

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held April 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

C-2021-3029522

v.

Safety 1<sup>st</sup> Paratransit Inc.

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Motion for Default Judgment (Motion), filed by the Commission's Bureau of Investigation and Enforcement (I&E) on March 24, 2022, against Safety 1<sup>st</sup> Paratransit Inc. (Safety 1<sup>st</sup> Paratransit or Respondent) in the above-captioned proceeding. No Answer to the Motion has been filed. For the reasons stated below, we shall grant the Motion, as modified, consistent with this Opinion and Order.

## Procedural History

The Commission issued the Respondent a Certificate of Public Convenience (Certificate) on or about November 6, 2013 at Docket No. A-2013-2346369 for paratransit authority.

On November 15, 2021, I&E filed the above-captioned Formal Complaint (Complaint). The Complaint was served by electronic mail to the Respondent at SAFETY1STPARATRANSITINC@YAHOO.COM, which is the last known email address that the Respondent provided to the Commission. Service of the Complaint was performed by electronic mail due to COVID-19 pandemic restrictions impacting Commission mailing operations.<sup>1</sup>

In the Complaint, I&E alleged that the Respondent violated Section 510(b) of the Public Utility Code (Code), 66 Pa. C.S. § 510(b), by failing to file an assessment report demonstrating its gross intrastate operating revenue for the 2018 and 2019 calendar years. I&E recommended a civil penalty of \$1,000 for these violations. In addition, I&E alleged that the Respondent violated Section 510(c) of the Code, 66 Pa. C.S. § 510(c), by failing to pay the Commission's assessments for the fiscal years of July 1, 2019 to June 30, 2020 (2019-2020 Fiscal Year) and July 1, 2020 to June 30, 2021

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<sup>1</sup> See *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 26, 2020).

(2020-2021 Fiscal Year). The total outstanding assessment balance is \$5,220.<sup>2</sup> I&E recommended a civil penalty of \$783.<sup>3</sup> Complaint at 5-6.

A Notice was attached to the Complaint and informed the Respondent that it must file an Answer within twenty (20) days of the date of service of the Complaint. The Notice also informed the Respondent that if it failed to answer the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint. The twenty (20) days to file an Answer to the Complaint expired on December 6, 2021.

As stated above, I&E filed its Motion on March 24, 2022. No Answer to the Motion has been filed.

### **Discussion**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also*

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<sup>2</sup> The outstanding assessment balance is \$2,893 for the 2019-2020 Fiscal Year and \$2,327 for the 2020-2021 Fiscal Year. Complaint at 4-5.

<sup>3</sup> The civil penalty for failing to pay the outstanding assessment relating to the 2019-2020 and 2020-2021 Fiscal Years is based on a review of: (1) the Respondent's history of compliance with the Code and Commission Regulations and Orders for three years prior to the date that I&E filed its Complaint in this matter; (2) the need to deter future violations; (3) and prior Commission decisions in similar situations pursuant to 52 Pa. Code §§ 69.1201(c)(6), (8), and (9). Due to the Respondent's acceptable compliance history, I&E requested that the Respondent pay a total civil penalty of 15% of the outstanding assessment balance or a minimum of \$50, whichever is greater. I&E recommended \$800 for the civil penalty, however, 15% of the \$5,220 outstanding assessment amount due for the 2019-2020 and 2020-2021 Fiscal Years equals \$783. Complaint at 7-8. We shall refer to the corrected amount of \$783 going forward.

*see, generally, University of Pennsylvania v. Pa PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).*

In its Motion, I&E states that the twenty-day time frame for filing an Answer to the Complaint has expired and the Respondent did not file an Answer. Motion at 2. I&E also states that the Respondent did not pay its outstanding assessment balance of \$5,220, and the civil penalty of \$1,783 that was requested in the Complaint as noted previously. *Id.* Accordingly, I&E requests that the Commission enter a Default Order against the Respondent that: (1) directs the Respondent to pay its outstanding assessment of \$5,220 for the 2019-2020 and 2020-2021 Fiscal Years and a civil penalty of \$1,783, within thirty days (30) of the entry date of this Opinion and Order; (2) directs the Bureau of Technical Utility Services to cancel the Respondent's Certificate at Docket No. A-2013-2346369, if the past due assessments and civil penalty are not timely paid; (3) notifies the Respondent that a copy of this Order will be sent to the Pennsylvania Department of Transportation for the suspension or revocation of vehicle registrations that were used under the Respondent's operating authority, if the Respondent fails to pay the total as stated above, within thirty (30) days of the entry date of the Commission's Order; and (4) directs the Bureau of Administration, Assessment Section, to refer the matter to the Pennsylvania Office of Attorney General for collection of the total set forth above, if the Respondent fails to pay that total within thirty (30) days of the entry date of the Commission's Order. Motion at 3.

In reviewing the instant Motion, we put the Respondent on notice that we will not hesitate to invoke our authority under the Code to ensure timely compliance with our Regulations and Orders, including the ordering of such other remedies that we may deem appropriate. 66 Pa. C.S. §§ 504, 505, 506, 3301, and 3302.

Public utilities regulated by this Commission are required under Section 510 of the Code to file and pay an assessment that provides a reasonable share of

the Commission's costs in administering regulatory oversight. The Respondent, is engaged in transporting passengers for compensation, is subject to the power and authority of this Commission pursuant to Section 501(a) of the Code, 66 Pa. C.S. § 501(a). Pursuant to Section 3301 of the Code, 66 Pa. C.S. § 3301, the Commission is authorized to impose civil penalties on any public utility, or any other person or corporation subject to the Commission's authority, for violation(s) of the Code and/or Commission Regulations.

Through the years, the civil penalties in Motion for Default Judgment cases have been calculated in various ways. Notwithstanding our past practice, we believe that on a going-forward basis, it is prudent to ensure a fair, reasonable, and consistent approach to the levying of civil penalties in these cases, and we will use this approach in this matter.

Specifically, the Commission developed a multifactor process for the assessment of civil penalties, for failure to pay annual assessments and/or failure to file annual assessment reports.<sup>4</sup> The process is based on several factors: (1) the type of violation involved which can be the failure to pay the assessment amount and/or the failure to file an assessment report; (2) the assessment amount in question; and (3) the utility's compliance history with Commission Regulations for the three years prior to the filing of the Complaint. Considering those factors, the Commission uses the following approach. If the Company fails to pay its assessment, the civil penalty process includes

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<sup>4</sup> See *Pa. PUC v. Juan Genet Enter., LLC t/a Safe Destinations*, Docket No. C-2014-2450660 (Order entered August 3, 2017); *Pa. PUC v. Leo Movers & Storage, Inc.*, Docket No. C-2015-2494528 (Order entered August 3, 2017); *Pa. PUC v. Hoffman Landscaping & Trucking, LLP*, Docket No. C-2015-2495061 (Order entered September 21, 2017); *Pa. PUC v. Deer Haven, LLP*, Docket No. C-2015-2498095 (Order entered October 26, 2017); *Pa. PUC v. Reach for the Stars Limousine Serv. Inc.*, Docket No. C-2015-2499276 (Order entered October 26, 2017); *Pa. PUC v. TTM Operating Corporation Inc.*, Docket No. C-2016-2558445 (Order entered April 19, 2018).

the following: (1) if the Company's past-due assessment amount is less than or equal to \$350, then the civil penalty is \$50 for any company with a good compliance history and \$100 for any company with an unacceptable compliance history; or (2) if the Company's past-due assessment amount is greater than \$350, then the civil penalty is 15% of the past-due yearly assessment on a company with a good compliance history or 25% of the past-due yearly assessment on a company with an unfavorable compliance history.

If the company fails to file its annual assessment reports, the civil penalty process also includes the following: (1) if the company's yearly assessment amount is less than or equal to \$500 and the company has a good compliance history then the civil penalty is \$250; but if the company has an unfavorable compliance history then the civil penalty is \$500; or (2) if the company's yearly assessment amount is greater than \$500 and the company has a good compliance history then the civil penalty is \$500; but if the company has an unfavorable compliance history then the civil penalty is \$1000.

We note that the Respondent's compliance history and the need to deter future violations are important considerations when weighing the amount of a civil penalty. 52 Pa. Code § 69.1201. We believe that it is reasonable to review Commission records for a period of three years prior to the date of the filing of the Complaint in this case and up to and including the date of Commission action in this matter to determine whether a particular company has a satisfactory compliance record. In reviewing Commission records to determine whether transportation entities have complied with applicable statutes, regulations, and orders, we will evaluate violations including, but not limited to, the following: (1) our assessment requirements in 66 Pa. C.S. § 510; (2) the unauthorized provision of service under 66 Pa. C.S. §§ 1101 and 1102; (3) our insurance requirements in 52 Pa. Code, Ch. 32; (4) our tariff requirements in 52 Pa. Code, Chs. 23, 29, and 31; (5) and our vehicle, service, and driver requirements in 52 Pa. Code, Ch. 29.

Our review of the aforementioned Commission records during the review period shows that the Respondent has had an acceptable history of compliance with the Code and Commission's Regulations. However, the Respondent has failed to file the assessment report and has failed to pay the Commission's assessments. Considering this, we acknowledge that the \$1,000 civil penalty for the assessment report filing violations is reasonable. Also, we acknowledge that the \$783 civil penalty imposed for the Respondent's failure to pay its outstanding assessment amount is reasonable, as we anticipate that this level of penalty will provide a sufficient deterrent against future violations by the Respondent.

Accordingly, based on our review of the record and the averments in I&E's Motion, we shall grant the Motion, as modified. Pursuant to Section 5.61(c) of our Regulations, 52 Pa. Code § 5.61(c), a Respondent who fails to file an Answer within the twenty-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. The Commonwealth Court has upheld our authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. PUC*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978). The Respondent was provided with adequate notice of the alleged violations against it and had the opportunity to respond and to request a hearing. The Respondent was also clearly advised that, if it did not file an Answer within twenty days, then I&E would request that we issue an Order imposing the penalties as set forth in the Complaint. Under the circumstances in this case, we find that it is appropriate to sustain the Complaint.

### **Conclusion**

Based on our review of the record, the averments in the Motion, and the applicable law, we shall grant I&E's Motion, as modified, consistent with this Opinion and Order; **THEREFORE**,

**IT IS ORDERED:**

1. That the Motion for Default Judgment filed by the Commission's Bureau of Investigation and Enforcement on March 24, 2022, is granted, as modified, consistent with this Opinion and Order.

2. That the allegations in the Commission's Bureau of Investigation and Enforcement's Formal Complaint are deemed admitted, and the Formal Complaint is hereby sustained.

3. That within thirty (30) days of the entry date of this Opinion and Order, Safety 1<sup>st</sup> Paratransit Inc. shall remit \$7,003, payable by certified check or money order to "Commonwealth of Pennsylvania" with the docket number of this proceeding listed, and sent to:

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

4. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

5. That a copy of this Opinion and Order shall be served upon the Bureau of Technical Utility Services for monitoring of compliance.

6. That, if Safety 1<sup>st</sup> Paratransit Inc. fails to make the payment required by Ordering Paragraph No. 3 above, within thirty (30) days of the entry date of this Opinion and Order, it is further ordered:

- a. That the Bureau of Technical Utility Services shall cancel the Certificate of Public Convenience held by Safety 1<sup>st</sup> Paratransit Inc. at Docket No. A-2013-2346369 without further action by this Commission;
- b. That the Commission will send a copy of this Order to the Pennsylvania Department of Transportation for the suspension or revocation of vehicle registrations that were used under Safety 1<sup>st</sup> Paratransit Inc.'s operating authority; and
- c. The Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

7. That, after Safety 1<sup>st</sup> Paratransit Inc. remits the payment required by Ordering Paragraph No. 3 above, the Secretary's Bureau shall mark this proceeding closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 14, 2022

ORDER ENTERED: April 14, 2022