

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2023-3037624
	:	
Service Emporium Inc.	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Motion for Default Judgment filed by the Pennsylvania Public Utility Commission’s (Commission) Bureau of Investigation and Enforcement (I&E). Service Emporium Inc. (Service Emporium or Respondent) did not file an Answer to I&E’s Formal Complaint; therefore, the allegations raised in the Formal Complaint are deemed admitted. Service Emporium shall remit \$3,082.00 to the Commission to satisfy its outstanding assessment balance of \$1,810.00 and total civil penalty of \$1,272.00.

HISTORY OF THE PROCEEDING

The Commission issued the Respondent a Certificate of Public Convenience on or about July 19, 2016, at Docket No. A-2015-2472602, to transport household goods between points in Pennsylvania. On January 12, 2023, I&E filed a Formal Complaint (Complaint) against the Respondent with the Commission. In the Complaint, I&E alleged that the Respondent failed to timely file an assessment report for the 2019 and 2020 calendar years in violation of 66 Pa.C.S. § 510(b). I&E further alleged that the Respondent failed to satisfy its 2020-2021 and 2021-2022

Fiscal Year Assessment in that it did not pay the amount due within thirty days of receipt of the invoice in violation of 66 Pa.C.S. § 510(c). As relief, I&E requested that the Respondent be ordered to pay a total of \$3,082, which consists of its outstanding assessment balance of \$1,810 and total civil penalty of \$1,272. Additionally, I&E requested: that the Respondent be directed to file assessment reports on a going-forward basis; that if payment is not made, the Commission issue an order cancelling the Respondent's Certificate of Public Convenience; that this matter be referred to the Pennsylvania Office of Attorney General for appropriate action; and that the Commission certify automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation.

On January 13, 2023, the Commission's Secretary served a copy of I&E's Complaint on the Respondent. The Respondent's answer was due within twenty days of service. The Respondent never filed an answer to the Complaint.

By Initial Call-In Telephonic Hearing Notice dated February 14, 2023, an initial call-in telephonic hearing was scheduled for April 6, 2023, at 10:00 a.m., and the matter was assigned to me.

On March 15, 2023, I&E filed a Motion for Default Judgment (Motion) with the Commission's Secretary. I&E's Motion was endorsed with a Notice to Plead advising the Respondent that it had twenty days to file a written response.

The Respondent did not file a written response to I&E's Motion, nor did it appear at the hearing held on April 6, 2023. The record in this matter closed on April 28, 2023, upon receipt of the transcript for the hearing. The matter is ripe for disposition.

FINDINGS OF FACT

1. The Complainant is the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement.
2. The Respondent is Service Emporium Inc.

3. On January 12, 2023, I&E filed a Formal Complaint against the Respondent.
4. On January 13, 2023, via email, the Commission's Secretary served a copy of I&E's Complaint on the Respondent.
5. The Respondent failed to pay its 2020-2021 Fiscal Year Assessment Invoice of \$1,060 and its 2021-2022 Fiscal Year Assessment Invoice of \$750.
6. The Respondent's total outstanding assessment balance relating to the 2020-2021 and 2021-2022 Fiscal Years is \$1,810.
7. The Respondent's answer to the Complaint was due within twenty days of service.
8. The Respondent did not file an answer to the Complaint.
9. On March 15, 2023, I&E filed a Motion for Default Judgment with the Commission's Secretary.
10. I&E's Motion was served via e-mail and was endorsed with a Notice to Plead advising the Respondent that it had 20 days to file a written response to the Motion.
11. The Respondent did not file a written response to the Motion.
12. The Respondent did not appear at the April 6, 2023, hearing conducted in this matter.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit parties to file motions. 52 Pa. Code §5.103.

Pursuant to Section 5.61(c) of the Commission's Regulations, 52 Pa. Code § 5.61(c), a respondent who fails to answer a complaint within the twenty-day response period may be deemed in default, and the relevant facts stated in the complaint may be deemed admitted. *See Hickory Hollow Farms c/o Lamar Harnish v. Liberty Power Holdings LLC and United Energy Alliance LLC*, Docket No. C-2016-2559494 (Final Order entered Aug. 31, 2017). 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) (*Fusaro*).

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. 66 Pa.C.S. § 510(c). 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.

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. *See Pa. Pub. Util. Comm'n v. Juan Genet Enter., LLC t/a Safe Destinations*, Docket No. C-2014-2450660 (Opinion and Order entered Aug. 3, 2017); *Pa. Pub. Util. Comm'n v. Leo Movers & Storage, Inc.*, Docket No. C-2015-2494528, (Opinion and Order entered Aug. 3, 2017); *Pa. Pub. Util. Comm'n v. Hoffman Landscaping & Trucking, LLP*, Docket No. C-2015-2495061 (Opinion and Order entered Sept. 21, 2017); *Pa. Pub. Util. Comm'n v. Deer Haven, LLP*, Docket No. C-2015-2498095 (Opinion and Order entered Oct. 26, 2017); *Pa. Pub. Util. Comm'n v. Reach for the Stars Limousine Serv. Inc.*, Docket No. C-2015-2499276 (Opinion and Order entered Oct. 26, 2017); *Pa. Pub. Util. Comm'n v. TTM Operating Corp. Inc.*, Docket No. C-2016-2558445, (Opinion and Order entered Apr. 19, 2018). 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 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.

The Respondent's compliance history and the need to deter future violations are also important considerations when weighing the amount of a civil penalty. 52 Pa. Code § 69.1201. It is Commission practice 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 the 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, the Commission will evaluate violations including, but not limited to, the following: (1) Commission assessment requirements in 66 Pa.C.S. § 510; (2) the unauthorized provision of service under 66 Pa.C.S. §§ 1101 and 1102; (3) Commission insurance requirements in 52 Pa. Code, Ch. 32; (4) Commission tariff requirements in 52 Pa. Code, Chs. 23, 29, and 31; (5) and Commission vehicle, service, and driver requirements in 52 Pa. Code, Ch. 29.

In the present case, the I&E Complaint indicates that the Respondent failed to report its gross intrastate operating revenues and pay its fiscal year assessment for the 2019 and 2020 calendar years, which is a violation of 66 Pa.C.S. § 510(b) for each year. Complaint at 6 -7, ¶¶ 21-28, 34, 35. For these violations, I&E proposed a \$1,000 civil penalty, which it indicated in its Complaint is based on the type of violation involved, the amount of the Respondent's assessment

balance related to the 2020-2021 and 2021-2022 Fiscal Years, and the Respondent's compliance history with the Public Utility Code and Commission regulations for the three years prior to the filing of the Complaint. Moreover, I&E submitted that a review of the Commission's records for the three years prior to the date of the Complaint demonstrated that the Respondent has an acceptable compliance history with the Commission. In the Complaint, I&E stated that a review of the Commission's records for a period of three years prior to the date of the filing of the Complaint demonstrates that Respondent has an acceptable compliance history with the Commission. Complaint ¶ 36 fn 5. I&E also specified that Respondent's certificate has been suspended for its failure to file a tariff with the Commission, however, there is no evidence that Respondent is operating with a suspended certificate, citing 52 Pa. Code § 23.11. *Id.*

I&E further indicated that the Respondent failed to satisfy its 2020-2021 and 2021-2022 Fiscal Year Assessments in that it did not pay the amount for each such Fiscal Year due within 30 days of receipt of the Invoice for each such Fiscal Year, which is a violation of 66 Pa.C.S. § 510(c). For this violation, I&E proposed a civil penalty that amounted to 15% of the total outstanding balance for the 2020-2021 and 2021-2022 Fiscal Years, or \$272. I&E maintained that this civil penalty is consistent with past Commission decisions, and based on the type of violation involved, the amount of the Respondent's outstanding assessment balance related to the 2020-2021 and 2021-2022 Fiscal Years, and the Respondent's compliance history with the Public Utility Code and Commission regulations for the three years prior to the filing of the Complaint. Again, I&E noted the Respondent's acceptable compliance history with the Commission. Complaint ¶ 37 and fn. 6.

Based on my review of the record, the averments in the Complaint and the Motion, the Respondent's failure to reply to either the Complaint or the Motion, and the Respondent's failure to appear at the hearing, I will grant the Motion and sustain the Complaint. Pursuant to Section 5.61(c) of the Commission's 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 Respondent was provided with adequate notice of the alleged violations against it and had the opportunity to respond. Under the circumstances, granting I&E's Motion and sustaining the Complaint is appropriate.

The Respondent failed to timely file assessment reports for the 2019 and 2020 calendar years in violation of 66 Pa.C.S. § 510(b). Considering the Respondent's failure to file these assessment reports and its acceptable compliance history, the \$1,000 civil penalty for the assessment report filing violations is reasonable and in accordance with Commission's process of assessing civil penalties.

The Respondent also failed to satisfy its 2020-2021 and 2021-2022 Fiscal Year Assessments in that it did not pay the amounts due within thirty days of receipt of the invoice for each such Fiscal Year in violation of 66 Pa.C.S. § 510(c). Considering the Respondent's failure to pay these assessments and its acceptable compliance history, the \$272 civil penalty for failing to pay these assessments is reasonable and in accordance with the Commission's process for assessing civil penalties. Moreover, it is anticipated that the combined \$1,272 penalty will provide a sufficient deterrent against future violations by the Respondent.

CONCLUSIONS OF LAW

1. A party may file for summary judgment pursuant to 52 Pa. Code §§ 5.103, 5.102.
2. A respondent who fails to answer a complaint within the twenty-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).
3. Service Emporium Inc. failed to file an answer to the Complaint within twenty days, is in default and the facts set forth in the Complaint are deemed admitted. 52 Pa. Code § 5.61(c).
4. Public utilities regulated by the Commission are required under Section 510 of the Code to file and pay an annual assessment that provides a reasonable share of the Commission's costs in administering regulatory oversight. 66 Pa.C.S. § 510(c).

5. 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. 66 Pa.C.S. § 3301.

6. Service Emporium Inc. failed to report its gross intrastate operating revenues for the 2019 and 2020 calendar years in violation of 66 Pa.C.S. § 510(b).

7. Service Emporium Inc. failed to satisfy its 2020-2021 and 2021-2022 Fiscal Year Assessments in that it did not pay the amount due within thirty days of receipt of the Invoice for the Assessments, which is a violation of 66 Pa.C.S. § 510(c) for each such Fiscal Year.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Default Judgment filed by the Bureau of Investigation and Enforcement is granted.
2. That the allegations in the Complaint filed by the Commission's Bureau of Investigation and Enforcement are deemed admitted, and the Complaint is sustained.
3. That within thirty (30) days of the entry date of a Final Order in this matter, Service Emporium Inc. shall remit \$3,082 (\$1,810 outstanding assessment and \$1,272 outstanding civil penalty) payable by certified check or money order, to "Commonwealth of Pennsylvania" with the docket number of this proceeding listed thereon, and send to:

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

4. That Service Emporium Inc. report its gross intrastate operating revenues for all future calendar years, pursuant to requirements at 66 Pa.C.S. § 510, and further cease and desist from further violations of the Public Utility Code and the Public Utility Commission's regulations.

5. That the Public Utility Commission's Bureau of Technical Utility Services suspend or revoke the Certificates of Public Convenience at Docket No. A-2015-2472602 if payments of the civil penalty (\$1,272) plus the outstanding assessment balance (\$1,810) are not received from Service Emporium Inc. within thirty (30) days after service of the Public Utility Commission's Order.

6. That if Service Emporium Inc. fails to comply with the Public Utility Commission's Order and pay the civil penalty and assessment balance within thirty (30) days of the Public Utility Commission's Order the Public Utility Commission shall forward a copy of the Order to the Pennsylvania Department of Transportation for the purpose of having the Department of Transportation suspend or revoke the vehicle registrations for all vehicles used within Respondent's operating authority.

7. That, if Service Emporium Inc. fails to make the civil penalty payment required by Ordering Paragraph No. 3 above, within thirty (30) days of the entry date of this Order, it is further ordered that 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.

8. That the record at Docket No. C-2023-3037624 shall be marked closed.

Date: June 28, 2023

/s/
Arlene Ashton
Administrative Law Judge