. Complainant is the Commission's Bureau of Investigation and Enforcement and is the entity established to prosecute complaints against public utilities pursuant to 66 Pa.C.S. §308.2(a)(11). Complainant's counsel is as follows:

Christopher M. Andreoli
Prosecutor
chandreoli@pa.gov
717.772.8582

Michael L. Swindler
Deputy Chief Prosecutor
mwindler@pa.gov
717.783.6369

3. Respondent is Phlat Rate Moving, with its principal place of business located at 1309 N. Water Avenue, Hermitage, PA 16148.

4. Respondent holds itself out to be a household goods carrier, but it lacks Commission authority to provide or furnish transportation of household property for compensation within the Commonwealth as a common carrier by motor vehicle or a contract carrier by motor vehicle, pursuant to Sections 102 and 2501(b)(1) of the Public Utility Code. 66 Pa.C.S. §§ 102 and 2501(b)(1).

5. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.

6. Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities or

companies holding themselves out to be a public utility for violations of any law or regulation that the Commission has jurisdiction to administer or enforce.

7. Section 3310 of the Public Utility Code, 66 Pa.C.S. § 3310, authorizes the Commission to impose administrative penalties on any person or corporation operating as a common carrier by motor vehicle or as a contract carrier by motor vehicle without a certificate of public convenience, permit, or license authorizing the service performed. Section 3310(c) specifically provides that an administrative penalty of Five Thousand Dollars (\$5,000) be imposed for a first violation of this section while an administrative penalty of Ten Thousand Dollars (\$10,000) shall be imposed for a second or subsequent violation.¹

8. Respondent, by providing or furnishing the transportation of household property between points within the Commonwealth by motor vehicle for compensation is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

¹ Section 3310 of the Public Utility Code, 66 Pa.C.S. § 3310, which was amended and made effective on February 20, 2018, authorizes the Commission to impose the following penalties on any person or corporation who operates as a common carrier or contract carrier by motor vehicle without a certificate of public convenience, permit, or license: (1) A \$5,000 administrative penalty shall be imposed for a first violation and \$10,000 for a second or subsequent violation; (2) Suspension of the registration of any vehicle whereby a determination has been made that it operated as a common carrier or contract carrier by motor vehicle without the approval of the Commission in accordance with 75 Pa.C.S. § 1375; and (3) Confiscation and impoundment of vehicles which have been used to provide common carrier or contract carrier by motor vehicle without Commission approval, subject to the process for the disposition of impounded vehicles as set forth under 75 Pa.C.S. § 6310.

Background

9. Respondent applied for a Certificate of Public Convenience. However, this application was denied by the Commission on November 19, 2018. See Exhibit I&E-1.

10. Subsequently, PUC Motor Carrier Enforcement Division was notified by a certificated household goods mover that Respondent was continuing to illegally operate as a household goods carrier.

11. In July 2019, as part of his investigation, PUC Enforcement Officer, David Gill, arranged a move of household goods with Respondent through a series of emails and telephone discussions. Respondent ultimately agreed to move household goods from Mercer, PA to Meadville, PA. The agreed upon price for this intrastate move was \$299.00 for the first hour plus \$100.00 for each additional hour.

12. On July 5, 2019, Respondent arrived at the agreed upon meeting location in Mercer, PA in a vehicle with markings that identified it as a "Penske" truck. The two men in the truck identified themselves to the PUC Enforcement Officer as Dustin Gould and Adjubah Sackor. These two men in the truck advised that they are the co-owners of Phlat Rate Moving.

13. The PUC Enforcement Officer confirmed that the truck in question is a rented "Penske" truck. This "Penske" truck is a 2017 Freightliner with Vehicle Identification Number 3ALACWDT6HDJD6882 and Indiana Registration Number 2267815.

14. Respondent does not possess nor has ever been issued a certificate of public convenience, permit, or license by the Commission authorizing such transportation of household property between points within the Commonwealth for compensation.

Violation

15. All allegations in paragraphs 1-14 are incorporated as if fully set forth herein.

16. Section 3310(b) of the Public Utility Code states that any person or corporation that operates as a common carrier or contract carrier by motor vehicle (as defined in 66 Pa.C.S. §§ 102 and 2501(b)) without a certificate of public convenience, permit, or license issued by the Commission authorizing such service performed, in violation of Section 3310(a),² “*shall* be ordered to pay an administrative penalty as prescribed in subsection (c).” 66 Pa.C.S. § 3310(b) (emphasis added).

17. Respondent violated Section 3310(a) and (b) of the Public Utility Code, 66 Pa.C.S. §§ 3310(a)-(b), by operating as a common carrier and/or contract carrier by motor vehicle without a certificate of public convenience, permit, or license issued by the Commission when it agreed to transport the Resident’s household property between points within the Commonwealth for compensation.

18. Section 3310(c) of the Public Utility Code requires that “[t]he amount of the administrative penalty under subsection (b) *shall* be \$5,000 for a first violation and

² 66 Pa.C.S. § 3310(a).

\$10,000 for a second or subsequent violation.” 66 Pa.C.S. § 3310(c) (emphasis added).³

As such, I&E’s requested administrative penalty is \$5,000 for this violation.

19. In addition to the requested administrative penalty above, a person or corporation under subsection (b) may also be subject to the following:

- (i) Suspension of registration under 75 Pa.C.S. § 1375 (relating to suspension of registration of unapproved carriers).
- (ii) Confiscation and impoundment of vehicle. A sheriff, upon an order issued by the court and having jurisdiction over the property, is empowered to confiscate and impound vehicles which have been used to provide common carrier by motor vehicle service or contract carrier by motor vehicle service in violation of subsection (b) or commission regulations. The process for the disposition of impounded vehicles shall be as set forth under 75 Pa.C.S. § 6310 (relating to disposition of impounded vehicles, combinations and loads).

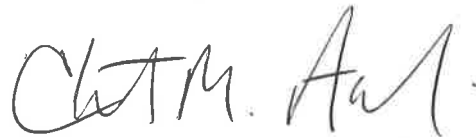
20. I&E is not requesting confiscation and impoundment of the vehicle which was used to provide common carrier or contract carrier by motor vehicle without Commission approval as permitted pursuant to 66 Pa.C.S. § 3310(c)(2)(ii), as the vehicle used in the provision of service that is the subject of this Complaint was a rented “Penske” truck, which is registered in Indiana.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the Commission find the Respondent in violation of the only count as set forth herein, and that

³ I&E researched the Respondent’s history and record with the Commission and concluded that this is Respondent’s first violation in Pennsylvania. However, as noted above, Respondent was previously made aware that it was operating in violation of the Public Utility Code. See Exhibit I&E-1.

Respondent be assessed the statutorily mandated administrative penalty of Five Thousand Dollars (\$5,000). Should the Respondent fail to pay the statutorily mandated administrative penalty of Five Thousand Dollars (\$5,000) upon Order of the Commission, the Bureau of Investigation and Enforcement requests that this matter be referred to the Pennsylvania Office of Attorney General for appropriate action.

Respectfully submitted,



Christopher M. Andreoli
Prosecutor
PA Attorney ID No. 85676

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Date: October 23, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
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v.


Phlat Rate Moving,
Respondent

Docket No. C-2019-

VERIFICATION

I, David W. Loucks, Chief of Enforcement, Bureau of Investigation and Enforcement, Motor Carrier Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau of Investigation and Enforcement will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: October 18, 2019



David W. Loucks
Chief of Motor Carrier Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Exhibit I&E-1



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

IN REPLY
PLEASE REFER
TO OUR FILE

November 19, 2018

A-8921574
A-2018-3005916

PHLAT RATE MOVING
1309 N WATER AVE
HERMITAGE PA 16148

RE: Application of Phlat Rate Moving for Motor Common Carrier of Household Goods in Use.

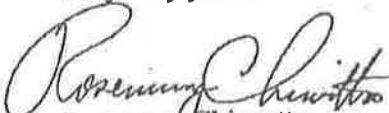
To Whom It May Concern:

The purpose of this Letter is to advise you that your Application, Docket No. A-2018-3005916, has been **DENIED** by the Pennsylvania Public Utility Commission (Commission). The Commission has determined that a Certificate of Public Convenience **WILL NOT BE GRANTED** for the following reason(s):

- **Inability to obtain requisite insurance coverage: Based upon your proposed operating strategy you will not be able to obtain the proper insurance coverage for leased or rented vehicles. Although you provided a "CERTIFICATE OF LIABILITY INSURANCE" with your application, it has been verified with both your broker and carrier that they would not be able to provide the requisite filings required by this commission.**

For this reason(s), your application is **DENIED** and **DISMISSED**. If you disagree with this decision, you may request that the Commission reconsider this matter under 52 Pa. Code §5.44. A petition for reconsideration must be filed with the Commission within twenty (20) days of the date of this Letter. If no timely request for reconsideration is made, this action will be deemed to be the final action of the Commission.

Very truly yours,


Rosemary Chiavetta
Secretary