

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation & Enforcement	:	
	:	
v.	:	C-2018-3003216
	:	
Cahill Trucking, LLC	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision sustains in part and denies in part a formal Complaint filed by the Bureau of Investigation & Enforcement (BIE) of the Pennsylvania Public Utility Commission (Commission) against Cahill Trucking, LLC (Cahill or Respondent), and imposes a \$500 civil penalty on the Respondent for failure to maintain proof of insurance.

**HISTORY OF THE PROCEEDING**

On July 10, 2018, BIE filed a formal Complaint against Cahill alleging that Cahill failed to maintain evidence of insurance on file with the Commission in violation of the Pennsylvania Public Utility Code (Code) at 66 Pa. C.S. § 512, and the regulations of the Commission at 52 Pa. Code §§ 32.2(c), 32.11(a) and 32.12(a) or 32.13(a). BIE stated that, absent the filing of an Answer, the payment of a civil penalty of \$500, or the filing within twenty (20) days of proof of insurance, that the Commission should cancel Respondent’s certificate of

public convenience, assess a \$500 civil penalty and an additional penalty should cancellation occur, and order such other remedy as might be appropriate.<sup>1</sup>

On July 11, 2018, the Complaint was served on Respondent by the Secretary of the Commission.

On August 15, 2018, the Complaint was returned to the Secretary by the United States Postal Service (USPS) marked, “Insufficient Address – Unable to Forward.”

On August 30, 2018, the Secretary re-served the Complaint.

On September 24, 2018, Respondent filed an Answer to the Complaint stating that he had changed his business address and had not received previous correspondence and stating that new insurance documentation would be filed right away. Respondent asked that the \$500 civil penalty not be assessed.<sup>2</sup>

Respondent subsequently filed evidence of liability insurance with an effective date of October 2, 2018.

On January 3, 2020, this case was assigned to me as presiding officer. Also, on that date, a hearing Notice was issued for a telephonic hearing to convene on February 12, 2020, originating from the Commission’s office in Harrisburg, Pennsylvania.

On January 7, 2020, a prehearing Order was issued which reminded the parties of the date and time of the hearing and set out various procedures applicable to this hearing. The prehearing Order also warned the parties that if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

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<sup>1</sup> As 52 Pa. Code § 32.11(a) is applicable to passenger carrier insurance, that allegation is not pertinent to this case.

<sup>2</sup> Though the Answer is undated, Commission records indicate that the pleading was received by the Secretary’s Office on September 24, 2018.

On February 12, 2020, a telephonic hearing in this matter was held. BIE was represented by Matthew C. Fallings, Esquire. No one appeared at the hearing on behalf of Respondent, Cahill. BIE sponsored four exhibits that were received into evidence:<sup>3</sup> They are: I&E 1, an Insurance Form E (Proof of Motor Carrier Insurance) effective April 6, 2018; I&E 2, an Insurance Form K, (Cancellation of Motor Carrier Insurance); I&E 3, a Notice of Suspension PUC Truck Operating Authority dated June 2, 2018; and, I&E 4, a Form E dated October 2, 2018. Tatjana Roth, a supervisor with the Bureau of Technical and Utility Services of the Commission, appeared as a BIE witness and presented testimony. BIE having completed the presentation of its case, and no one having appeared on behalf of the Respondent, the hearing was adjourned.

A transcript of sixteen (16) pages was filed on March 3, 2020. The record closed on that date. This Initial Decision affirms in part and denies in part the BIE Complaint and imposes a civil penalty of \$500 on Respondent, Cahill.

#### FINDINGS OF FACT

1. The Complainant in this proceeding is the Commission's Bureau of Investigation & Enforcement.
2. The Respondent in this proceeding is Cahill Trucking, LLC, the holder of a Certificate of Public Convenience from the Commission.
3. On July 10, 2018, the Complainant filed a formal Complaint against Cahill.
4. On September 24, 2018, Respondent filed an Answer to the Complaint.
5. On October 2, 2018, Respondent filed evidence of liability insurance. BIE Exhibit 4.

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<sup>3</sup> The BIE exhibits are incorrectly shown as Respondent's exhibits in the hearing transcript.

6. On January 3, 2020, a hearing Notice was issued for a telephonic hearing to convene on February 12, 2020, originating from the Commission's office in Harrisburg, Pennsylvania.

7. On January 7, 2020, a standard form prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.

8. Both the prehearing Order and the hearing Notice warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.

9. The hearing Notice and the prehearing Order were sent to Respondent by first-class mail to the address provided by the Company.

10. The hearing Notice and prehearing Order sent to Respondent were not returned to the Commission as undeliverable.

11. Respondent failed to appear at the scheduled date and time for the hearing.

12. From June 5, 2018 to October 2, 2018, Respondent did not have proof of insurance coverage on file with the Commission. Tr. at 12; BIE Exhibits 2, 4.

13. Respondent was in compliance with proof of insurance with the Commission on the date of the hearing. Tr. at 10-11.

#### DISCUSSION

As the proponent of a Commission order, BIE has the burden of proof in this case. 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, BIE must show that Cahill is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 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*, 529 Pa. 654, 602 A.2d 863 (1992). That is, 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). BIE must initially produce sufficient credible evidence to establish a prima facie case in order that it not lose summarily. *Morrissey v. Pa. Dep't of Highways*, 424 Pa. 87, 225 A.2d 895 (1967). If it does so, the burden of going forward with evidence shifts to Cahill to produce credible evidence of at least co-equal weight. This burden of going forward with evidence may shift back and forth between the parties, but the ultimate burden of persuasion remains with BIE. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

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. Pa. Dep't of Pub. Welfare*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are provided with notice and an opportunity to be heard. *Id.*

No one appeared on behalf of Cahill at the date and time set for the hearing in his case, despite notice of the hearing having been sent to Cahill at the address provided by its President in Cahill's Answer.

Commission regulations address circumstances when a party fails to appear in a proceeding. The Commission's regulation at 52 Pa. Code § 5.245 provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

- (a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
  - (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
  - (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
  - (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The hearing Notice and the prehearing Order were sent to Cahill by first-class mail to the address provided by the Company's President in Cahill's Answer. The hearing Notice and prehearing Order were not returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents which were sent to the Respondent in the ordinary course of business were received. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 303 Pa.Super. 221, 449 A.2d 658 (1982). As noted above, the prehearing Order stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

No request for a postponement or continuance of the hearing was received by my office. Thus, Respondent had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Therefore, the Respondent's due process rights have been fully protected. *Sentner v. Bell Telephone Company of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a). By failing to appear, Cahill failed to rebut the evidence presented by BIE in support of its Complaint.

In its Complaint, BIE alleged that Cahill had failed to maintain evidence of insurance on file with the Commission in violation of the Code at 66 Pa. C.S. § 512, and the regulations of the Commission at 52 Pa. Code §§ 32.2(c), 32.11(a) and 32.12(a) or 32.13(a). BIE stated that, absent the filing of an Answer, the payment of a civil penalty of \$500, or the filing within twenty (20) days of proof of insurance, that the Commission should cancel Respondent's certificate of public convenience, assess a \$500 civil penalty and an additional penalty should cancellation occur, and order such other remedy as might be appropriate.

Section 512 of the Code, 66 Pa. C.S. § 512 states, in pertinent part:

**§ 512. Power of commission to require insurance.**

The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters. . . .

66 Pa. C.S. § 512.

The regulation of the Commission at 52 Pa. Code § 32.2(c) relative to proof of insurance filings states:

**§ 32.2. Insurance forms and procedures.**

(c) *Filing and copies.* An original of each certificate of insurance, surety bond and notice of cancellation shall be filed with the

Commission. An approved copy will be returned to sender if a self-addressed, stamped envelope is enclosed with the filing.

52 Pa. Code § 32.2(c).

The regulation of the Commission at 52 Pa. Code § 32.12(a) relative to insurance for property and household goods carriers states, in pertinent part:

**§ 32.12. Property carrier and household goods in use carrier insurance.**

(a) No common carrier or contract carrier of property or household goods in use may engage in intrastate commerce and no certificate will 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 persons, or the loss 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 § 32.12(a).

The regulation of the Commission at 52 Pa. Code § 32.13(a) relative to cargo liability insurance:

**§ 32.13. Cargo liability insurance.**

(a) A common carrier of property or household goods in use by motor vehicle shall file with the Commission, in addition to the public liability and property damage certificate of insurance required under § 32.12 (relating to property carrier and household goods in use carrier insurance), certificates of insurance in an amount satisfactory to the Commission, but not less than \$5,000, to provide payment for loss or damage to cargo carried on a motor vehicle. No motor vehicle may be operated unless the insurance policy or other approved method of protection is in effect at the time of operation. This section may not be modified or abrogated by tariff filings. The Commission may approve another method of cargo protection in specific cases.

52 Pa. Code § 32.13(a).

BIE has met its burden of proof that Cahill violated these provisions of the law through the credible testimony of its witness, Ms. Roth, who authenticated the BIE Exhibits and explained the chronology of events, and through its documentary evidence: I&E 1, an Insurance Form E (Proof of Motor Carrier Insurance) effective April 6, 2018; I&E 2, an Insurance Form K, (Cancellation of Motor Carrier Insurance); I&E 3, a Notice of Suspension PUC Truck Operating Authority dated June 5, 2018; and, I&E 4, a Form E dated October 2, 2018.

I note that Cahill has never disputed the fact that it failed to maintain satisfactory insurance coverage. In the Answer filed on September 24, 2018, Douglas Cahill, Respondent's President, stated that he had changed his business address and had not received previous correspondence, and he stated that new insurance documentation would be filed right away. Respondent asked that the \$500 civil penalty not be assessed. Evidence of insurance was filed on October 2, 2018. BIE Exhibit 2, 4.

By failing to appear, despite having notice and an opportunity to be heard, Respondent presented no mitigating or extenuating evidence with respect to the level of the civil penalty requested by BIE. The Commission, through its regulations, has provided guidance on assessing the amount of a civil penalty.

A civil penalty is warranted in this case because of the un rebutted evidence of the violations of Commission regulations. The imposition and quantification of a civil penalty is based on the Commission's regulation at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. That regulation states that the Commission will consider specific factors and standards in evaluating litigated cases involving violations of the Public Utility Code and the regulations of the Commission. The ten factors that the Commission will consider in determining if a fine for violating a Commission order, regulation or statute is appropriate are 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(c).

In this case, the conduct at issue was of a serious nature. Uninsured vehicles of any kind pose a threat to the welfare of the public. Uninsured commercial vehicles are a public menace. 52 Pa. Code § 69.1201(c)(1). The record does not establish the occurrence of consequences of a serious nature, such as uncompensated personal injury or property damage. 52 Pa. Code § 69.1201(c)(2). It is unclear whether the conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). There is no evidence that Cahill has made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future, but it would be well advised to do so. 52 Pa. Code § 69.1201(c)(4). The record does not establish that anyone was affected by the violation. 52 Pa. Code § 69.1201(c)(5). This appears to have been an isolated incident. 52 Pa. Code § 69.1201(c)(6). 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. There is no evidence that Cahill acted in bad faith. 52 Pa. Code § 69.1201(c)(7). The amount of the civil penalty is less a deterrent than it is an incentive to review procedure and to conform with the requirements of the law. 52 Pa. Code § 69.1201(c)(8). There is no progression of similar cases that would suggest a different result. 52 Pa. Code § 69.1201(c)(9). The problem would seem to be susceptible to simple corrective action going forward that would serve the interests of Cahill and the public. 52 Pa. Code § 69.1201(c)(10).

BIE has met its burden of proof, and the Complaint at this docket is sustained except as to the allegation of a violation of 52 Pa. Code § 32.11(a) which is applicable to passenger carrier insurance. That count of the Complaint is denied as irrelevant. The failure to maintain evidence of insurance as required by the Code and Commission regulations is cause for concern. However, no evidence of past violations of the Code or regulations appears in the record. On the basis of Cahill's September 24, 2018 letter/Answer, the violation may be ascribed to inattention. Consistent with the foregoing analysis and BIE's request, the imposition of a civil penalty of \$500 for this one-time occurrence is appropriate as an incentive to corrective action.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties

to this proceeding. 66 Pa.C.S. §§ 512, 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

4. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are provided with notice and an opportunity to be heard. *Id.*

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. It is the duty of a party to apprise the Commission promptly of changes to the party's current address. 52 Pa. Code § 1.53(d).

7. Cahill Trucking's due process rights have been fully protected. *Sentner v. Bell Telephone Company of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

8. Cahill Trucking failed to appear to present mitigating factors relative to the BIE Complaint.

9. 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).

10. The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters. 66 Pa. C.S. § 512.

11. An original of each certificate of insurance, surety bond and notice of cancellation shall be filed with the Commission. An approved copy will be returned to sender if a self-addressed, stamped envelope is enclosed with the filing. 52 Pa. Code § 32.2(c).

12. No common carrier or contract carrier of property or household goods in use may engage in intrastate commerce and no certificate will 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 persons, or the loss 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 § 32.12(a).

13. A common carrier of property by motor vehicle shall file with the Commission, in addition to the public liability and property damage certificate of insurance required by § 32.12 (relating to property carrier insurance), certificates of insurance in an amount satisfactory to the Commission, but not less than \$5,000 to provide payment for loss or damage to cargo carried on a motor vehicle. No motor vehicle may be operated unless the insurance policy or other approved method of protection is in effect at the time of operation. 52 Pa. Code § 32.13(a).

