

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2023-3037524
	:	
Silv Communications, Inc.	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Motion for Default Judgment filed by the Bureau of Investigation and Enforcement and sustains the assessment-related Amended Formal Complaint. This Decision orders the Company to pay a total of \$697, consisting of the Company’s outstanding 2021-2022 and 2022-2023 Fiscal Year assessment balance of \$97, plus a civil penalty of \$600. This Decision also directs the Company to file assessment reports in the future and update its physical mailing address with the Commission.

HISTORY OF THE PROCEEDING

On or about September 19, 2005, the Pennsylvania Public Utility Commission (“Commission”) issued Silv Communications, Inc. (“Respondent” or “Company”) a Certificate of Public Convenience at Docket Number A-311383, for interexchange carrier authority. On January 9, 2023, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a

Formal Complaint alleging two assessment-related violations against Respondent for the 2021-2022 Fiscal Year.

On February 13, 2023, a Corrected Hearing Notice¹ was issued scheduling a telephonic hearing for April 11, 2023, and I was assigned as the presiding officer.

On February 22, 2023, I&E filed an Amended Formal Complaint (“Amended Complaint”), which amended the Formal Complaint by alleging two additional assessment-related violations for the 2022-2023 Fiscal Year.

Specifically, in Counts 1 and 2 of the Amended Complaint, I&E avers that Respondent failed to report its gross intrastate operating revenues for the 2020 and 2021 calendar years in that it did not file assessment reports for those calendar years. I&E avers this failure is in violation of Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b). For these violations, I&E proposes a civil penalty of \$500 (\$250 per count).

In Counts 3 and 4 of the Amended Complaint, I&E avers that the Respondent failed to satisfy its 2021-2022 and 2022-2023 Fiscal Year Assessments in that it did not pay the amounts due within thirty days of receipt of each invoice. I&E avers that this failure is in violation of Section 510(c) of the Public Utility Code (Code), 66 Pa.C.S. § 510(c). For these violations, I&E proposes a civil penalty of \$100 (\$50 per count).

I&E also avers that Respondent’s total past due balance for the 2021-2022 and 2022-2023 Fiscal Years of \$97 remains outstanding.

As relief, I&E requests that Respondent be ordered to pay a total of \$697, to file assessment reports for future calendar years, and to update its physical mailing address. Further, I&E requests that if Respondent does not make this payment, that the Commission issue an Order to cancel Respondent’s Certificate of Public Convenience and refer this matter to the Pennsylvania Office of Attorney General for appropriate action.

¹ The Corrected Hearing Notice corrected that the time of the hearing was to start at 10:00 a.m.

I&E's Amended Formal Complaint included a notice to plead, and was served on the Respondent on February 23, 2023. Respondent did not file an answer to I&E's Amended Complaint, which was due twenty days after its service. *See*, 52 Pa. Code § 5.61(a).

On March 21, 2023, I&E filed a Motion for Default Judgment ("Motion"), which included a notice to plead. Respondent did not file an answer to I&E's Motion, which was due twenty days after its service. *See*, 52 Pa. Code § 5.61(a)(1).

On April 11, 2023, a telephonic hearing convened as scheduled. I&E was represented by Alphonso Arnold III, Esquire, along with a witness, Amy Zuvich, Chief of Finance and Assessments. No one appeared on behalf of the Company. At this time, I&E renewed its Motion. (Tr. at 5). I took this Motion under advisement.

The transcript of this proceeding was filed with the Secretary's Bureau on April 21, 2023, at which time the record closed.

For the reasons stated below, I&E's Motion is granted, the Amended Formal Complaint is sustained, and the relief requested is granted.

FINDINGS OF FACT

1. The Complainant is the Commission's Bureau of Investigation and Enforcement, and is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308.2(a)(11). *See also, Implementation Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011) (transferring authority to prosecute assessment cases to I&E).

2. The Respondent is Silv Communications, Inc., which was issued a Certificate of Public Convenience by the Commission, at Docket Number A-311383, for interexchange carrier authority.

2021-2022 Fiscal Year

3. On or about February 10, 2021, the Commission mailed, by first-class mail, to Respondent an Assessment Report for Respondent to report its gross intrastate operating revenues for the 2020 calendar year. Amended Complaint ¶ 16.

4. The Assessment Report was accompanied by instructions, which notified Respondent that the report was to be completed and returned to the Commission on or before March 31, 2021. Amended Complaint ¶ 17.

5. The Respondent failed to file an Assessment Report stating its 2020 calendar year revenues. Amended Complaint ¶ 18.

6. On or about September 10, 2021, the Commission mailed to Respondent, by first-class mail, an Assessment Invoice for the July 1, 2021 to June 30, 2022 Fiscal Year (“2021-2022 Fiscal Year”) that was based, in part, on Respondent’s estimated revenues for the 2020 calendar year due to Respondent’s failure to file an Assessment Report detailing its 2020 gross intrastate operating revenues. Respondent’s assessment was \$44. Amended Complaint ¶ 19.

7. 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 thirty (30) days or file objections within fifteen (15) days. Amended Complaint ¶ 20.

8. The first-class mailing of the Assessment Invoice and Notice of Assessment was undeliverable to Respondent and returned to the Commission. Amended Complaint ¶ 21.

9. On or about October 27, 2021, the Commission re-mailed to Respondent, by certified mail, the Assessment Invoice and Notice of Assessment to Respondent’s last known

mailing address on file with the Commission at 3460 Wilshire Blvd, Suite 1103, Los Angeles, CA 90010. Amended Complaint ¶¶ 22, 23.

10. On November 17, 2021, the certified mailing of the Assessment Invoice and Notice of Assessment was returned to the Commission as “not deliverable as addressed; unable to forward.” Amended Complaint ¶ 24.

11. The Commission received no objections from Respondent to the assessment amount set forth in the 2021-2022 Fiscal Year assessment invoice. Amended Complaint ¶ 27.

12. Respondent failed to pay its 2021-2022 Fiscal Year assessment invoice of \$44. Amended Complaint ¶ 28.

2022-2023 Fiscal Year

13. On or about February 9, 2022, the Commission mailed, by first-class mail, to Respondent an Assessment Report for Respondent to report its gross intrastate operating revenues for the 2021 calendar year. Amended Complaint ¶ 29.

14. The Assessment Report was accompanied by instructions, which notified Respondent that the report was to be completed and returned to the Commission on or before March 31, 2022. Amended Complaint ¶ 30.

15. Respondent failed to file an Assessment Report stating its 2021 calendar year revenues. Amended Complaint ¶ 31.

16. On or about September 9, 2022, the Commission mailed to Respondent, by certified mail, an Assessment Invoice for the July 1, 2022 to June 30, 2023 Fiscal Year (“2022-2023 Fiscal Year”) that was based, in part, on Respondent’s estimated revenues for the 2021 calendar year due to Respondent’s failure to file an Assessment Report detailing its 2021

gross intrastate operating revenues. Respondent's assessment was \$53. Amended Complaint ¶ 32.

17. 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 thirty (30) days or file objections within fifteen (15) days. Amended Complaint ¶ 33.

18. The certified mailing of the Assessment Invoice and Notice of Assessment was mailed to Respondent's last known mailing address on file with the Commission at 3460 Wilshire Blvd, Suite 1103, Los Angeles, CA 90010. Amended Complaint ¶ 34.

19. On September 21, 2022, the certified mailing of the Assessment Invoice and Notice of Assessment was returned to the Commission as "return to sender." No forwarding address was provided by the postal authorities. Amended Complaint ¶ 35.

20. The Commission received no objections from Respondent to the assessment amount set forth in the 2022-2023 Fiscal Year Assessment Invoice. Amended Complaint ¶ 38.

21. Respondent failed to pay its 2022-2023 Fiscal Year assessment invoice of \$53. Amended Complaint ¶ 39.

Warning Letter

22. On or about October 26, 2022, the Commission's Bureau of Administration sent Respondent a letter warning Respondent that if it did not pay its past due balance of \$97, consisting of its unpaid assessment balance for the 2021-2022 and 2022-2023 Fiscal Years, within twenty days of receipt of the letter, then the Commission would institute appropriate legal action against Respondent. Amended Complaint ¶ 40.

23. Respondent's total past due balance for the 2021-2022 and 2022-2023 Fiscal Years of \$97 remains outstanding. Amended Complaint ¶ 41.

DISCUSSION

The Complainant, I&E, was established by statute to prosecute complainants against public utilities. 66 Pa.C.S. § 308.2(a)(11). Respondent, a California Corporation, is a "public utility" as defined by 66 Pa.C.S. § 102. On or about September 19, 2005, the Commission issued Respondent a Certificate of Public Convenience at Docket Number A-311383, for interexchange carrier authority.

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.

The Commission explained the importance of public utilities complying with Section 510 in its tentative Order at *Cancellation of Certificates of Public Convenience for Motor Carriers; Failure to Pay Assessment*, Docket No. 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 Amended Complaint or 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 Amended 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 2021-2022 and 2022-2023 Fiscal Year Assessments and failed to file an Assessment Report for the 2020 and 2021 calendar years. The Commission received no objections from the Respondent to the assessments.

The Assessment Reports and Assessment Invoices for the 2021-2022 and 2022-2023 Fiscal Years were returned to the Commission as undeliverable. However, these Assessment Reports and Assessment Invoices were sent to the Respondent's last known mailing address in California. 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 these documents 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).

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).

In the instant case, I&E asserts its proposed civil penalties are consistent with past Commission decisions and sufficient to deter future violations. I&E proposes a penalty of \$500 (\$250 per count) for the two violations of Section 510(b) of the Code and a penalty of \$100 (\$50 per count) for the two violations of Section 510(c) of the Code. *See*, Amended Complaint at 8, n.3 (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); and *Pa. Pub. Util. Comm'n v. Roger Richard t/a RLR Trucking*, Docket No. C-2020-3022788 (Opinion and Order entered May 26, 2021)).

Further, I&E asserts this amount is warranted based on the following three factors: (1) the type of violations in the instant proceeding; (2) the amount of Respondent's outstanding assessment balance related to the 2021-2022 and 2022-2023 Fiscal Years, and (3) Respondent's acceptable history of compliance with the Commission for a period of three years prior to the date of the filing of the Amended Complaint. *See*, Amended Complaint, at 9.

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 \$44 for its 2021-2022 Fiscal Year Assessment, \$53 for its 2022-2023 Fiscal Year Assessment, and Respondent failed to file its 2020 and 2021 calendar year Assessment Reports. I&E also avers Respondent has a good compliance history. Thus, I&E's requested penalty of \$500 total for Counts 1 and 2 (\$250 per count) and a total of \$100 for Counts 3 and 4 (\$50 per count) are appropriate and consistent with Commission precedent. *Moore Family Holdings*.

Accordingly, I&E's Motion will be granted and this decision will order payment of a fine of \$500 for the two violations of Section 510(b), plus \$100 for the two violations of Section 510(c), in addition to payment of the outstanding assessment of \$97, for a total of \$697. 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 directed to 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, 510, 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. 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).

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

6. As the holder of a Commission-issued certificate of public convenience, the Respondent has a duty to comply with Commission orders and regulations. 66 Pa.C.S. § 501(c).

7. The Respondent is obligated to promptly apprise the Commission of changes to its current address. 52 Pa. Code § 1.53(d).

8. 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).

9. The Respondent's failure to submit its Assessment Reports for the calendar years 2020 and 2021 are violations of 66 Pa.C.S. § 510(b).

10. 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).

11. The Respondent's failure to satisfy its 2021-2022 Fiscal Year Assessment and 2022-2023 Fiscal Year Assessment are violations of 66 Pa.C.S. § 510(c).

12. 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.

13. A civil penalty for failing to pay an outstanding assessment in 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Default Judgment filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Silv Communications, Inc., at Docket No. C-2023-3037524, is hereby granted.

2. That the Amended Formal Complaint filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Silv Communications, Inc., at Docket No. C-2023-3037524, is hereby sustained.

3. That within thirty (30) days of the entry date of the Commission's final Order in this matter, Silv Communications, Inc. shall remit \$697 (\$97 outstanding assessment and \$600 outstanding civil penalty), payable by certified check or money order, to the "Commonwealth of Pennsylvania" with the docket number of this proceeding listed thereon, and sent to:

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

4. That Silv Communications, Inc. shall immediately update its physical mailing address with the Pennsylvania Public Utility Commission.

5. That Silv Communications, Inc. shall report its gross intrastate operating revenue for all future calendar years, pursuant to the 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.

6. That the Public Utility Commission's Bureau of Technical Utility Services suspend or revoke the Certificate of Public Convenience at Docket No. A-311383 if payments of the civil penalty (\$600) plus the outstanding assessment balance (\$97) are not received from Silv Communications, Inc., within thirty (30) days after service of the Public Utility Commission's final Order.

7. That, if Silv Communications, Inc. fails to make the payment required by Ordering Paragraph No. 3 above within thirty (30) days of the entry date of the final Order of the Commission, 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 a copy of this Decision be served on the Commission's Bureau of Technical Services and the Bureau of Administrative Services, Assessment Section.

