

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

Public Meeting held October 27, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

C-2022-3032701

v.

N & W Transportation LLC

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 July 29, 2022, against N & W Transportation LLC (N & W 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 consistent with this Opinion and Order.

Procedural History

The Commission issued the Respondent a Certificate of Public Convenience on or about May 22, 2017, at Docket No. A-2016-2572347, for paratransit authority.

On May 31, 2022, I&E filed the above-captioned Formal Complaint (Complaint). On June 1, 2022, the Complaint was served by certified mail to the Respondent at 222 Allen Street, West Hazelton, Pa 18202.

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 each of the 2019 and 2020 calendar years. I&E recommended a civil penalty of \$500¹ 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 assessment for the fiscal years of July 1, 2020 to June 30, 2021 (2020-2021 Fiscal Year) and July 1, 2021 to June 30, 2022 (2021-2022 Fiscal Year).² The total outstanding assessment balance is

¹ I&E proposed a civil penalty of \$250 for each year that an Assessment Report was not filed thus the total civil penalty for this violation is \$500.

² The assessment for the 2020-2021 Fiscal Year was \$114 and the assessment for the 2021-2022 Fiscal Year was \$182 for a total of \$296.

\$296. I&E also recommended a civil penalty of \$100³ for these violations. Complaint at 8. The total owed by N & W for these violations is \$896 (\$296 + \$600⁴). Complaint at 3-9.

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.⁵ The twenty (20) days to file an Answer to the Complaint expired on January 19, 2022.

As stated above, I&E filed its Motion on July 29, 2022. No Answer to the Motion has been filed.

³ The civil penalty for failing to pay the outstanding assessments relating to the 2020-2021 and 2021-2022 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 for each violation, whichever is greater. I&E recommended \$100 (\$50 for each of the two violations for failure to pay), which is greater than 15% of the total assessment amount of \$296, for the civil penalty.

⁴ I&E recommended \$600 (\$500 (\$250 for each year) for the failure to file the 2019 and 2020 Assessment Reports + \$100 (as a total civil penalty for its failure to pay the 2020-2021 and 2021-2022 Fiscal Year Assessments of \$50 per year).

⁵ I&E would also request that if the Respondent did not pay the civil penalties and the assessments, that: (1) the Commission issue an Order to cancel the Certificate of Public Convenience issued to the Respondent; (2) this matter be referred to the Pennsylvania Office of Attorney General for appropriate action; and (3) the Commission certify automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation. Complaint at 7-8.

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 Cor. v. Pa PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also 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: (1) pay its outstanding assessment balance of \$114 for the 2020-2021 Fiscal Year and the total civil penalty of \$300;⁶ and (2) pay its outstanding assessment balance of \$182 for the 2021-2022 Fiscal Year, and a total civil penalty of \$300,⁷ 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 total outstanding assessment amount of \$296 for the 2020-2021 and 2021-2022 Fiscal Years and a civil penalty of \$600 for a total of \$896, within thirty (30) days of the entry date of this Opinion and Order; (2) directs the Bureau of Technical Utility Services to cancel the Respondent's Certificates of Public Convenience at A-2016-2572347 if the Respondent fails to pay the

⁶ As earlier indicated, due to the Respondent's acceptable compliance history, I&E requested that the Respondent pay a total civil penalty of \$300, which is \$50 for the Respondent's failure to pay the outstanding assessment related to the 2020-2021 Fiscal Year, and \$250 for the Respondent's failure to file an assessment report for the 2019 calendar year. Motion at 2.

⁷ I&E requested that the Respondent pay a total civil penalty of \$300, which is \$50 for the Respondent's failure to pay the outstanding assessment related to the 2021-2022 Fiscal Year, and \$250 for the Respondent's failure to file an assessment report for the 2020 calendar year. Motion at 2.

total set forth in subparagraph (a), above, within thirty (30) days of the entry date of the Commission's Order; (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.⁸ 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 complaint. Considering those factors, the Commission uses the following approach. If the Company fails to pay its assessment, the civil penalty process includes 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 a 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

⁸ 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).

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.

As mentioned previously, we note that this process was created based on the utility's compliance history. We also note that in this instance the Respondent's violation is its failure to file its annual assessment for the years 2019 and 2020 and pay its assessment amount for the 2020-2021 and 2021-2022 Fiscal Years. Thus, we have arrived at the civil penalties set forth herein based on consideration of the Respondent's yearly assessment amount and the Respondent's compliance history. As noted, in the instant case, I&E recommended a total civil penalty of \$500 (\$250 for each year) for failure to submit its 2019 and 2020 annual assessment reports and \$100 (\$50 for each year) for failure to pay its outstanding assessment amount.

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 with regard to our Orders, Regulations, and applicable statutory provisions.

Furthermore, 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.

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. Here, the Respondent has failed to file the 2019 and 2020 assessment reports and pay the 2020-2021 and 2021-2022 Fiscal Year

Assessments of \$114 and \$182. Considering this, we acknowledge that in applying the Commission's established process for failure to file the yearly assessment report, and pay past due assessments as set forth above, the \$296 outstanding assessment balance and the \$600 civil penalty (\$500 for failure to file assessment reports for Fiscal Years 2020-2021 and 2021-2022 + \$100 imposed for the Respondent's failure to pay its outstanding assessment amounts for the two Fiscal Years) complies with the civil penalty assessment process and is reasonable. Furthermore, we anticipate that this level of penalty will provide a sufficient deterrent against future violations by the Respondent. Therefore, the total outstanding balance owed by the Respondent is \$896 (\$296 + \$600).

Accordingly, based on our review of the record and the averments in I&E's Motion, we shall grant the Motion. 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 violation 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.

We remind the Respondent that it is obligated to file its assessment reports with the Commission and to pay its assessments in order to comply with applicable law and Commission Regulations in order to avert any additional enforcement action by the Commission and to operate its business in the Commonwealth.

Conclusion

Based on our review of the record, the averments in the Motion, and the applicable law, we shall grant I&E's Motion 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 July 29, 2022, is granted.

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

3. That within thirty (30) days of the entry date of this Opinion and Order, N & W Transportation LLC shall remit \$896, 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 N & W Transportation LLC is directed to file assessment reports on a going-forward basis.

5. That N & W Transportation LLC is directed to update its address with the Commission.

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 N & W Transportation 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 Technical Utility Services shall cancel the Certificate of Public Convenience held by N & W Transportation LLC at Docket No. A-2016-2572347, without further action by this Commission;
- b. That the Commission will serve a copy of this Order on the Pennsylvania Department of Transportation and the Commission requests that the Pennsylvania Department of Transportation put a suspension or revocation of vehicle(s) registration(s) that were used under N & W Transportation LLC's operating authority pursuant to Chapter 13 of the Vehicle Code, 75 Pa. C.S. § 6310; 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 N & W Transportation LLC remits the payment required by Ordering Paragraph No. 3 above, the Secretary's Bureau shall mark this proceeding closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022