

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2024-3049578
	:	
Michael McMahon t/a Pocono Pickups	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision grants Complainant’s Motion for Default Judgment and sustains the Formal Complaint against Respondent for failure to file an Answer or otherwise plead to allegedly providing passenger or paratransit transportation services without possessing a certificate of public convenience. Accordingly, the allegations of the Formal Complaint are deemed admitted, Default Judgment will be entered, and a civil penalty imposed on Respondent.

HISTORY OF THE PROCEEDING

On November 18, 2024, the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“Complainant” or “I&E”) filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission

(“Commission”) against Michael McMahon t/a¹ Pocono Pickups (“Respondent”). The complaint alleges that Respondent has never applied for or received a certificate of public convenience for passenger or paratransit transportation services from the Commission. Complaint ¶ 2. The complaint further alleges that Respondent was providing passenger or paratransit services resulting in the Commission issuing a warning letter, on July 24, 2024, advising Respondent to cease-and-desist until authority to provide those services was granted. Complaint ¶ 3. On October 8, 2024, an I&E enforcement officer arranged a passenger transport with Respondent for October 9, 2024 in exchange for compensation. Complaint ¶ 4. On October 9, 2024, Respondent provided said service and was cited by I&E staff. Complaint ¶ 5.

On November 18, 2024, the Commission served the complaint on Respondent by certified mail sent to Respondent’s principal place of business, 116 Hemlock Trail, P.O. Box 457, Scotrun, PA 18335. This mailing was returned to the Commission on November 26, 2024.

On December 10, 2024, the Commission re-served the complaint to Respondent by certified mail sent to 116 Hemlock Trail, P.O. Box 457, Scotrun, PA 18335. This mailing was returned to the Commission on December 30, 2024.

On January 11, 2025, the Commission served the complaint to Respondent by publication in the *Pennsylvania Bulletin* at 55 Pa.B. 425 (Jan. 11, 2025). The publication included a Notice advising Respondent that it must file an answer within 20 days of service of the complaint.

Respondent failed to answer or otherwise plead to the complaint.

¹ “t/a” stands for trading as.

On February 19, 2025, Complainant filed a Motion for Default Judgment (“motion”) with the Commission. The motion was served on Respondent by First-Class Mail sent to 116 Hemlock Trail, P.O. Box 457, Scotrun, PA 18335. The motion included a Notice advising Respondent to file a written response within 20 days of service of the motion.

Respondent failed to answer or otherwise plead to the motion.

On May 7, 2025, the Commission served a Motion Judge Assignment assigning the case to me. The record closed on May 7, 2025, when the matter was assigned to me.

This decision grants Complainant’s Motion for Default Judgment.

FINDINGS OF FACT

1. Complainant is the Commission’s Bureau of Investigation and Enforcement.
2. Respondent is Michel McMahon t/a Pocono Pickups with a mailing address of 116 Hemlock Trail, P.O. Box 457, Scotrun, PA 18335.
3. Respondent does not possess and has never applied for a certificate of public convenience for passenger or paratransit transportation services from the Commission. Complaint ¶ 2.
4. Respondent was providing passenger or paratransit transportation services in or before July 2024. Complaint ¶ 3.

5. On July 24, 2024, the Commission issued Respondent a cease-and-desist letter advising Respondent to stop providing passenger or paratransit transportation services without authority. Complaint ¶ 3.

6. On October 8, 2024, I&E Enforcement Officer John Allen (“Officer Allen”) texted the number advertised on Facebook for Respondent’s service requesting transportation from Stroudsburg to several wineries on October 9, 2024. Complaint ¶ 4.

7. Respondent replied advising the costs would be \$20.00 for one way or \$35.00 for a round trip and that a silver Subaru Forester was the vehicle that would be used for the service. Complaint ¶ 4.

8. On October 9, 2024, Respondent arrived at the pickup location of 1863 W. Main Street, Stroudsburg, Pennsylvania driving a 2018 Subaru Forester with a New York license plate. Complaint ¶ 5.

9. On October 9, 2024, Officer Allen conducted a Driver/Vehicle Compliance Report at 1863 W. Main Street, Stroudsburg, Pennsylvania and determined that Respondent did not have authority/certificate of public convenience from the Commission to provide transportation for compensation in the Commonwealth. Complaint ¶ 5.

10. On November 18, 2024, I&E filed a complaint against Respondent.

11. On November 18, 2024, the Commission attempted to serve the complaint on Respondent by certified mail sent to 116 Hemlock Trail, P.O. Box 457, Scotrun, PA 18335.

12. On November 26, 2024, the complaint was returned to the Commission as “Attempted – Not Known Unable to Forward.”

13. On December 10, 2024, the Commission attempted to re-serve the complaint on Respondent by certified mail sent to 116 Hemlock Trail, P.O. Box 457, Scotrun, PA 18335.

14. On December 30, 2024, the complaint was returned to the Commission as “Attempted – Not Known Unable to Forward.”

15. On January 11, 2025, the Commission served the complaint on Respondent by publication in the *Pennsylvania Bulletin* at 55 Pa.B. 425 (Jan. 11, 2025), which included a Notice requiring Respondent to file an answer or otherwise plead within 20 days of service of the complaint.

16. Respondent did not answer or otherwise plead to the complaint.

17. On February 19, 2025, I&E filed a Motion for Default Judgment with the Commission, which was served on Respondent by First-Class Mail sent to 116 Hemlock Trail, P.O. Box 457, Scotrun, PA 18335.

18. The motion included a Notice requiring Respondent to answer or otherwise plead to the motion within 20 days.

19. Respondent did not answer or otherwise plead to the motion.

DISCUSSION

Jurisdiction and Authority

Section 501 of the Public Utility Code (“Code”) grants the Commission authority to supervise and regulate all public utilities doing business in the Commonwealth and requires all public utilities to comply with regulations and orders. 66 Pa.C.S. § 501. Section 701 of the Code grants the Commission jurisdiction authority to file a complaint against a public utility for violation of any section of the Code, or any regulation or order of the Commission. 66 Pa.C.S. § 701.

I&E is the Commission’s bureau established to take enforcement actions against public utilities and other entities subject to the Commission's jurisdiction. 66 Pa.C.S. § 308.2(a)(11); *see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Opinion and Order entered Aug. 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

The Commission has authority to hear and determine complaints for unauthorized operation by motor carriers pursuant to Section 3310 of the Code. 66 Pa.C.S. § 3310. Section 3310 provides in pertinent part as follows:

(a) General rule.--Any person or corporation operating as a motor carrier or as a common carrier by airplane, and any operator or employee of such carrier, and any person or corporation operating as a broker, without a certificate of public convenience, permit or license, authorizing the service performed, as required by this part, shall be guilty of a summary offense, and any subsequent offense by such person or corporation shall constitute a misdemeanor of the third degree.

66 Pa.C.S. § 3310(a).

Motion for Default Judgment

Commission regulations provide that a Respondent failing to file an answer within the applicable period may be deemed in default, and relevant facts stated in the pleadings may be deemed admitted. 52 Pa.C.S. § 5.61(c); *see also Pa. Pub. Util. Comm'n v. Glenn's Inc.*, Docket No. C-2014-2413366 (Opinion and Order entered Aug. 3, 2015) (“*Glenn's Inc.*”). The Commonwealth Court has also 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, 797 (Pa. Cmwlth. 1978).

In the current case, the Commission unsuccessfully attempted to serve Respondent with the complaint by certified mail on two separate occasions at Respondent’s principal place of business, 116 Hemlock Trail, P.O. Box 457, Scotrun, PA 18335. Thereafter, on January 11, 2025, the Commission served the complaint on Respondent by publication in the *Pennsylvania Bulletin* at 55 Pa.B. 425 (Jan. 11, 2025) in accordance with Section 1.53 of the Commission’s regulations. 52 Pa. Code § 1.53(e). The publication included a notice advising Respondent that it must file an Answer within 20 days of service of the Complaint.

As Respondent failed to file an answer or otherwise plead to the complaint or the motion, the Motion for Default Judgment will be granted and the averments in the complaint are deemed to be admitted by Respondent. 52 Pa.C.S. § 5.61(c).

Disposition

Among the relevant facts deemed admitted are that Respondent does not have a certificate of public convenience, nor has Respondent applied for a certificate of public convenience to provide passenger or paratransit transportation service from the Commission. Complaint ¶ 2. It is also deemed admitted that: (1) Respondent was

providing passenger or paratransit transportation services in or before July 2024, (2) on July 24, 2024, the Respondent received a cease and desist letter advising Respondent to stop providing passenger or paratransit transportation services without authority, (3) on October 8, 2024, an I&E enforcement officer contacted Respondent via text to arrange transportation in exchange for compensation for October 9, 2024 and (4) on October 9, 2024, Respondent appeared at the agreed upon location and in the described vehicle to provide transportation in exchange for compensation. Complaint ¶¶ 3-5.

As previously set forth in this decision, Section 3310(a) of the Code establishes that it is a violation for any person or corporation to operate as a motor carrier without a certificate of public convenience, permit or license, authorizing the service performed. 66 Pa.C.S. § 3310. Motor carrier is defined as, “[a] common carrier by motor vehicle, and a contract carrier by motor vehicle. The term does not include a transportation network company or a transportation network company driver.” 66 Pa.C.S. § 102. A common carrier by motor vehicle is defined as follows:

- (1) Any common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation, whether or not the owner or operator of such motor vehicle, or who or which provides or furnishes any motor vehicle, with or without driver, for transportation or for use in transportation of persons or property as aforesaid.
- (2) The term includes:
 - (i) Common carriers by rail, water, or air, and express or forwarding public utilities insofar as such common carriers or such public utilities are engaged in such motor vehicle operations.
 - (ii) A person that holds itself out to provide or furnish transportation of household property between residential dwellings within this Commonwealth by

motor vehicle for compensation, owns or operates the motor vehicle and provides or furnishes a driver of the motor vehicle with the transportation.

(3) The term does not include:

(i) A lessor under a lease given on a bona fide sale of a motor vehicle where the lessor retains or assumes no responsibility for maintenance, supervision, or control of the motor vehicles so sold.

(ii) Transportation of school children for school purposes or to and from school-related activities whether as participants or spectators, with their chaperones, or between their homes and Sunday school in any motor vehicle owned by the school district, private school or parochial school, or transportation of school children between their homes and school or to and from school-related activities whether as participants or spectators, with their chaperones, if the person performing the school-related transportation has a contract for the transportation of school children between their homes and school, with the private or parochial school, with the school district or jointure in which the school is located, or with a school district that is a member of a jointure in which the school is located if the jointure has no contracts with other persons for the transportation of students between their homes and school, and if the person maintains a copy of all contracts in the vehicle at all times, or children between their homes and Sunday school in any motor vehicle operated under contract with the school district, private school or parochial school. Each school district shall adopt regulations regarding the number of chaperones to accompany students in connection with school-related activities.

(iii) Any owner or operator of a farm transporting agricultural products from, or farm supplies to, such farm, or any independent contractor or cooperative agricultural association hauling agricultural products or farm supplies exclusively for one or more owners or operators of farms.

(iv) Any person or corporation who or which uses, or furnishes for use, dump trucks for the transportation of ashes, rubbish, excavated and road construction materials. This paragraph does not include the use or furnishing of five-axle tractor trailers.

(v) Transportation of property by the owner to himself, or to purchasers directly from him, in vehicles owned and operated by the owner of such property and not otherwise used in transportation of property for compensation for others.

(vi) Transportation of voting machines to and from polling places by any person or corporation for or on behalf of any political subdivision of this Commonwealth for use in any primary, general, municipal or special election.

(vii) Transportation of pulpwood, chemical wood, saw logs or veneer logs from woodlots.

(viii) Transportation by towing of wrecked or disabled motor vehicles.

(ix) Any person or corporation who or which furnishes transportation for any injured, ill or dead person.

(x) A person or entity that is any of the following:

(A) A transportation network company.

(B) A transportation network company driver.

(xi) A motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely packed, loaded, unloaded or unpacked by an individual other than an employee or agent of the motor carrier.

By making arrangements to provide passenger or paratransit transportation service in exchange for compensation on October 8, 2024, after previously receiving a letter to cease and desist, and providing that service in the described vehicle on October 9, 2024 without possessing a certificate of public convenience to provide that service, Respondent violated Section 3310 of the Code. 66 Pa.C.S. § 3310(a). I&E proposed a civil penalty of \$1,000 for this violation.

Civil Penalty

Section 3301 of the Code authorizes the Commission to impose civil penalties, up to \$1,000, for the violations herein and provides, in pertinent part, as follows:

(a) General rule.--If any public utility, or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, or any order of the commission prescribing temporary rates in any rate proceeding, or to comply with any final judgment, order or decree made by any court, such public utility, person or corporation for such violation, omission, failure, neglect, or refusal, shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000, to be recovered by an action of assumpsit instituted in the name of the Commonwealth. In construing and enforcing the provisions of this section, the violation, omission, failure, neglect, or refusal of any officer, agent, or employee acting for, or employed by, any such public utility, person or corporation shall, in every case be deemed to be the violation, omission, failure, neglect, or refusal of such public utility, person or corporation.

66 Pa.C.S. § 3301(a).

The standard for civil penalties was developed in *Rosi v. Bell-Atlantic – Pennsylvania, Inc. and Sprint Communications, L.P.*, Docket No. C-00992409 (Opinion and Order entered Mar. 16, 2000) (“*Rosi*”), and in *Pennsylvania Public Utility Commission v. NCIC Operator Services*, Docket No. M-00001440 (Order entered Dec. 21, 2000), where the Commission held that violations would be subject to the *Rosi* standards. Subsequently, the Commission adopted a policy statement enumerating the same standards. Through case law, the Commission has directed that litigated proceedings seeking to impose a civil penalty include an analysis of these standards. The Commission regulation at 52 Pa. Code § 69.1201 sets forth the following ten factors for determining whether a fine for violating a Commission order, regulation or statute is appropriate:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The

amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. 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.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201. Accordingly, the factors set out in 52 Pa. Code § 69.1201(c) are addressed below.

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

The evidence supports a finding of willful misconduct as Respondent was issued a cease-and-desist letter by the Commission and continued to provide passenger or

paratransit transportation service despite not having authority to provide said service. This supports a higher penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

No evidence was presented regarding personal injury or property damage. Therefore, this factor has no impact on the amount of the penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

Since the Respondent was on notice from a prior cease-and-desist letter that Respondent was not authorized to provide said services and Respondent continued to offer passenger transportation service to the I&E Enforcement Officer despite not having authority, the conduct was clearly intentional, supporting a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

No evidence was presented regarding efforts made by the Respondent to modify its internal practices and procedures to address the conduct at issue and prevent

similar conduct in the future. Therefore, this factor has no impact on the amount of the penalty.

(5) The number of customers affected and the duration of the violation.

No evidence was presented regarding the number of customers affected or the total duration of this violation. Therefore, this factor has no impact on the amount of the penalty.

(6) The compliance history of the regulated entity which committed the violation. 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.

The evidence that was presented supports that the violation in question was not an isolated incident based on the issuance of a prior cease-and-desist letter before the cited violation on October 9, 2024. However, no evidence was presented on the frequency of the violation. In the absence of specific evidence demonstrating a pattern of non-compliance with Commission regulations, I cannot make any adverse findings regarding Respondent's compliance history. Therefore, this factor has no impact on the amount of the penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

No evidence was presented to demonstrate that the Respondent cooperated or failed to cooperate with the Commission's investigation. Therefore, this factor has no impact on the amount of the penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

I&E has asked the Commission to approve a \$1,000 penalty to deter future violations of this sort. I find I&E's proposed \$1,000 penalty to be an appropriate amount that is sufficient to impress upon the Respondent the need to comply with the Commission's regulations.

(9) Past Commission decisions in similar situations.

I&E did not present any evidence concerning situations and proceedings where the Commission imposed civil penalties for violating this provision of the Commission's regulations. However, a \$1,000 penalty has been the standard amount that is imposed for this violation. *Pa. Publ. Util. Comm'n v. Daniel and Darlene Applegate t/a Independent Security Cab*, Docket No. C-2015-2451749 (Final Order entered May 23, 2016). Therefore, this factor supports the \$1,000 penalty.

(10) Other relevant factors.

No other relevant factors were presented.

Respondent's clear violation of Commission regulations by offering passenger or paratransit transportation services without authority or possessing a certificate of convenience after being provided with a cease-and-desist letter justifies a penalty here. Considering the nature of the Respondent's violation, the provisions at 66 Pa.C.S. § 3301(a), as well as the factors set out at 52 Pa. Code § 69.1201(c), the \$1,000.00 penalty requested by I&E is reasonable and is granted.

CONCLUSIONS OF LAW

1. The Commission has authority and jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. §§ 501, 701.

2. Commission regulations provide that a Respondent failing to file an answer within the applicable period may be deemed in default, and relevant facts stated in the pleadings may be deemed admitted. 52 Pa.C.S. § 5.61(c); *Pa. Pub. Util. Comm'n v. Glenn's Inc.*, Docket No. C-2014-2413366 (Opinion and Order entered Aug. 3, 2015).

3. 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, 797 (Pa. Cmwlth. 1978).

4. Respondent is deemed to be in default by failing to answer or otherwise plead to the complaint and the relevant facts therein are deemed admitted. 52 Pa.C.S. § 5.61(c).

5. A person or corporation may not operate as a motor carrier without a certificate of public convenience, permit or license, authorizing the service performed. 66 Pa.C.S. § 3310(a).

6. Respondent is deemed to be in default by failing to answer or otherwise plead to the complaint and the relevant facts therein are deemed admitted. 52 Pa.C.S. § 5.61(c).

7. The facts deemed admitted support that Respondent violated Section 3310 of the Public Utility Code by providing passenger or paratransit transportation service without possessing a certificate of public convenience. 66 P.S. § 3310(a).

8. The Public Utility Code provides that if any public utility fails to comply with any regulation or final direction, requirement, determination or order made by the Commission, it shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000.00 per day of violation. 66 Pa.C.S. § 3301(a).

9. The Commission is authorized to consider and impose civil monetary penalties for violations of the Public Utility Code after evaluation of specific factors. 52 Pa. Code § 69.1201; *Rosi v. Bell-Atl. – Pa., Inc. and Sprint Comms., L.P.*, Docket No. C-00992409 (Opinion and Order entered Mar. 16, 2000).

10. I&E’s proposal for a \$1,000 civil penalty is reasonable under applicable standards. 52 Pa. Code § 69.1201

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Default Judgment filed by the Commission’s Bureau of Investigation and Enforcement against Michael McMahon t/a Pocono Pickups at Docket No. C-2024-3049578 is granted.

2. That the Formal Complaint filed by the Commission’s Bureau of Investigation and Enforcement against Michael McMahon t/a Pocono Pickups at Docket No. C-2024-3049578 is sustained.

3. That, within thirty (30) days of the entry date of this Opinion and Order, Michael McMahon t/a Pocono Pickups shall remit \$1,000.00, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Matt Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

4. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

5. That, if Michael McMahon t/a Pocono Pickups fails to make the payment required by Ordering Paragraph No. 3, above, within thirty (30) days of the entry date of the Commission’s Order, the Commission shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

6. That after Michael McMahon t/a Pocono Pickups remits the \$1,000.00 as required by Ordering Paragraph No. 3, the Secretary’s Bureau shall mark Docket No. C-2024-3049578 as closed.

Date: May 27, 2025

/s/
Chad L. Allensworth
Administrative Law Judge