

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2022-3032542
	:	
Homestead Taxi LLC	:	

INITIAL DECISION

Before
Administrative Law Judge
John M. Coogan

INTRODUCTION

The Commission’s Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint against Homestead Taxi LLC (Homestead Taxi) for failing to file an Assessment Report for the 2020 calendar year and to satisfy its 2020-2021 and 2021-2022 Fiscal Year assessments. Homestead Taxi did not file an answer to I&E’s Formal Complaint. I&E filed a motion for default judgment, which Homestead Taxi did not answer. This decision grants I&E’s motion for default judgment, sustains I&E’s Formal Complaint, and orders Respondent to pay \$769, consisting of the past due assessment of \$419, plus a civil penalty totaling \$350.

HISTORY OF THE PROCEEDING

On or about May 11, 2001, the Pennsylvania Public Utility Commission (Commission) issued Homestead Taxi a Certificate of Public Convenience at Docket Number A-00117413 for the authority to operate a taxi service.

I&E is the prosecutory arm of the Commission. On May 19, 2022, I&E filed a Formal Complaint alleging that Respondent failed to pay its 2020-2021 Fiscal Year Assessment in the amount of \$162 and 2021-2022 Fiscal Year Assessment in the amount of \$257. I&E's Formal Complaint included a notice to plead. In Counts 1 and 2 of the Complaint, I&E avers that Respondent failed to satisfy its 2020-2021 and 2021-2022 Fiscal Year Assessments in violation of Section 510(c) of the Public Utility Code (Code), 66 Pa.C.S. § 510(c). I&E proposes a civil penalty of \$100 total for these violations. In Count 3, I&E avers Respondent failed to file an Assessment Report for calendar year 2020, which is required to determine the assessment due for the 2021-2022 Fiscal Year. I&E avers this failure is in violation of Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b), and proposes a civil penalty of \$250 for this violation. In sum, I&E requests that Respondent be ordered to pay \$769, consisting of the outstanding assessment balance of \$419 and a total civil penalty balance of \$350. If Respondent does not make this payment, I&E requests that the Commission issue an Order to cancel the Certificate of Public Convenience issued to Respondent, this matter be referred to the Pennsylvania Office of Attorney General for appropriate action, and the Commission certify Respondent's automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation.

Respondent did not file an answer to I&E's Formal Complaint.

On July 6, 2022, I&E filed a motion for default judgment, which included a notice to plead. Respondent did not file an answer to I&E's motion.

On January 6, 2023, this matter was assigned to the Office of Administrative Law Judge. On January 11, 2023, I issued an interim order closing the record because the time for Homestead Tax to file an answer to either I&E's Formal Complaint or motion for default judgment had passed. For the reasons stated below, I&E's motion for default judgment will be granted, and I&E's Formal Complaint will be sustained.

FINDINGS OF FACT

1. Complainant, the Bureau of Investigation and Enforcement, is the prosecutory arm of the Commission.
2. Respondent, Homestead Taxi, LLC, is a taxi service with the authority to operate under a Certificate of Public Convenience issued by the Commission on or about May 11, 2001, Docket Number A-00117413.
3. Respondent's assessment for the 2020-2021 Fiscal Year was \$162. I&E Formal Complaint.
4. On or about September 10, 2020, the Commission mailed to Respondent, by first class mail, an Assessment Invoice for the July 1, 2020, to July 30, 2021, Fiscal Year ("2020-2021 Fiscal Year") that was based, in part, on revenues for the 2019 calendar year that Respondent reported to the Commission in its 2019 Assessment Report. I&E Formal Complaint.
5. Accompanying the Assessment Invoice was a Notice of Assessment that informed Respondent that it was obligated to pay the amount listed on the Assessment Invoice within 30 days or file objections within 15 days. I&E Formal Complaint.
6. The Assessment Invoice and Notice of Assessment were mailed to Respondent at its last known mailing address of P.O. Box 1506, Lansdale, PA 19446. I&E Formal Complaint.
7. There is no record that the Assessment Invoice and Notice of Assessment were returned in the mail to the Commission as being undeliverable. I&E Formal Complaint.
8. On or about November 12, 2020, the Commission re-mailed to Respondent, by certified mail, the Assessment Invoice and Notice of Assessment since

Respondent did not pay the amount listed on the Assessment Invoice within 30 days or file objections within 15 days. I&E Formal Complaint.

9. USPS tracking shows Respondent received the Assessment Invoice and Notice of Assessment on November 17, 2020. I&E Formal Complaint.

10. The Commission received no objections from Respondent to the Assessment Invoice. I&E Formal Complaint.

11. On or about December 30, 2020, the Commission's Bureau of Administration (ADM) sent Respondent a warning letter that if it did not pay its 2020-2021 Fiscal Year assessment within 20 days of receipt of the letter, the Commission would institute legal action against Respondent. I&E Formal Complaint.

12. The warning letter was mailed to Respondent at its last known mailing address at P.O. Box 1506, Lansdale, PA 19446. I&E Formal Complaint.

13. On or about March 29, 2021, the warning letter was returned to the Commission by the United States Postal Service (USPS) as unable to forward. I&E Formal Complaint.

14. There is no record of the Respondent apprising the Commission of any changes to its current address. I&E Formal Complaint.

15. Respondent has not paid its 2020-2021 Fiscal Year Assessment Invoice of \$162. I&E Formal Complaint.

16. On or about February 10, 2021, the Commission mailed Respondent an Assessment Report along with instructions for Respondent to report its gross intrastate operating revenues for the 2020 calendar year. I&E Formal Complaint.

17. The Assessment Report along with instructions were mailed to Respondent at its last known mailing address at P.O. Box 1506, Lansdale, PA 19446. I&E Formal Complaint.

18. On or about March 29, 2021, the Assessment Report along with instructions were returned to the Commission by the USPS as unable to forward. I&E Formal Complaint.

19. Respondent's assessment for the 2021-2022 Fiscal Year was \$257. I&E Formal Complaint.

20. On or about September 10, 2021, the Commission mailed to Respondent, by certified mail, an Assessment Invoice for the July 1, 2021, to July 30, 2022, Fiscal Year ("2021-2022 Fiscal Year") that was based, in part, on Respondent's estimated revenues for the 2020 calendar year. I&E Formal Complaint.

21. Accompanying the Assessment Invoice was a Notice of Assessment that informed Respondent that it was obligated to pay the amount listed on the Assessment Invoice within 30 days or file objections within 15 days. I&E Formal Complaint.

22. The Assessment Invoice and Notice of Assessment were mailed to Respondent at its last known mailing address of P.O. Box 1506, Lansdale, PA 19446. I&E Formal Complaint.

23. On or about September 26, 2021, the Assessment Invoice and Notice of Assessment were returned to the Commission by the USPS as unable to forward. I&E Formal Complaint.

24. The Commission received no objections from Respondent to the assessment amount set forth in the 2021-2022 Fiscal Year Assessment Invoice. I&E Formal Complaint.

25. On or about October 27, 2021, ADM sent Respondent a letter warning Respondent that if it did not pay its 2020-2021 and 2021-2022 Fiscal Year assessments, totaling \$419, within 20 days of receipt of the letter, the Commission would institute legal action against Respondent. I&E Formal Complaint.

26. The warning letter was mailed to Respondent at its last known mailing address of P.O. Box 1506, Lansdale, PA 19446. I&E Formal Complaint.

27. On or about November 10, 2021, the warning letter was returned to the Commission by the USPS as unable to forward. I&E Formal Complaint.

28. Respondent failed to pay its 2021-2022 Fiscal Year Assessment Invoice of \$257. I&E Formal Complaint.

29. Respondent failed to pay its total assessment outstanding balance of \$419. I&E Formal Complaint.

30. The Commission's records for a period of three years prior to the date of the filing of I&E's Formal Complaint demonstrate Respondent has an acceptable compliance history with the Commission. I&E Formal Complaint.

DISCUSSION

The Complainant is the Commission's Bureau of Investigation and Enforcement, which was established by statute to prosecute complainants against public utilities pursuant to 66 Pa.C.S. § 308.2(a)(11). Respondent transports passengers in the Commonwealth of Pennsylvania for compensation. It is a "public utility" as defined by 66 Pa.C.S. § 102. On May 11, 2001, at Docket Number A-00117967, the Commission issued Respondent a Certificate of Public Convenience to operate a taxi service.

In a case involving an alleged violation of a determination or order of the Commission by a public utility, the burden of proof shall be upon the public utility to show that it has complied with the determination or order of the Commission. 66 Pa.C.S. § 315(b). As a recipient of a Commission-issued certificate of public convenience, Respondent has a duty to comply with Commission orders and regulations. 66 Pa.C.S. § 501(c).

Public utilities regulated by the 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. Pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, the Commission is authorized to impose civil penalties up to \$1,000 per violation on utilities that fail to file or pay their annual assessment on time.

As the Commission explained in its tentative Order at *Cancellation of Certificates of Public Convenience for Motor Carriers; Failure to Pay Assessment*, Docket Number M-2020-3021634 (Sept. 17, 2020):

The Public Utility Code requires that by March 31 each year, every public utility must file a report detailing its gross intrastate operating revenue for the preceding assessment calendar year. 66 Pa. C.S. § 510(b). This report is essential for the Commission to fund its operations and to properly allocate assessment costs among the regulated utility community. *Id.*

For each fiscal year, the Commission determines the total assessment for regulatory expenses, which is allocated to, and paid by, public utilities pursuant to the methodology set forth in the Public Utility Code. 66 Pa.C.S. §§ 510(a), (b). The Commission provides notice of the amount lawfully assessed against a utility and requires the utility to pay that amount within thirty (30) days of receipt of the notice. 66 Pa.C.S. § 510(c). The Public Utility Code authorizes the Commission to revoke a utility's Certificate of Public Convenience (CPC) for failure to pay the assessment within the time prescribed. *Id.*

Cancellation of Certificates of Public Convenience for Motor Carriers; Failure to Assessment, at
1.

The Respondent did not file an answer to either I&E's Formal Complaint or I&E's motion for default judgment. Pursuant to Section 5.61(c) of the Commission's regulations, a respondent who fails to file an answer to a complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the complaint may be deemed admitted. 52 Pa. Code § 5.61(c). Additionally, the Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978).

The evidence presented by I&E in its Formal Complaint supports finding that the Respondent violated Sections 510(b) and (c) and that a penalty under Section 3301 is appropriate. The Respondent failed to pay its 2020-2021 and 2021-2022 Fiscal Year Assessments and failed to file an Assessment Report for the 2020 calendar year. I&E Formal Complaint. Although USPS records show Respondent received the 2020-2021 Fiscal Year assessment, the Commission received no objections from the Respondent to the assessment. I&E Formal Complaint. The Assessment Report and Assessment Invoice for the 2021-2022 Fiscal Year were returned to the Commission as undeliverable. I&E Formal Complaint. However, this Assessment Report and Assessment Invoice were sent to Homestead Taxi's last known mailing address. I&E Formal Complaint. Respondent is obligated to promptly apprise the Commission of changes to its current address pursuant to Section 1.53(d) of the Commission's regulations. 52 Pa. Code § 1.53(d). There is no record of the Respondent apprising the Commission of any changes to its current address and, therefore, the Commission followed proper legal procedure in this matter in serving every legal document to the Respondent's current address on file with the Commission. *See Application of Michael Maier t/a Eveco Transp. Svcs. d/b/a Maier's Relocation Svc. Co.*, Docket No. A-2015-2483632 (Opinion and Order entered July 13, 2017). Therefore, the record establishes that the Respondent has violated both Section 510(b) of the Code by failing to file an Assessment Report for the 2020 calendar year and Section 510(c) by failing to timely pay its 2020-2021 and 2021-2022 Fiscal Year Assessments.

Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility up to \$1,000 per violation for the

failure to file or pay the annual assessment on time. Each and every day of continuance of the violation is a separate offense. 66 Pa.C.S. § 3301(b).

I&E asserts its proposed civil penalty of \$250 for violation of Section 510(b) of the Code and a civil penalty of \$100 for violations of Section 510(c) of the Code are consistent with past Commission decisions. I&E Formal Complaint, citing *Pa. Pub. Util. Comm'n v. Moore Family Holdings, LLC*, Docket No. C-2021-3029489 (Opinion and Order entered Apr. 14, 2022) (*Moore Family Holdings*); *Pa. Pub. Util. Comm'n v. Crespo Towing, LLC*, Docket No. C-2020-3022761 (Opinion and Order entered June 17, 2021); *Pa. Pub. Util. Comm'n v. Roger Richard t/a RLR Trucking*, Docket No. C-2020-3022788 (Opinion and Order entered May 26, 2021). Specifically, I&E asserts this amount is warranted based on Respondent's acceptable history of compliance with the Public Utility Code and Commission regulations, the amount of Respondent's outstanding assessment balance related to the 2020-2021 and 2021-2022 Fiscal Years, and the need to deter future violations of the Public Utility Code and Commission regulations. I&E Formal Complaint.

Factors and standards to be utilized when determining whether a fine for violating a Commission order, regulation or statute is appropriate are set forth in 52 Pa. Code § 69.1201. The Commission has determined that a civil penalty for failing to pay an outstanding assessment is based on a review of: (1) a respondent's compliance history for the three-year period prior to the date I&E files its formal complaint; (2) the need to deter future violations; and (3) prior Commission decision in similar situations pursuant to 52 Pa. Code §§ 69.1201(c)(6), (8), and (9). *Moore Family Holdings*. The Commission has directed that if a company's past-due assessment is less than or equal to \$350, then the civil penalty is \$50 per violation for any company with good compliance history. *Id.* The Commission has also directed that if a company fails to file its annual assessment reports, its yearly assessment amount is less than or equal to \$500, and the company has a good compliance history, then the civil penalty is \$250. *Id.*

Respondent owes \$162 for its 2020-2021 Fiscal Year Assessment, \$257 for its 2021-2022 Fiscal Year Assessment, and Respondent failed to file its 2020 calendar year Assessment Report. I&E Formal Complaint. I&E also avers Respondent has a good compliance

history. I&E Formal Complaint. Accordingly, I&E's requested penalty of \$100 total for Counts 1 and 2 and \$250 for Count 3 of its Formal Complaint are appropriate and consistent with Commission precedent. I&E's motion for default judgment will be granted and this decision will order payment of a fine of \$250 for the Section 510(b) violation plus \$100 for the Section 510(c) violations, in addition to payment of the outstanding assessment of \$419, for a total of \$769. If the Respondent does not make payment of the outstanding assessment and the imposed civil penalty within thirty days of the date of entry of a Final Order, the Respondent's Certificate to operate will be revoked, the matter sent for collection and the Commission will pursue all remedies, provided by law, to ensure timely compliance with the Code, Commission regulations and orders, including initiation of further enforcement proceedings. 66 Pa.C.S. §§ 504-6, 3301-2; Pa. R.A.P. Rule 3761.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. §§ 501(b), 701.
2. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa.C.S. § 501(a).
3. In a case involving an alleged violation of a determination or order of the Commission by a public utility, the burden of proof shall be upon the public utility to show that it has complied with the determination or order of the Commission. 66 Pa.C.S. § 315(b).
4. As the holder of a Commission-issued certificate of public convenience, Respondent has a duty to comply with Commission orders and regulations. 66 Pa.C.S. § 501(c).
5. A public utility is required to annually file a statement showing its gross intrastate operating revenues for the preceding calendar year. 66 Pa.C.S. § 510(b).

6. The Respondent's failure to submit the calendar year 2020 assessment is a violation of 66 Pa.C.S. § 510(b).

7. A public utility is required to pay the Commission's assessment invoices within thirty days of having received notice from the Commission of the amounts assessed or challenge its assessment within fifteen days after receiving notice of the assessment. 66 Pa.C.S. § 510(c).

8. Respondent's failure to pay the 2020-2021 annual assessment is a violation of 66 Pa.C.S. § 510(c).

9. Respondent's failure to pay the 2021-2022 annual assessment is a violation of 66 Pa.C.S. § 510(c).

10. If any regulated entity fails to comply with any Commission regulation it shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000.00 per day of violation. 66 Pa.C.S. § 3301.

11. A civil penalty for failing to pay an outstanding assessment is based on a review of: (1) a respondent's compliance history for the three-year period prior to the date I&E files its formal complaint; (2) the need to deter future violations; and (3) prior Commission decision in similar situations pursuant to 52 Pa. Code §§ 69.1201(c)(6), (8), and (9). *Pa. Pub. Util. Comm'n v. Moore Family Holdings, LLC*, Docket No. C-2021-3029489 (Opinion and Order entered Apr. 14, 2022).

12. A civil penalty in the amount of \$250 for violation of 66 Pa.C.S. § 510(b) plus \$100 for two separate violations of 66 Pa.C.S. § 510(c), totaling \$350, is reasonable and appropriate. *Pa. Pub. Util. Comm'n v. Moore Family Holdings, LLC*, Docket No. C-2021-3029489 (Opinion and Order entered Apr. 14, 2022).

13. Respondent is obligated to promptly apprise the Commission of changes to its current address pursuant to Section 1.53(d) of the Commission’s regulations. 52 Pa. Code § 1.53(d).

14. A respondent who fails to file an answer to a complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the complaint may be deemed admitted. 52 Pa. Code § 5.61(c).

15. The Commission has authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. Pub. Util. Comm’n*, 382 A.2d 794 (Pa. Cmwlth. 1978).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Default Judgment filed by the Commission's Bureau of Investigation and Enforcement against Homestead Taxi LLC at Docket No. C-2022-3032542 is granted.

2. That the Formal Complaint filed by the Commission's Bureau of Investigation and Enforcement against Homestead Taxi LLC at Docket No. C-2022-3032542 is sustained.

3. That within thirty (30) days of the entry date of the Commission's final order in this matter, Homestead Taxi LLC, shall remit \$769 payable to the “Commonwealth of Pennsylvania” by check, money order, or certified funds, to:

Secretary
Pennsylvania Public Utility Commission

