

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

Public Meeting held September 15, 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-2021-3025692

v.

WHC PA, LLC

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration from Staff Action (Petition) filed by WHC PA, LLC (WHC or the Petitioner) on October 5, 2021, relative to the above-captioned proceeding. The staff action for which reconsideration is sought is a Secretarial Letter issued on September 14, 2021 (*September 2021 Secretarial Letter*), which assessed a civil penalty of \$500 against WHC. No Answer to the Petition has been filed. For the reasons discussed herein, we will deny the Petition and adopt the *September 2021 Secretarial Letter*, consistent with this Opinion and Order.

I. History of the Proceeding

WHC was issued Certificates of Public Convenience (Certificates) for taxi authority on March 4, 2020,¹ paratransit authority on May 4, 2020,² limousine authority on June 3, 2020,³ group and party 15 or less authority on June 30, 2020,⁴ and transportation network authority on February 2, 2022.⁵

This proceeding involves an alleged failure by WHC to provide taxi service in a timely manner on April 26, 2021.

On May 4, 2021, after investigating the claims, and pursuant to its authority to initiate prosecution proceedings, the Commission's Bureau of Investigation and Enforcement (I&E) initiated a Complaint against WHC alleging that the Petitioner failed to provide service at the scheduled pickup time, violating 66 Pa. C.S. § 1501 in that it failed to furnish and maintain adequate, efficient, safe, and reliable service. Complaint at ¶ 4.

Specifically, on April 26, 2021, the Commission received a complaint alleging violations of Commission Regulations which occurred during a trip on April 26, 2021. The individual stated that, on April 25, 2021, he scheduled a 4:30 a.m. pickup for April 26, 2021, in Pittsburgh, Pennsylvania, but was picked up two hours late. Complaint at ¶ 3.

¹ At Docket No. A-2019-3012519.

² At Docket No. A-2019-3012501.

³ At Docket No. A-2019-3012511.

⁴ At Docket No. A-2019-3012512.

⁵ At Docket No. A-2021-3029247.

On May 5, 2021, Commission Enforcement Officer Ryan Balestra spoke with Operations Manager George Delk regarding the April 26, 2021 incident. Mr. Delk, after checking the logs, verified that the trip pickup was two hours late. *Id.*

The Complaint was served on WHC by email on July 2, 2021, in which I&E recommended a civil penalty of \$500 for the alleged violation. Complaint at ¶ 4.

In accordance with 52 Pa. Code § 5.61, a Notice was attached to the Complaint and informed WHC that it must file an Answer to the Complaint within twenty (20) days of the date of service of the Complaint. The Notice also informed the Petitioner 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 days to file an Answer to the Complaint expired on July 22, 2021. WHC did not file an Answer to the Complaint.

On September 14, 2021, the Commission issued the *September 2021 Secretarial Letter* to WHC via email. The *September 2021 Secretarial Letter* advised WHC that, due to its failure to file an Answer to the Complaint, the allegations in the Complaint were deemed to be admitted, the Complaint was sustained, and WHC was assessed a civil penalty of \$500 for failure to comply with the provisions of 75 Pa. C.S. and 52 Pa. Code. *September 2021 Secretarial Letter* at 1. WHC was informed about how to remit payment of the civil penalty to the Commission. *Id.*

The *September 2021 Secretarial Letter* also notified WHC that, if it disagreed with the Commission's determination, it should send a Petition for Reconsideration from Staff Action to the Commission's Secretary at the indicated address within twenty (20) days of the date of the *September 2021 Secretarial Letter*. *Id.* Detailed instructions regarding the form and content of such a Petition were provided,

including references to the inclusion of relevant documentation and verification with an original signature.

On October 5, 2021, the instant Petition was filed as noted above. No response to the Petition has been filed.

II. Discussion

A. Legal Standards

In considering the Petition, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania, et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Petitions for Reconsideration from Staff Action are governed by Section 5.44(a) of the Commission's Rules of Administrative Practice and Procedure, which provides the following:

Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless reconsideration is sought from the Commission within 20 days after service of notice of the action, unless a different time-period is specified in this chapter or in the act.

52 Pa. Code § 5.44(a).

In considering the appeal from Staff Action, the Application and the compliance with Commission Regulations, Section 332(a) of the Public Utility Code

(Code), 66 Pa. C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding the Applicant is the party seeking affirmative relief from the Commission. Therefore, the Applicant is the party with the burden of proof. *See Application of 610 Hauling, LLC, t/a College Hunks Hauling Junk, for the right to begin to transport, as a common carrier, by motor vehicle, household goods in use, from points in the counties of Chester, Delaware, Montgomery, Philadelphia, and Bucks, to points in Pennsylvania*, Docket Nos. A-2012-2334103 and A-8915269 (Order entered November 5, 2015), citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

In *Se-Ling Hosiery v. Margulies, supra*, the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Additionally, the Commission must ensure that the decision is supported by substantial evidence in the record. The Pennsylvania appellate courts have defined substantial evidence to mean such relevant evidence that a reasonable mind may 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. *Application of 610 Hauling, LLC, t/a College Hunks Hauling Junk, supra*, citing *Norfolk & Western Railway Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984)

B. Petition

In its Petition, WHC contends that it never received the Complaint as it was not adequately served, as required under 66 Pa. C.S. § 702.⁶ Petition at ¶ 1. Specifically, WHC alleges that it never received a copy of the July 2, 2021 Complaint, either by registered mail or by email, through either Chad Stepanik, its Pittsburgh General Manager, or George Delk, its Pittsburgh Operations Manager. Therefore, according to the Petitioner, upon first learning of the Commission’s action through its receipt of the *September 2021 Secretarial Letter*, WHC could not comply with the Commission’s requirements because the time for filing a response had already passed. *Id.* at ¶¶ 2-3.

The Petitioner further contends that the Complaint, as well as the *September 2021 Secretarial Letter*, incorrectly indicated WHC’s address for its principal place of business as 1301 Beaver Avenue, Pittsburgh, PA 15233. WHC states its correct address is 1101 Beaver Avenue, Pittsburgh, PA 15233. *Id.* at ¶ 4.

WHC acknowledges that it failed to timely execute the pre-arranged transportation on April 26, 2021 by arriving two hours late; however, it argues for rescission of the *September 2021 Secretarial Letter* in light of: (1) its claim that it was not timely notified of the Complaint; (2) its efforts to “ameliorate” the situation by cooperating with I&E’s investigation; (3) the challenges imposed by the COVID-19 pandemic, specifically the logistical challenges and staffing shortages, which allegedly gave rise to the underlying incident at issue in this proceeding. *Id.* at ¶¶ 5-7.

⁶ Section 702 of the Code states that “[u]pon the filing of a complaint, the commission shall cause to be served upon each party named in the complaint a copy of the complaint[.]”

C. Disposition

On review, we conclude that the Petitioner has presented no grounds on which to overturn the conclusions of the *September 2021 Secretarial Letter*; therefore, we shall deny the Petition.

Our Regulations at 52 Pa. Code § 1.53 (relating to service by the Commission) state the following (emphasis added):

- (a) *Applicability.* This section applies to service of an order, notice or other document originating with the Commission and other documents designated by the Commission, except when the Commission specifically requires a different form of service.
- (b) *Forms of service.*
 - (1) *First class mail.* Service may be made by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading, submittal or notice of appearance at the person's residence, principal office or place of business.
 - (2) *Personal.* Service may be made personally by anyone authorized by the Commission.
 - (3) *Electronic.* Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted.
- (c) *Registered or certified mail.* Service of a petition under § 3.391 (relating to arbitration of claims for billing and collecting services), and **service of a complaint under**

section 702 of the act (relating to service of complaint on parties) must be by registered or certified mail, return receipt requested.

- (d) *Change of address.* It is the duty of a party to apprise the Commission promptly of changes to the party's current address.
- (e) *Alternative service.* If the Commission is unable to serve a party by mail at the party's last known address, the Commission may make service by publication in a newspaper of general circulation in the same area as the party's last known address. In the alternative, service may also be accomplished by publication in the *Pennsylvania Bulletin* or by service on the Secretary of the Commonwealth, if appropriate.

The gravamen of WHC's Petition is that it did not receive the July 2, 2021 Complaint, and thus has attempted to use Subsection (c) of our Regulation, shown above, as a basis to overturn the conclusions of the *September 2021 Secretarial Letter*. However, as the Commission's records indicate, both the Complaint and the *September 2021 Secretarial Letter* were sent to WHC by electronic service (email) at jcamp@pghtrans.com pursuant to our *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262, entered March 20, 2020, ratified March 26, 2020, which provides that service by the Commission on parties, including the service of complaints, will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. These service requirements, as authorized under the Proclamation of Disaster Emergency, did not expire until September 30, 2021.

We note that the Petitioner does not aver that it did not receive the *September 2021 Secretarial Letter*. In fact, in its Petition WHC acknowledged receiving the *September 2021 Secretarial Letter* (which was served electronically at jcamp@pghtrans.com). None of the documents electronically served by the Commission

at jcamp@pghtrans.com were returned as undeliverable, including the Complaint. Therefore, based upon the record in this case, the Petitioner is deemed to have received this document and had sufficient notice of the Complaint and a proper opportunity to respond.

Furthermore, the Commission has previously determined that the failure to provide timely taxi service may constitute unreasonable service in violation of Section 1501. *See Pa. PUC v. Yellow Cab Company of Pittsburgh*, Docket No. C-2012-2219127 (Final Order entered May 31, 2013) (caller waited over two hours before a taxi driver provided service); and *Pa. PUC v. Posten Taxi, Inc.*, 95 Pa. P.U.C. 1 (2001) (delay of fifty-two minutes in picking up a blind passenger who had called for service resulted in a violation of Section 1501). Here, there is no question that WHC was provided sufficient notice in the Complaint that it would need to defend against allegations of unreasonable service under Section 1501.

It is undisputed that the trip pick-up was two hours late. We find that the Petitioner's actions constituted unreasonable service and therefore, conclude that I&E has satisfied its burden of proof with respect to the violation of Section 1501 of the Code, 66 Pa. C.S. § 1501. Pursuant to Section 5.61(c) of our Regulations, 52 Pa. Code § 5.61(c), a company who fails to file an Answer within the 20-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). WHC was provided with adequate notice of the alleged violations against it and had the opportunity to respond. WHC also was 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 set forth in the Complaint.

Accordingly, we will deny the Petition and uphold the *September 2021 Secretarial Letter* and civil penalty attached thereto.

Furthermore, a review of our records reveals that on May 21, 2021, WHC filed a “Notification of Address Change for Certificate, Permit and Brokerage License Holders.” That form indicated the old address of 1300 Lydia Avenue, Kansas City, MO 64106, was to be changed to the new address of 1101 Beaver Street, Pittsburgh, PA 15233. However, due to an apparent administrative error, the instant Complaint, as well as the *September 2021 Secretarial Letter*, misstated that WHC’s principal place of business was 1301 Beaver Avenue, Pittsburg, PA 15233. Notwithstanding this discrepancy, we are of the opinion that this error cannot form the basis for overturning the *September 2021 Secretarial Letter*, since both documents were served via email at jcamp@pghtrans.com. Coincidentally, the same Notification of Address Change filed by WHC on May 21, 2021 shows an email address of jcamp@pghtrans.com as the correct email address for WHC.

III. Conclusion

Based upon our review of the record and the applicable legal standards, we shall deny the Petition for Reconsideration from Staff Action, filed by WHC, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action, filed by WHC PA, LLC on October 5, 2021, at Docket No. C-2021-3025692, is denied, consistent with this Opinion and Order.
2. That the Secretarial Letter issued on September 14, 2021, is adopted.

3. That within thirty (30) days of the entry date of this Opinion and Order, WHC PA, LLC shall remit \$500, payable by certified check or money order, to “Commonwealth of Pennsylvania” 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 Commission’s Bureau of Investigation and Enforcement.

6. That, if WHC PA, LLC 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 Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for appropriate action;
- b. That all parties are hereby placed on notice of the Commission’s intent to consider pursuing all remedies, provided by law, including criminal prosecution as well as the initiation of an enforcement proceeding in the Commonwealth Court, pursuant to Pa. R.A.P. Rule 3761.

7. That the Secretary's Bureau shall change WHC PA, LLC's main mailing address to 1101 Beaver Avenue, Pittsburgh, PA 15233.

8. That upon receipt of the payment of \$500 by WHC PA, LLC as directed by Ordering Paragraph No. 3 above, this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: September 15, 2022

ORDER ENTERED: September 15, 2022