

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2018-3001157
	:	
Haines and Harvey Van Service LLC	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a formal complaint filed by the Commission’s Bureau of Investigation and Enforcement finding that substantial evidence demonstrates that the respondent motor carrier violated the Public Utility Code by operating without having provided evidence of insurance to the Commission. This decision imposes a civil penalty on the respondent of \$3,000 as a result of such violations.

HISTORY OF THE PROCEEDING

On August 1, 2018, the Pennsylvania Public Utility Commission’s (Commission) Bureau of Investigation and Enforcement (I&E) filed a formal complaint at the Commission against Haines and Harvey Van Service LLC (Haines), docket number C-2018-3001157. In its complaint, I&E averred that Haines permitted its vehicle to be under operation from February 21, 2018 to February 26, 2018 even though Haines’ operating rights during that time were suspended

due to its failure to maintain evidence of insurance. I&E requested that a civil penalty of \$1,000 per day be imposed for each day Haines operated while under suspension.

On August 15, 2018, Haines filed an answer to I&E's complaint. In the answer, Kala Haines stated that she was informed by her insurance agent that her policy was cancelled February 21, 2018 due to non-payment and that she was subsequently informed by the Commission that her license was being suspended for not keeping insurance credentials on file. Haines provided additional information regarding her efforts to maintain proper insurance but alternatives were too expensive.

On January 6, 2020, the Commission issued a hearing notice scheduling an initial telephonic hearing for this matter for Wednesday, February 19, 2020 and assigning me as the presiding officer. A prehearing order dated January 6, 2020 was issued setting forth various procedural rules that would govern the hearing. Of note, the hearing notice stated that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Similarly, the prehearing order stated, among other things, 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." Both the hearing notice and the prehearing order were sent to Haines via first-class mail. Neither was returned as undeliverable.

The hearing convened on February 19, 2020, as scheduled. Matthew C. Fallings, Esquire, appeared on behalf of I&E and presented one witness who sponsored seven exhibits that were admitted into the record. No one appeared on behalf of Haines. A transcript of 18 pages was created.

The record in this case closed on March 3, 2020, the day the transcript of the February 19, 2020 hearing was submitted to the Commission. For the reasons discussed below, the complaint will be sustained and a civil penalty of \$3,000 will be imposed.

FINDINGS OF FACT

1. The complainant in this case is the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement.
2. The respondent in this case is Haines and Harvey Van Service LLC.
3. Haines maintains a principal place of business at 7 Edgemore Drive, Stevens, PA.
4. Haines is a public utility as that term is defined under Section 102 of the Public Utility Code because it is engaged in transporting passengers in the Commonwealth for compensation.
5. No one called into the hearing on behalf of Haines as instructed on the hearing notice and in the prehearing order. Tr. 4.
6. The hearing was delayed 10 minutes to accommodate any delay in anyone appearing at the hearing on behalf of Haines. Tr. 1.
7. Haines received notice of the hearing when it was sent a hearing notice via first-class mail on January 6, 2020. Tr. 4.
8. Haines received notice of the hearing when it was sent a prehearing order via first-class mail on January 6, 2020. Tr. 4.
9. Neither the hearing notice nor the prehearing order were returned to the Commission as undeliverable. Tr. 4.
10. Both the hearing notice and the prehearing order indicated that a party may lose the case if they do not appear and take part in the hearing.

11. Counsel for I&E indicated during the hearing the numerous efforts that I&E took to provide Haines with notice of the hearing. Tr. 5.

12. Timothy Troxell is an enforcement officer for I&E and has worked in that capacity for over 11 years. Tr. 6.

13. Officer Troxell investigated Haines' insurance lapse. Tr. 7.

14. I&E exhibit number 1 is a Form K, uniform notice of cancellation of motor carrier insurance policy, that shows that the terms of the policy issued to Haines by National Liability and Fire Insurance Company was cancelled effective February 21, 2018. Tr. 7-8; I&E Exh. No. 1.

15. When a company's insurance cancellation date arrives, the Commission suspends the company's authority to operate. Tr. 8.

16. I&E exhibit number 2 is the notice of suspension of Commission paratransit operating authority that was sent to Haines informing Haines that as of February 21, 2018 the Commission operating authority is suspended due to failure to maintain evidence of insurance on file with the Commission. Tr. 8; I&E Exh. No. 2.

17. I&E exhibit number 3 is Haines' Pennsylvania financial responsibility identification card with an effective insurance date of February 26, 2018 at 4:36 p.m. Tr. 9; I&E Exh. No. 3.

18. The Pennsylvania financial responsibility identification card is not the proper way to file evidence of insurance with the Commission. Tr. 9.

19. I&E exhibit number 7 is a Form E uniform motor carrier bodily injury and property damage liability certificate of insurance issued by United Financial Casualty Company that provides insurance to Haines effective April 12, 2018 at 12:01 a.m. Tr. 9-10; I&E Exh. No. 7.

20. Form E is the appropriate way to file evidence of insurance with the Commission. Tr. 10.
21. Haines did not have evidence of insurance on file with the Commission from 12:01 on February 21, 2018 to April 12, 2018. Tr. 10.
22. Haines did have insurance as of February 26, 2018. Tr. 10.
23. I&E exhibit number 4 is the driver log sheet for Haines for the month of February 2018 provided to Officer Troxell by Kala Haines. Tr. 11-12; I&E Exh. No. 4.
24. Haines operated without insurance on February 21, 22 and 23 of 2018. Tr. 12.
25. Haines also was in operation on February 26, 27 and 28, 2018 as well as for 25 days in March 2018. Tr. 13; I&E Exh. No. 5.
26. I&E exhibit number 5 is Haines' driver's log sheet for the month of March 2018. Tr. 13; I&E Exh. No. 5.
27. I&E exhibit number 6 is Haines' driver's log sheet for the month of April 2018 which was provided by Kala Haines. Tr. 14; I&E Exh. No. 6.
28. Haines operated for eight days in April, 2018 prior to April 12, 2018 when the insurance became effective. Tr. 14.

DISCUSSION

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem

described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “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). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, I&E averred that Haines operated without having evidence of insurance on file at the Commission for three days in violation of the Commission’s regulations and that a \$3,000 civil penalty should be imposed on Haines as result of such violation. I&E, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm’n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

Also relevant to this proceeding is section 512 of the Public Utility Code. This section provides:

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.

In addition, in this case, Haines failed to appear for the hearing. 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 afforded notice and the opportunity to be heard. Id. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 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 prehearing order and hearing notice were sent to Haines by regular first-class mail and neither were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Haines in the ordinary course of business were received by Haines. 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). Of note, the hearing notice and the prehearing order stated 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. Furthermore, counsel for I&E indicated during the hearing the efforts that it took to provide Haines with notice of the hearing. Tr. 5. As such, Haines had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Haines' due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, I&E presented the testimony of Officer Troxell. Officer Troxell testified, among other things, that the terms of the insurance policy issued to Haines were cancelled effective February 21, 2018 and a notice of suspension of Commission paratransit operating authority was sent to Haines by the Commission on February 19, 2018. Tr. 7-8; I&E Exh. Nos. 1 and 2. Officer Troxell added that a financial responsibility identification card was issued to Haines showing an effective date of February 26, 2018 and showing that Haines had some kind of insurance as of that date. Tr. 9-10; I&E Exh. No. 7. From at least February 21, 2018 to February 26, 2018, Haines did not have any insurance at all. Tr. 10-11. Officer Troxell next testified that during that period, according to the log sheet provided by Haines, Haines operated three days between February 21, 2018 and February 26, 2018. Tr. 11-12; I&E Exh. No. 4. As noted, no one appeared at the hearing on behalf of Haines.

Section 32.2 and 32.11 of the Commission's regulations provide that:

§ 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.

§ 32.11. Passenger carrier insurance.

- (a) 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 §§ 32.2(c) and 32.11(a).

As a result, based on Officer Troxell's testimony and accompanying exhibits, which were not refuted, substantial record evidence in this proceeding demonstrates that Haines violated Sections 32.2(c) and 32.11(a) of the Commission's regulations regarding requirements of motor carriers to have proof of insurance on file with the Commission. Having found that Haines violated these sections, next it is necessary to determine whether a civil penalty should be imposed for such violations.

The Commission's authority for imposing civil penalties can be found at 66 Pa.C.S. § 3301 which provides in pertinent part:

§ 3301. Civil penalties for violation.

(a) General rule. – If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation . . . shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth.

66 Pa.C.S. § 3301(a).

Furthermore, Section 69.1201 of the Commission's regulations provides a Policy Statement regarding factors and standards to be used when 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. 52 Pa.Code § 69.1201(a). These factors and standards are as follows:

- (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); *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000).

When applying these factors to the facts of this case, it is clear that a \$3,000 civil penalty is appropriate and supported by record evidence.

With regard to factor number 1, whether the conduct was of a serious nature, this factor supports a higher civil penalty. Although the violation was not willful fraud or misrepresentation, operating without proper insurance is of a serious nature involving public safety concerns. To the extent that an accident would have occurred during the relevant time period, there would have been significant financial repercussions and the public would have been harmed; therefore, this requires a determination that the conduct was of a serious nature. This factor warrants a higher civil penalty.

With regard to factor number 2, whether the resulting consequences of the conduct at issue were of a serious nature, again, although there is no evidence of any accidents occurring while Haines was not insured, to the extent that an accident would have occurred during the relevant time period, the repercussions would have been significant and public harm would have been caused. No personal injury or property damage would occur as a result of Haines not being properly insured but significant financial injury could result. This factor warrants a lower civil penalty.

With regard to factor number 3, whether the conduct was deemed intentional or negligent, there is no record evidence that Haines intended not to have evidence of proper

insurance on file with the Commission but Haines is obligated to ensure that it is in compliance with all Commission regulations. This factor also supports a lower civil penalty.

With regard to factor number 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, Haines ultimately did obtain insurance and later provided evidence of such coverage to the Commission. However, it is unclear that Haines has taken any steps to ensure that there will be no lapse in coverage going forward. Therefore, this factor supports a higher civil penalty.

With regard to factor number 5, the number of customers affected and the duration of the violation, the record evidence does not indicate how many customers Haines had during the time it did not have evidence of insurance on file with the Commission. The record does demonstrate that Haines was in violation of these regulations for only three days. As a result, this factor supports a lower civil penalty.

With regard to factor number 6, the compliance history of the regulated entity, there is no evidence of record that demonstrates that Haines has failed to comply with these regulations or any other Commission regulations in the past. This factor, therefore, support a lower civil penalty.

With regard to factor number 7, whether the regulated entity cooperated with the Commission's investigation, Haines did provide an answer to I&E's complaint, and there does appear to have been some attempts at settling this matter. Nonetheless, Haines did not appear at the hearing and, therefore, cannot be considered to have cooperated with the Commission in its investigation. Such actions are not the equivalent of bad faith, active concealment of actions or attempts to interfere with the Commission investigation, as noted in Section 69.1201. Therefore, this factor supports neither a higher nor a lower civil penalty.

With regard to factor number 8, the amount of civil penalty necessary to deter future violations, this factor warrants a higher civil penalty be imposed. Operating a vehicle for

hire without having evidence of proper insurance for such actions is a significant violation of the Commission's regulations and the public trust. A customer of such a carrier assumes, by virtue of the certificate of operation, that the motor carrier has complied with all Commission regulations, including Section 32.2 and 32.11. Haines' failure to abide by the Commission's regulations must be deterred. This factor warrants a higher penalty.

With regard to factor number 9, past Commission decisions, there is no evidence of past similar Commission decisions. Therefore, this factor will not be considered.

With regard to factor number 10, other relevant factors, the impact on the public is an important relevant factor. To the extent that an accident were to have occurred while Haines was uninsured, more than just the customer could have been impacted. For example, if the accident involved more than one vehicle, Haines also may be liable for personal injury and property damage suffered by a member of the public. This factor is not recognized in the other factors articulated in Section 69.1201 but should be considered in this case. In addition, another relevant factor is that Haines violated two Commission regulations, both Section 32.2 and 32.11. These factors support a higher civil penalty.

In total, when considering all factors in the Section 69.1201 analysis, the record evidence demonstrates that it is reasonable to impose a civil penalty of \$1,000 a day for each day that Haines was not in compliance with two Commission regulations, for a total civil penalty of \$3,000.

Finally, it is noted that, although I&E presented evidence demonstrating possible violations of Commission regulations beyond the period of February 21, 2018 through February 26, 2018 which could have resulted in additional civil penalties, I&E limited its requested relief to \$3,000 for the time period of February 21, 2018 through February 26, 2018. Tr. 15. As such, this decision will also be limited to that period.

In conclusion, the formal complaint filed by I&E against Haines will be sustained. Substantial record evidence demonstrates that Haines violated Sections 32.2 and 32.11 of the Public

Utility Code that require Haines to have evidence of insurance coverage on file with the Commission. Haines did not provide evidence of insurance while operating for three days in February, 2018 and, therefore, a civil penalty totaling \$3,000 is appropriate based on the above analysis. In addition, even though Haines was given notice and an opportunity to be heard in this matter, it determined not to appear for the hearing. Haines is advised to ensure that it is in compliance with all applicable Commission regulations going forward.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 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. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "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).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift

from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlt. 23, 480 A.2d 382 (1984).

9. 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.

10. 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.Cmwlt. 1984). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. Id.

11. 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).

12. Haines' due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

13. Motor carriers are required to maintain an original of each certificate of insurance, surety bond and notice of cancellation on file with the Commission. 52 Pa. Code § 32.2(c).

14. 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).

15. If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation . . . shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth. 66 Pa.C.S. § 3301.

16. The Commission's regulations provide a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201; *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000).

17. I&E has satisfied its burden of proving that Haines violated Sections 32.2(c) and 32.11(a) of the Commission's regulations and that a \$3,000 civil penalty should be imposed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement against Haines and Harvey Van Service, LLC at docket number C-2018-3001157 on August 1, 2018 is sustained.

2. That Haines and Harvey Van Service, LLC shall pay a civil penalty of \$3,000 due to the violation of Sections 32.2(c) and 32.11(a) of the Commission's regulations. 52 Pa. Code §§ 32.2(c) and 32.11(a).

3. That Haines and Harvey Van Service, LLC shall pay a total of \$3,000 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

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

4. That Haines and Harvey Van Service, LLC shall cease and desist from further violations of the Public Utility Code or any regulations of the Public Utility Commission.

5. That this matter be marked closed upon payment by Haines and Harvey Van Service, LLC of the \$3,000 civil penalty.

Date: May 26, 2020

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge