

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2024-3046414
	:	
Roger Richard d/b/a RLR Trucking	:	

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 (“BIE”) of the Pennsylvania Public Utility Commission (“Commission”). The Respondent, Roger Richard d/b/a/ RLR Trucking (“RLR Trucking,” “Company,” or “Respondent”), did not file an answer to BIE’s assessment-related Formal Complaint (“Complaint”); therefore, the allegations raised in the Complaint are deemed admitted. This Decision orders the Company to pay a total of \$2,285, which consists of its outstanding assessment of \$85 and the requested civil penalty of \$2,200.

HISTORY OF THE PROCEEDING

On or about April 28, 2014, the Commission issued RLR Trucking a Certificate of Public Convenience at A-8916383, for approval to transport as a common carrier by motor vehicle, property, excluding household goods in use, between points in Pennsylvania. On

February 13, 2024, BIE filed the within Complaint against the Respondent alleging six counts of assessment-related violations.

In Counts 1 through 4 of the Complaint, BIE avers that the Respondent failed to report its gross intrastate operating revenues for the calendar years of 2018, 2019, 2021 and 2022 in that it did not file assessment reports for these years. BIE avers that these failures are in violation of Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b). For these violations, BIE proposes a total civil penalty of \$2,000 (\$500 per count).

In Counts 5 and 6 of the Complaint, BIE avers that the Respondent failed to satisfy its 2022-2023 and 2023-2024 Fiscal Year Assessments in that it did not pay the amounts due within thirty days of receipt of each invoice. BIE avers that these failures are in violation of Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c). For these violations, BIE proposes a total civil penalty of \$200 (\$100 per count).

BIE also avers that the Respondent failed to pay its cumulative 2022-2023 and 2023-2024 Fiscal Year Assessment Invoice of \$172 (\$87 for 2023-34 and \$85 for 2022-2023).

As relief, BIE requests in its Complaint that the Respondent be ordered to pay a total of \$2,372, which consists of its cumulative outstanding assessment balance of \$172 and a total civil penalty of \$2,200, and that it be directed to file assessment reports for future calendar years. Further, BIE requests that if the Respondent does not make this payment, that the Commission issue an Order to cancel the Respondent's Certificate of Public Convenience and refer this matter to the Pennsylvania Office of Attorney General for appropriate action.

On February 14, 2024, the Complaint, which was endorsed with a notice to plead, was served on the Respondent by certified mail. The Notice also advised the Respondent that if it failed to answer the Complaint, BIE would request that the Commission issue an Order imposing the penalties set forth in the Complaint. The Respondent did not file an answer to BIE's Complaint, which was due twenty days after its service, or by March 5, 2024. *See*, 52 Pa. Code § 5.61(a).

On March 8, 2024, the Commission received a money order from the Respondent in the amount of \$87 to satisfy its outstanding assessment invoice for the 2023-2024 Fiscal Year.

On March 12, 2024, BIE filed a Motion for Default Judgment (“Motion”), which included a notice to plead. In this Motion, BIE averred that the Respondent’s partial payment of \$87 to satisfy the Complaint leaves an outstanding assessment invoice and civil penalty of \$2,285.

To date, Respondent has not filed an answer to BIE’s Motion, which was due twenty days after its service, or by April 1, 2024. *See*, 52 Pa. Code § 5.61(a)(1). Subsequently, I was assigned this matter.

For the reasons stated below, BIE’s Motion will be granted and the Complaint will be sustained. Further, the relief requested will be 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 BIE).

2. The Respondent is Roger Richard d/b/a RLR Trucking, which was issued a Certificate of Public Convenience by the Commission on March 28, 2014, at A-8916383, for approval to transport as a common carrier by motor vehicle, property, excluding household goods in use, between points in Pennsylvania. (Complaint ¶ 6; Docket No. A-2014-2409576).

3. The Respondent maintains its principal place of business at 4343 Middle Road, Middleburg, Pennsylvania 17842, Attention: Roger Richard. (Complaint ¶ 4).

2019-2020 Fiscal Year

4. On or about February 21, 2019, the Commission mailed, by first-class mail, to the Respondent an Assessment Report for Respondent to report its gross intrastate operating revenues for the 2018 calendar year. (Complaint ¶ 11).

5. 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 April 1, 2019. (Complaint ¶ 12).

6. Respondent failed to file an Assessment Report for the 2018 calendar year. (Complaint ¶ 14).

2020-2021 Fiscal Year

7. On or about February 11, 2020, the Commission mailed, by first-class mail, to the Respondent an Assessment Report for Respondent to report its gross intrastate operating revenues for the 2019 calendar year. (Complaint ¶ 15).

8. 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, 2020. (Complaint ¶ 16).

9. The Respondent failed to file an Assessment Report for the 2019 calendar year. (Complaint ¶ 18).

2022-2023 Fiscal Year

10. On or about February 9, 2022, the Commission mailed, by first-class mail, to the Respondent an Assessment Report for Respondent to report its gross intrastate operating revenues for the 2021 calendar year. (Complaint ¶ 19).

11. The Assessment Report was accompanied by instructions, which notified the Respondent that the report was to be completed and returned to the Commission on or before March 31, 2022. (Complaint ¶ 20).

12. The Respondent failed to file an Assessment Report for the 2021 calendar year. (Complaint ¶ 22).

Failure to Pay Assessment Invoice

13. On or about September 8, 2022, the Commission mailed to the 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 calendar year revenues. Respondent’s assessment was \$85. (Complaint ¶ 23).

14. 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. (Complaint ¶ 24).

15. On or about September 10, 2022, Respondent provided an electronic signature to the United States Postal Service for the certified mailing, which indicated that it received the assessment invoice and notice of assessment for the 2022-2023 Fiscal Year. (Complaint ¶ 25).

16. The Commission received neither objections nor payment from the Respondent to the assessment amount set forth in the 2022-2023 Fiscal Year assessment invoice. (Complaint ¶ 26).

17. On or about October 26, 2022, the Commission mailed to the Respondent, by first-class mail, a delinquent assessment notice that Respondent had a past due assessment balance of \$85.00 for the 2022-2023 Fiscal Year. (Complaint ¶ 27).

18. The Respondent failed to pay its 2022-2023 assessment invoice of \$85. (Complaint ¶ 30).

2023-2024 Fiscal Year

19. On or about January 31, 2023, the Commission mailed, by first-class mail, to the Respondent an Assessment Report for Respondent to report its gross intrastate operating revenues for the 2022 calendar year. (Complaint ¶ 31).

20. 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, 2023. (Complaint ¶ 32).

21. The Respondent failed to file an Assessment Report for the 2022 calendar year. (Complaint ¶ 34).

22. On or about September 6, 2023, the Commission mailed to the Respondent, by certified mail, an Assessment Invoice for the July 1, 2023 to June 30, 2024 Fiscal Year (“2023-2024 Fiscal Year”) that was based, in part, on Respondent’s estimated revenues for the 2022 calendar year due to the Respondent’s failure to file an Assessment Report stating its 2022 calendar year revenues. The Respondent’s assessment was \$87. (Complaint ¶ 35).

23. 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. (Complaint ¶ 36).

24. On or about September 13, 2023, the Respondent provided an electronic signature to the United States Postal Service for the certified mailing, which indicated that it received the assessment invoice and notice of assessment for the 2023-2024 Fiscal Year. (Complaint ¶ 37).

25. The Commission received neither objections nor payment from the Respondent to the assessment amount set forth in the 2023-2024 Fiscal Year Assessment Invoice. (Complaint ¶ 38).

26. On or about October 24, 2023, the Commission mailed to the Respondent, by first-class mail, a letter warning Respondent that if it did not pay its past due balance of \$172, comprised of \$87.00 for the 2023-2024 Fiscal Year and \$85.00 for the prior 2022-2023 Fiscal Year within twenty days of receipt of the letter, then the Commission would institute appropriate legal action against Respondent. (Complaint ¶¶ 39, 40).

27. The Respondent failed to pay its cumulative 2022-2023 and 2023-2024 Fiscal Year assessment invoice of \$172. (Complaint ¶ 42).

Partial payment.

28. On March 8, 2024, the Commission received a money order from the Respondent in the amount of \$87 to satisfy its outstanding assessment invoice for the 2023-2024 Fiscal Year. (Motion ¶ 11).

29. Respondent's partial payment to satisfy the Complaint of \$87.00 leaves an outstanding assessment invoice and civil penalty of \$2,285.00, which consists of its outstanding assessment of \$85.00 and the requested civil penalty of \$2,200.00. (Motion ¶ 14).

DISCUSSION

The Complainant, BIE, was established by statute to prosecute complainants against public utilities. 66 Pa.C.S. § 308.2(a)(11). The Respondent is a “public utility” as defined by 66 Pa.C.S. § 102, as it was engaged in the transporting of property in the Commonwealth of Pennsylvania for compensation. On or about April 28, 2014, the Commission issued RLR Trucking a Certificate of Public Convenience at A-8916383.

In a case involving an alleged violation of a determination or order of the Commission by a public utility, the burden of proof is 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, the 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.*

Id. at 1.

The Respondent did not file an answer to either BIE's 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. *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978). Therefore, the allegations raised in the Complaint will be deemed admitted.

The evidence presented by BIE in its 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 file completed assessment reports for the 2018, 2019, 2021, and 2022 calendar years, in violation of Section 510(b). The Respondent failed to satisfy its 2022-2023 and 2023-2024 Fiscal Year Assessments, in violation of Section 510(c). The Commission received no objections from the Respondent to the assessments.

Although the Commission received on March 8, 2024, a money order from the Respondent in the amount of \$87 to satisfy its outstanding assessment invoice for the 2023-2024 Fiscal Year, the Respondent did not pay the total outstanding assessment balance of \$172 for the 2022-2023 and 2023-2024 Fiscal Years or the civil penalty of \$2,200 that was sought in the Complaint for the failure to pay its 2022-2023 and 2023-2024 Fiscal Year assessments and to report its gross intrastate operating revenues for the 2018, 2019, 2021, and 2022 calendar years.

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, BIE asserts its proposed civil penalties are consistent with past Commission decisions and sufficient to deter future violations. BIE proposes a penalty of \$2,000 (\$500 per count) for the four violations of Section 510(b) of the Code and a penalty of \$200

(\$100 per count) for the two violations of Section 510(c) of the Code. (See, Complaint at 10, n.2) (citing *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).

Further, BIE 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 2022-2023 and 2023-2024 Fiscal Years; and (3) Respondent's poor compliance history with the Public Utility Code and Commission regulations for three years prior to the date of the filing of the instant Complaint. (See, Complaint ¶ 44).

The 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 BIE files its formal complaint; (2) the need to deter future violations; and (3) prior Commission decisions 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) ("*Moore Family Holdings*").¹

BIE contends that a review of the Respondent's applicable three-year compliance history demonstrates that the Respondent does not have an acceptable compliance history. BIE

¹ 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. *Moore Family Holdings*.

points to the Respondent's failure to file assessment reports stating its gross intrastate revenue as required under 66 Pa.C.S. § 510(b) for two of the past three calendar years and its assessments for the past two fiscal years as required under 66 Pa.C.S. § 510(c). (*See*, Complaint ¶ 44, n.3; Motion ¶ 12, n.1).

Based on my review of the record, the averments in BIE's Complaint, and the Respondent's failure to reply to either the Complaint or the Motion, I conclude that granting BIE's motion is warranted and should be granted. The Respondent was provided with adequate notice of the alleged violations against it and had the opportunity to respond. Under the circumstances of the instant case, granting BIE's Motion and sustaining the Complaint is appropriate.

Accordingly, BIE's Motion will be granted and this decision will order payment of a fine of \$500 each for the four violations of Section 510(b) (\$2,000), plus \$100 each for the two violations of Section 510(c) (\$200), in addition to payment of the outstanding assessment of \$85, for a total of \$2,285. 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 to 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. 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).

8. The Respondent's failure to submit its completed Assessment Reports for the calendar years of 2018, 2019, 2021, and 2022 are violations of 66 Pa.C.S. § 510(b).

9. 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).

10. The Respondent's failure to satisfy its 2022-2023 and 2023-2024 Fiscal Year Assessments within thirty days of receipt of each Assessment Invoice are violations of 66 Pa.C.S. § 510(c).

11. 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.

12. 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 BIE 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 Roger Richard d/b/a RLR Trucking at Docket No. C-2024-3046414, is hereby granted.

2. That the Formal Complaint filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Roger Richard d/b/a RLR Trucking at Docket No. C-2024-3046414, is hereby sustained.

3. That within thirty (30) days of the entry date of the Commission's final Order in this matter, Roger Richard d/b/a/ RLR Trucking shall remit \$2,285.00, which consists of its outstanding assessment of \$85.00 and a civil penalty of \$2,200.00, 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 Roger Richard d/b/a RLR Trucking 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.

5. That the Public Utility Commission's Bureau of Technical Utility Services shall cancel the Certificate of Public Convenience at Docket No. A-2014-2409576 if payments of the civil penalty (\$2,200.00) plus the outstanding assessment balance (\$85.00) are not received from Roger Richard d/b/a RLR Trucking, within thirty (30) days after service of the Public Utility Commission's final Order in this matter.

6. That, if Roger Richard d/b/a RLR Trucking 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.

7. That, if Roger Richard d/b/a RLR Trucking 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 Commission will send a copy of this Order to the Pennsylvania Department of Transportation for the suspension or revocation of vehicle registrations that were used under Roger Richard d/b/a RLR Trucking's operating authority.

8. That a copy of this Decision be served on the Commission's Bureau of Technical Utility Services and the Bureau of Administrative Services, Assessment Section.

