

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

Public Meeting held December 7, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

C-2021-3028563

v.

Jadon Trucking, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Amendment of the Commission's Order entered December 8, 2022 (*December 2022 Order*), filed by the Commission's Bureau of Investigation and Enforcement (I&E) on January 19, 2023, and a Joint Petition for Approval of Settlement (Settlement, or Settlement Agreement) filed by I&E and Jadon Trucking, Inc. (Jadon or Company) on August 9, 2023. For the reasons set forth herein,

we will approve the Settlement based on our finding that the Settlement is in the public interest, grant the Petition for Amendment, and amend the *December 2022 Order*.

Background

On September 16, 2021, I&E filed a Formal Complaint alleging that Jadon 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, among other things, that the Commission direct the Company to pay a total of \$5,848, consisting of its outstanding assessment balance of \$4,148 and the requested civil penalty of \$1,700. The Company did not file an Answer to I&E's Formal Complaint. Settlement at 4.

On February 2, 2022, I&E filed a Motion for Default Judgment, requesting that its Formal Complaint be sustained due to Jadon's failure to file an Answer to the Complaint. The Company did not file an Answer to I&E's Motion for Default Judgment. Settlement at 4.

In May 2022, I&E and Jadon (together, the Parties), through its owner John Coates (the Owner), held settlement discussions and verbally agreed to a settlement of the Formal Complaint. Due to the Owner's purported health and cash flow issues, I&E agreed to allow the Company 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. On May 20, 2022, Jadon made the first installment payment of \$2,500. The Commission did not receive the second and final payment installment in the amount of \$2,498 from the Company. Petition for Amendment at 2-3.

On December 8, 2022, the Commission entered the *December 2022 Order* granting I&E's Motion for Default Judgment and directing the Company to pay \$3,270.

In response to the *December 2022 Order*, the Company filed a letter on December 30, 2022 (Letter). In the Letter, Jadon stated its Owner had health issues and was in the hospital during June and July of 2022. The Company states on June 29, 2022, I&E emailed its Owner concerning the second installment payment. Jadon asserts the Owner's wife mailed the second installment payment to I&E on August 2, 2022. Letter at 1.

On January 19, 2023, I&E filed a Petition for Amendment of the *December 2022 Order* to reflect a civil penalty due of \$850 rather than the full civil penalty of \$1,700. The Settlement Agreement, filed on August 9, 2023, documented the terms of the Settlement, consistent with the revision of the civil penalty amount sought in I&E's Petition for Amendment of the *December 2022 Order*.

Terms of the Settlement

The Parties entered into the Settlement to terminate this formal proceeding and to settle this matter without litigation. Pursuant to the proposed Settlement, Jadon agreed to the following terms:

- a) That the civil penalty (\$1,700) requested in the Formal Complaint filed at this Docket be reduced by half (\$850).
- b) That Jadon Trucking Inc. shall pay a total of four thousand nine-hundred ninety-eight dollars (\$4,998), consisting of its outstanding assessment balance of \$4,148 and a civil penalty of \$850, to the Commission in two installment payments of \$2,500 and \$2,498.

- c) That the Commission received the first installment payment per the terms of this Settlement of \$2,500 on May 20, 2022.
- d) That the second and final installment payment of \$2,498 shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

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

Settlement at 5-6.

The Settlement is conditioned upon the Commission's approval of the Settlement's terms and conditions in its entirety and without modification. If the Commission modifies the Settlement, any party may withdraw from the Settlement and proceed with litigation. The Settlement does not constitute a concession or an admission of fact or law by Jadon. *Id.* at 7. The Settlement is presented without prejudice to any position the Parties have advanced or may advance in the future regarding the merits of the issues in future proceedings, except to the extent necessary to effectuate this Settlement. *Id.* at 8.

Discussion of the Settlement

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Opinion and Order entered January 7, 2004). In this

regard, the Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth ten factors we use when determining whether, and to what extent, a civil penalty is warranted in litigated and non-litigated settled cases. In settled cases, while many of the same factors may still be considered, the settling parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b). Based on our review of the Settlement, we find, as discussed in more detail below, that the application of these factors supports approval of the Settlement. The Commission’s Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). As noted, the conduct in this matter involves failure to file assessment reports and failure to pay assessment invoices. We are of the opinion that the violations are of a less egregious nature.

The second factor to consider is whether the resulting consequences of the alleged conduct were of a serious nature. 52 Pa. Code § 69.1201(c)(2). We find the penalty to be reasonable due to the administrative nature of the violations.

The third factor to be considered under the *Policy Statement* is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* This factor does not apply to the present case because this proceeding is a settled matter that did not involve formal litigation.

The fourth factor to be considered is whether the Company has made efforts to modify its practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As described in I&E’s Statements in Support, Jadon made a good faith effort to abide by the terms of the verbal settlement. The efforts made by the Company support the proposed civil penalty.

The fifth factor to be considered relates to the number of customers affected by the Company’s actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). There is no indication that any customers were affected by Jadon’s failure to file assessment reports and pay assessment invoices. For this reason, this factor weighs in support of the proposed penalty.

The sixth factor that may be considered is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.* The *December 2022 Order* indicates that the Company has had an acceptable compliance history with the Code and the Commission’s Regulations. Motion for Default Judgment at 7. Thus, we find that Jadon’s compliance history leans towards a reduced penalty.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). The violations are a failure of Jadon to timely file assessment reports and pay assessment invoices. *December 2022 Order* at 2. Consequently, I&E's investigation of the Company was limited to confirming Jadon failed to file assessment reports and pay assessment invoices. Therefore, this factor does not apply to this case.

The eighth factor we may consider is the amount of the civil penalty necessary to deter future violations. 52 Pa. Code § 69.1202(c)(8). Here, I&E submits that the civil penalty for failing to pay the outstanding assessment relating to the 2019-2020 and 2020-2021 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 Jadon'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, whichever is greater. *December 2022 Order* at 3. We agree with I&E's methodology, and therefore, find that the civil penalty is appropriate.

The ninth factor examines whether the results of a proposed settlement are consistent with past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E submits that 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. PUC v. TTM Operating Corporation Inc.*, Docket No. C-2016-2558445 (Opinion and Order entered April 19, 2018). *December 2022 Order* at 5-7. Therefore, we agree with I&E that the proposed settlement is consistent with previous Commission decisions.

The tenth standard provides that the Commission may consider “other relevant factors” in assessing a penalty. 52 Pa. Code § 69.1201(c)(10). I&E submits that the civil penalty is not an arbitrary, agreed-to penalty, but rather is based on a civil penalty algorithm used in all assessment complaints. To conserve Commission resources as well as to conserve the time and expense of the Company, I&E avers it often offers to settle a matter by indicating that the civil penalty will be reduced to assist in the financial hardship experienced by the entity and to amicably resolve a complaint in an expedited fashion. Further I&E notes that there is no reduction in the amount of assessment payment due in reaching such a settlement; only the discretionary civil penalty is negotiated. I&E Statement in Support at 5-6. We believe, consistent with our policy that encourages settlements, it is in the public interest to settle this matter according to I&E’s methodology to avoid the time and expense of formal litigation.

Having considered the Settlement, we will turn to the petition.

Discussion of the Petition for Amendment

In considering the Petition for Amendment, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of

our Regulations, 52 Pa. Code § 5.572 (relating to petitions for relief following the issuance of a final decision).

In exercising Commission authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” *See, City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980).

The standards for granting a Petition for Amendment were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) (*Duick*):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that: Parties cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Duick, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Pub. Serv. Comm’n*, 179 A. 850, 854 (Pa. Super. 1935)).

Under the standards of *Duick*, a petition for rescission or amendment may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions 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*, 56 Pa. P.U.C. at 559.

We have noted that the Commission has administrative discretion regarding whether to grant or deny a petition for rescission or amendment of an order filed under 66 Pa. C.S. § 703(g). *West Penn Power Co. v. Public Utility Commission*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995). However, such a petition should only be granted judiciously and under appropriate circumstances because such an action results in the disturbance of a final order. *Id.* Furthermore, as such, the Commission has wide latitude to deny a petition for rescission or amendment.

Petition for Amendment

In the Petition for Amendment, I&E requests that the *December 2022 Order* be amended to direct Jadon to remit \$2,498 as defined in the Settlement, instead of the \$3,270 as directed in the *December 2022 Order*. Petition for Amendment at 1. I&E states it and the Company agreed to settle the Company's failure to file assessment reports and failure to pay assessment invoices 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 of \$2,500, however the Commission did not receive the second payment due by June 30, 2022. In its Letter, Jadon avers its owner was hospitalized in June and July of 2022 and attempted to comply with the verbal settlement by submitting the second payment to the Commission on August 2, 2022. I&E states although it has not been able to locate the check that Jadon confessed to have mailed to the Commission on August 2, 2022, I&E nonetheless supports the Company's position that it mailed the second payment installment to the Commission on August 2, 2022, in compliance with the verbal settlement agreement. Petition for Amendment at 6. Therefore, I&E requests that the Commission grant its Petition for Amendment of the *December 2022 Order*, and direct Jadon to make payment

in the amount of \$2,498 to 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 *December 2022 Order*. Petition for Amendment at 7-8.

Disposition of the Petition for Amendment

As mentioned, a petition for amendment or rescission is governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new or novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is, therefore, to evaluate the new or novel argument or overlooked consideration, in order to determine whether to modify our previous decision.

Based on our review of the Petition for Amendment and the record documents, we will grant the Petition for Amendment. We find that the new argument raised in the petition regarding the facts of this case to warrant amending our prior order consistent with this Opinion and Order. In addition, we recognize the Parties' resolution of the matter via a settlement as adhering to the Commission's policy to encourage settlements. *See*, 52 Pa. Code § 5.231 and discussion, *supra*. Consequently, under the circumstances of the instant case, we find reasonable, I&E's explanation that the Company attempted to comply with the verbal settlement agreement. Therefore, we direct Jadon to make a payment in the amount of \$2,498, to be paid within thirty (30) days of the entry of the amended Opinion and Order.

Conclusion

It is the Commission's policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, we find that the proposed Settlement between I&E and Jadon is in the public interest and merits approval. Additionally, for the reasons discussed herein, we will grant the Petition for Amendment and amend the *December 2022 Order* requiring Jadon to make the second and final installment payment of \$2,498 within thirty (30) days of the entry date of the amended Opinion and Order. We, therefore, shall grant the Joint Petition for Settlement and Petition for Amendment, and thereby, approve the Settlement consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement filed on August 9, 2023, between the Commission's Bureau of Investigation and Enforcement and Jadon Trucking, Inc. is approved in its entirety without modifications.
2. That the Petition for Amendment, filed by the Commission's Bureau of Investigation and Enforcement, on January 19, 2023, at Docket No. C-2021-3028563, is granted, consistent with this Opinion and Order.
3. That the Opinion and Order entered on December 8, 2022, in the proceeding of the Commission's Bureau of Investigation and Enforcement v Jadon Trucking, Inc., at Docket No. C-2021-3028563, is amended, consistent with this Opinion and Order.

4. That, in accordance with Section 3301(c) of the Public Utility Code, 66 Pa. C.S. § 3301(c), within thirty (30) days of the date this Order becomes final, Jadon Trucking Inc. shall pay a total of \$2,498 (\$850 as a civil penalty and \$1,648 for the outstanding 2020 assessment) as the second and final installment associated with the terms of the settlement. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania.” The docket number of this proceeding shall be indicated with the certified check or money order and shall be sent to:

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

5. That a copy of this Opinion and Order be served on the Financial and Assessment Chief, Office of Administrative Services.

6. That the above-captioned matter shall be marked closed upon receipt of Jadon Trucking Inc.’s payment of the above amount.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 7, 2023

ORDER ENTERED: December 7, 2023