



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

January 19, 2023

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Jadon Trucking, Inc.
Docket No. C-2021-3028563
Petition for Amendment

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's **Petition for Amendment** of the Commission's Opinion and Order entered December 8, 2022, in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Alphonso Arnold III'.

Alphonso Arnold III
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 318487
(717) 787-3836
alphonarno@pa.gov

AA/ac
Enclosures

cc: Per Certificate of Service (*via email*)
Kathryn G. Sophy, OSA (*via email*)
Office of Special Assistants (*via email* - ra-OSA@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3028563
	:	
Jadon Trucking, Inc.,	:	
Respondent	:	

**PETITION FOR AMENDMENT OF
THE BUREAU OF INVESTIGATION AND ENFORCEMENT**

Pursuant to Section 703(g) of the Public Utility Code (“Code”), 66 Pa.C.S. § 703(g), and Section 5.572 of the Commission’s regulations, 52 Pa. Code § 5.572, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorney, files this Petition for Amendment (“Petition”) of the Opinion and Order entered by the Commission on December 8, 2022 (“December 8 Order”) in the above-captioned proceeding. I&E respectfully requests that the December 8 Order be amended to direct Jadon Trucking, Inc. (“Respondent”) to remit \$2,498 to resolve the above-captioned proceeding, instead of the \$3,270 as directed in the Order. In support thereof, I&E respectfully represents as follows:

I. INTRODUCTION

1. I&E is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

2. Jadon Trucking, Inc. (“Respondent”) is a “public utility” as that term is defined at 66 Pa.C.S. § 102, as it is engaged in the transporting of property within the Commonwealth of Pennsylvania for compensation. Respondent was issued a Certificate of Public Convenience by this Commission to transport property on or about February 7, 2006, at Docket No. A-00100411.

II. BACKGROUND

3. I&E commenced this action on September 17, 2021, by filing a Formal Complaint alleging that Respondent failed to file assessment reports detailing its gross intrastate operating revenues for the 2018 and 2019 calendar years in violation of Section 510(b) of the Code, 66 Pa.C.S. § (510)(b) and failed to pay its 2019-2020 and 2020-2021 Fiscal Year assessment invoices in violation of Section 510(c) of the Code, 66 Pa.C.S. § 510(c). For relief, I&E requested, amongst other things, that the Commission direct Respondent to pay a total of \$5,848, consisting of its outstanding assessment balance of \$4,148 and the requested civil penalty of \$1,700.

4. Respondent did not file an Answer to I&E’s Formal Complaint.

5. On February 2, 2022, I&E filed a Motion for Default Judgment, requesting that its Formal Complaint be sustained due to Respondent’s failure to file an Answer to the Complaint.

6. In May 2022, I&E and Respondent held settlement discussions and agreed to settlement of this matter.¹

¹ The settlement agreement was entered into between Respondent and a former I&E prosecutor. The undersigned was not privy to the settlement discussions between I&E and Respondent.

7. As part of the settlement agreement, I&E agreed to reduce the civil penalty (\$1,700) by half (\$850). Therefore, per the settlement, Respondent was to pay \$4,998 to resolve the Formal Complaint filed at this Docket.²

8. Due to Respondent's purported health and cash flow issues, I&E agreed to allow Respondent to pay the settlement amount of \$4,998 in two installments of \$2,500 and \$2,498. The first payment installment was to be made by the end of May 2022, and the second payment installment was to be made by the end of June 2022.³

9. On May 20, 2022, the Commission received the first payment installment in the amount of \$2,500 from Respondent, per the terms of the settlement.

10. The Commission did not receive the second and final payment installment in the amount of \$2,498 from Respondent.

11. As the Commission did not receive the second payment installment from Respondent, Respondent defaulted on the settlement agreement.

12. On December 8, 2022, the Commission entered an Opinion and Order granting I&E's Motion for Default Judgment as modified by the Opinion and Order and sustaining I&E's Formal Complaint.

13. Regarding the modifications made by the December 8 Order, the Commission applied Respondent's May 20, 2022, \$2,500 payment to its outstanding assessment balance of \$4,148. Therefore, Respondent's modified outstanding assessment balance per the December 8 Order is \$1,648. December 8 Order at 4.

² The terms of the settlement as expressed in this Petition were gathered from email records between the former I&E prosecutor and Commission staff.

³ I&E requested that the Commission hold off on a ruling on its Motion for Default Judgment, pending the execution of the settlement agreement terms.

14. The December 8 Order also modified the requested civil penalty, reducing the penalty from \$1,700 to \$1,622.⁴ *Id* at 3.

15. The Commission in its December 8 Order directed Respondent to remit \$3,270 (\$1,648 remaining assessment balance + \$1,622 corrected civil penalty) to the Commission within thirty (30) days of the entry date of the Order. If Respondent failed to make the payment within those thirty (30) days, the Commission directed the Bureau of Technical Utility Services to cancel Respondent's Certificate of Public Convenience and directed the Bureau of Administrative Services to refer the matter to the Pennsylvania Office of Attorney General for collection. *Id* at 8, 9.

16. On December 30, 2022, Respondent, through its owner John "Jack" Coates, filed a Letter in this matter. In his letter, Mr. Coates stated he was in the hospital dealing with health issues in June and July of 2022. Mr. Coates stated that he received an email from the former prosecutor concerning the second payment installment per the settlement agreement on June 29, 2022. Mr. Coates asserted that his wife mailed the second payment installment⁵ on August 2, 2022, to the former I&E prosecutor.

III. LEGAL STANDARDS

17. The Code establishes a party's right to seek relief following the issuance of a final decision of the Commission. In that regard, Section 703(g) of the Code, 66 Pa.C.S. § 703(g), permits a party to seek rescission or amendment of a Commission order.

⁴ The requested civil penalty was reduced because the Commission found that I&E miscalculated the requested civil penalty in its Formal Complaint.

⁵ Mr. Coates in his letter stated that his wife mailed a check in the amount of \$2,450 to the Commission on August 2, 2022. As noted, according to email records, Respondent was to make a second payment installment in the amount of \$2,498 to the Commission.

18. Requests for rescission and amendment of Commission orders must be consistent with Section 5.572 of the Commission's Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision from the Commission.

19. A petition for rescission or amendment can be filed at any time. See 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572(d).

20. The standard that is applied by the Commission for reviewing a Petition for amendment or rescission is set forth in *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 558-559 (1983) (*Duick*). In *Duick*, the Commission held that Petitions seeking to convince the Commission to exercise its discretion to amend or rescind a prior Order are likely to succeed only when they raise new and novel arguments not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

21. Therefore, application of the considerations of *Duick* essentially requires a two-step analysis. The first step is to determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. The second step is to evaluate the new or novel argument, or overlooked consideration that is alleged, in order to determine whether to modify the previous decision. *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered May 19, 2019).

22. For the reasons set forth below, I&E respectfully submits that it successfully meets the standards set forth in *Duick* in that the December 30, 2022, letter filed by Respondent presents new arguments that have not been addressed by the Commission in its December 8 Order. The letter reveals that Respondent submitted a check on August 2, 2022, that if received by the Commission, would have resolved this matter as being in compliance with the settlement entered into between I&E and Respondent. Therefore, I&E respectfully requests that the Commission grant I&E's Petition for Amendment.

IV. ARGUMENT

A. I&E SUPPORTS RESPONDENT'S POSITION THAT IT ATTEMPTED TO COMPLY WITH THE TERMS OF THE SETTLEMENT BETWEEN IT AND I&E.

23. I&E and Respondent agreed to settle this matter for payment in the amount of \$4,998 (\$4,148 assessment balance + \$850 agreed-to reduced civil penalty) to be paid in two installments of \$2,500 and \$2,498. The Commission received the first payment installment, but not the second payment installment. Respondent's letter, filed December 30, 2022, essentially asserts that Respondent attempted to comply with the terms of the settlement agreement by submitting the second payment installment to the Commission on August 2, 2022.

24. The settlement terms indicated that the second payment installment was due by the end of June 2022. Jack Coates in his December 30, 2022, letter asserted that he was hospitalized in June and July 2022. I&E accepts Mr. Coates' health issues as a valid

reason as to why the second payment installment was not timely made per the settlement agreement.⁶

25. As such, although the settlement terms indicated that the second payment installment was to be due by the end of June 2022, had I&E received Respondent's August 2, 2022, payment it would have accepted the payment as having been timely paid per the settlement agreement.

26. Had I&E received the second payment installment from Respondent, it would have filed a Petition to Withdraw its Motion for Default Judgment and filed a Certificate of Satisfaction in this matter, asking that the Commission deem this matter as satisfied.

27. Although I&E has not been able to locate the check that Respondent confessed to have mailed to the former I&E prosecutor on August 2, 2022, I&E nonetheless supports Respondent's position that it mailed the second payment installment to the Commission on August 2, 2022, in compliance with the settlement agreement.

28. Therefore, I&E submits that Respondent attempted to comply with the terms of the settlement entered between it and I&E.

V. CONCLUSION

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the Commission grant its Petition for Amendment of the Commission's Opinion and Order entered in the above-captioned matter on December 8, 2022, and direct Respondent to make payment in the amount of \$2,498 to

⁶ Notably, the former prosecutor agreed to let Respondent satisfy the settlement balance in two payment installments under consideration of Mr. Coates' health issues.

resolve the above-captioned proceeding which equates to the lost second payment installment per the terms of the settlement agreement, instead of the \$3,270 as directed in the Opinion and Order, to be paid within thirty (30) days of the entry of an Amended Opinion and Order in this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Alphonso Arnold III". The signature is written in a cursive style with a distinct "III" at the end.

Alphonso Arnold III
Prosecutor
PA Attorney ID No. 318487

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
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Date: January 19, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

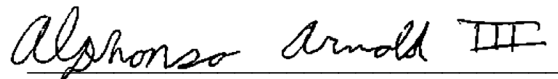
Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3028563
	:	
Jadon Trucking, Inc.,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Petition for Amendment, in the manner and upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served via Electronic Mail

John Coates
Jadon Trucking Inc.
2072 Alberta Drive
South Park, PA 15129
jacoates49@comcast.net


Alphonso Arnold III
Prosecutor
PA Attorney ID No. 318487

Pennsylvania Public Utility Commission
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Dated: January 19, 2023