

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation & Enforcement	:	
	:	
v.	:	C-2019-3008151
	:	
Patterson Trucking, LLC	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On or about March 5, 2019, I&E filed a complaint against Patterson Trucking at Docket No. C-2019-3008151. In its complaint, I&E alleged that the Respondent failed to maintain evidence of cargo insurance on file with the Commission. As a result, I&E recommended that a civil penalty be imposed on the Respondent in the amount of \$500.

On or about August 23, 2019, Respondent submitted a letter to the Commission in which it averred that Patterson Trucking has up-to-date insurance, and that its insurance company sent to the Commission insurance Form-E but not Form-H.

By notice dated June 4, 2020, the Commission scheduled a telephonic hearing for July 1, 2020, and assigned me as the Presiding Officer. On June 24, 2020, I sent to the parties a prehearing order in which I set forth certain procedural requirements for participation in the telephonic hearing. Both the hearing notice and my prehearing order informed the parties that their case may be dismissed if they failed to connect to the hearing at the scheduled time.

The initial hearing was convened as scheduled on July 1, 2020. Matthew Fallings, Esquire, appeared on behalf of I&E. No one appeared at the hearing on behalf of the Respondent. Mr. Fallings stated that the parties had reached a settlement in principle and requested additional time to finalize the settlement. The parties were directed to provide to me an update on settlement efforts by July 22, 2020. By electronic mail dated July 23, 2020, I was informed by Mr. Fallings that the Respondent had been unable to meet the terms of the settlement. Mr. Fallings stated that I&E was prepared to proceed to a hearing.

By notice dated July 23, 2020, a further telephonic hearing was scheduled for October 6, 2020. This notice informed the parties that they may lose their case if they did not appear at the hearing. The further hearing was convened as scheduled on October 6, 2020 at 10:00 a.m. Mr. Fallings appeared on behalf of I&E and presented the testimony of one witness, Elizabeth Plantz, who sponsored three exhibits, all of which were admitted into the record. No one appeared on behalf of Patterson Trucking. I waited until approximately 10:07 a.m. before beginning the hearing in case the Respondent was late. No one ever connected to the hearing on behalf of the Respondent. The hearing commenced in the Respondent's absence.

The record in this case closed on November 4, 2020, upon receipt by the Commission of the hearing transcript, and consists of a 26-page transcript and three I&E exhibits.

FINDINGS OF FACT

1. The Complainant in this proceeding is the Commission's Bureau of Investigation & Enforcement.

2. The Respondent in this proceeding is Patterson Trucking, LLC, the holder of a Certificate of Public Convenience from the Commission.

3. On March 5, 2019, I&E filed a formal complaint against Patterson Trucking.

4. On or about August 23, 2019, Respondent filed a response to the complaint.

5. On June 4, 2020, the Commission issued a telephonic hearing notice to the parties by which it scheduled a telephonic hearing for July 1, 2020 and assigned me as the Presiding Officer.

6. On June 24, 2020, I sent to the parties a prehearing order that set forth certain requirements for participation in the telephonic hearing.

7. Both the June 4, 2020 hearing notice and my June 24, 2020 prehearing order stated that the parties may lose their case if they did not connect to and participate in the hearing.

8. The initial hearing was convened as scheduled on July 1, 2020. Matthew Fallings, Esquire, appeared on behalf of I&E. No one appeared at the hearing on behalf of the Respondent.

9. Mr. Fallings stated that the parties had reached a settlement in principle and requested additional time to finalize the settlement. Accordingly, the parties were directed to provide to me an update on settlement efforts by July 22, 2020.

10. By electronic mail dated July 23, 2020, Mr. Fallings notified me that the Respondent had been unable to meet the terms of the settlement and stated that I&E was prepared to proceed to a hearing.

11. On July 23, 2020, the Commission issued a notice to the parties by which it scheduled a further telephonic hearing for October 6, 2020.

12. This notice informed the parties that they may lose their case if they did not appear at the hearing.

13. The further hearing was convened as scheduled on October 6, 2020.

14. Mr. Fallings appeared on behalf of I&E and presented the testimony of one witness, who sponsored three exhibits, all of which were admitted into the record.

15. No one appeared at the October 6, 2020 hearing on behalf of Patterson Trucking.

16. The July 23, 2020 hearing notice was not returned to the Commission as undeliverable.

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

18. A Form H proof of cargo insurance was submitted to the Commission by United Financial Casualty Company on behalf of Patterson Trucking indicating an effective date for cargo insurance of October 19, 2018. (Tr. 15; I&E Ex. 1).

19. On January 16, 2019, the Commission received a Form K Notice of Cancellation from United Financial Casualty Company on behalf of Patterson Trucking indicating that Patterson Trucking's cargo insurance would expire in 30 days. (Tr. 16-17; I&E Ex. 2).

20. Upon receiving the Form K notice from United Financial Casualty Company, the Commission sent to Patterson Trucking a notice of suspension, indicating that Respondent's operating authority would be suspended as of February 18, 2019. (Tr. 19; I&E Ex. 3).

21. The Commission suspended Patterson Trucking's operating authority effective February 18, 2019, due to the expiration of the company's cargo insurance. (Tr. 18-19; I&E Ex. 3).

22. As of the date of the hearing, Patterson Trucking's cargo insurance had been reinstated. (Tr. 22).

23. On September 25, 2020, the Commission received a new Form K on behalf of Patterson Trucking indicating that the company's cargo insurance would expire in 30 days.

DISCUSSION

In this proceeding, I&E is seeking imposition of a \$500 civil penalty on Patterson Trucking due to its failure to maintain evidence of cargo insurance on file with the Commission. In the event Respondent fails to pay the civil penalty, I&E seeks termination of the company's operating authority. (Tr. 20). As the proponent of a Commission order, I&E 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, I&E must show that Patterson Trucking is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. 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.Cmwlt. 218, 221-222, 578 A.2d 600, 602 (1990), *app. den.*, 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). I&E 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 Patterson Trucking 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 I&E. *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 Transp. 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 & W. Ry. 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 (1960); *Murphy v. Pa. Dept. 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 Patterson Trucking at the date and time set for the hearing in this case, despite notice of the hearing having been sent to the Respondent.

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 July 23, 2020 hearing notice was sent to Patterson Trucking by electronic mail to the e-mail address on file for the company at the Commission. The Commission did not receive any indication that the hearing notice was not delivered as addressed. Accordingly, it must be presumed that the notice which was sent to the Respondent in the ordinary course of business was received. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). As noted above, the hearing notice stated that the parties may lose the case if they fail to connect to the hearing 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 Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a). By failing to appear, Patterson Trucking failed to rebut the evidence presented by I&E in support of its complaint.

In its complaint, I&E alleged that Patterson Trucking failed to maintain evidence of cargo 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). I&E 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).

I&E has met its burden of proof that Patterson Trucking violated these provisions of the law through the credible testimony of its witness, Elizabeth Plantz, who sponsored and authenticated the I&E Exhibits and explained the chronology of events, and through its documentary evidence: I&E Ex. 1, an Insurance Form H (proof of cargo insurance) effective October 19, 2018; I&E Ex. 2, an Insurance Form K, (notice of cancellation of motor carrier insurance), received on January 16, 2019 and effective in 30 days from that date; and I&E Ex. 3, a Notice of Suspension PUC Truck Operating Authority, suspension effective February 18, 2019.

Ms. Plantz testified that the Commission received a Form H proof of cargo insurance from United Financial Casualty Company on behalf of Patterson Trucking indicating an effective date for cargo insurance of October 19, 2018. (Tr. 15; I&E Ex. 1). She testified that on January 16, 2019, the Commission received a Form K Notice of Cancellation from United Financial Casualty Company on behalf of Patterson Trucking indicating that Patterson Trucking's cargo insurance would expire in 30 days. (Tr. 16-17; I&E Ex. 2). She stated that, upon receiving the Form K notice from United Financial Casualty Company, the Commission sent to Patterson Trucking a notice of suspension, indicating that Respondent's operating authority would be

suspended as of February 18, 2019. (Tr. 19; I&E Ex. 3). Ms. Plantz indicated that the Commission suspended Patterson Trucking's operating authority effective February 18, 2019, due to the Respondent's failure to maintain evidence of cargo insurance on file with the Commission. (Tr. 18-19; I&E Ex. 3).

By Respondent's failure to appear at the hearing, there is no evidence in the record disputing I&E's evidence that the company failed to maintain satisfactory insurance coverage.

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 I&E. 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 unrebutted 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 Patterson Trucking made any 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 Respondent 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 Patterson Trucking and the public. 52 Pa. Code § 69.1201(c)(10).

I&E has met its burden of proof, and the complaint at this docket is sustained. 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. Consistent with the foregoing analysis and I&E'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. Paterson Trucking's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

7. Patterson Trucking failed to appear to present mitigating factors relative to the I&E complaint.

8. 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).

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. 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).

11. 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).

12. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by the Commission's Bureau of Investigation and Enforcement at Docket No. C-2019-3008151 be sustained.

2. That Patterson Trucking LLC pay a civil penalty of \$500 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from entry of the Final Commission Order to:

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

3. That, in the event Respondent fails to pay the civil penalty as directed in paragraph 2 above, the Certificate of Public Convenience issued to it on November 4, 2015 at Docket No. A-8918157 will be canceled.

4. That this case be marked closed.

Date: January 4, 2020

/s/
Steven K. Haas
Administrative Law Judge