

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held February 19, 2026

Commissioners Present:

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

Petition of Evolve IP LLC for Refund Claim of
Pennsylvania Telecommunications Relay Service
Charge

P-2023-3041041

ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition filed by Ryan, LLC on behalf of Evolve IP, LLC (Evolve or Company) on May 31, 2023 (Petition), seeking rescission of the Commission's Opinion and Order at Docket No. M-2019-3006851 (entered June 17, 2021) (*June 2021 Order*). The Commission's *June 2021 Order* denied Evolve's prior petition requesting the issuance of a refund for Pennsylvania Telecommunications Relay Service Surcharge (TRS Surcharge) payments that were, allegedly, erroneously remitted to the Pennsylvania Telecommunications Relay Service Fund (Pa. TRS Fund). Evolve's prior petition was denied because Evolve had neither cited statutory authority expressly authorizing the Commission to refund amounts remitted to and received by the TRS Fund nor presented sufficient evidence or legal authority that would allow the Commission to determine Evolve is entitled to such a refund.

No Answer to the Petition has been filed.

BACKGROUND

By Order entered May 24, 1990, at Docket No. M-00900239 (*TRS Implementation Order*), the Commission approved implementation of the Pennsylvania Telecommunications Relay Service System (Pa. TRS System) to assist citizens of the Commonwealth with hearing, speech, or other disabilities in obtaining equivalent telecommunications service. The Pa. TRS Fund was established to recover the eligible intrastate costs associated with the operation of the Pa. TRS System as well as the costs of operation of the Telecommunications Devices for the Deaf Program and the Print Media Access System Program. *See* 35 P.S. §§ 6701.1-6701.4. The Pa. TRS Fund is funded, in part, from the collection and remittance of monthly end-user billing surcharges by jurisdictional local exchange carriers that have networks utilizing traditional time-division multiplexing (TDM) technology to provide [intrastate] voice communications service to their customers. 52 Pa. Code § 63.37. Thus, under this regulation and consistent with statute, Pennsylvania's incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) collect the monthly TRS Surcharge fees and remit them to the Pa. TRS Fund based on their total aggregate access line count.

A. June 2021 Order

On December 21, 2020, a petition was filed by Ryan on behalf of Evolve, at Docket No. P-2020-3023415, requesting the refund of monies the Company avers it erroneously remitted to the Pa. TRS Fund in the amount of \$249,913.13 for a period covering June 1, 2019, through January 31, 2020 (December 2020 Petition).¹ In the December 2020 Petition, Evolve explained that these payments were intended instead for the Pennsylvania Department of Revenue (Revenue) as payment of Evolve's Gross Receipt Tax (GRT) responsibilities.²

¹ December 2020 Petition at 1.

² *Id.*

The *June 2021 Order* begins by identifying and addressing a procedural deficiency with the service of Evolve’s December 2020 Petition. Under Section 5.41(b) of Title 52 of the Pennsylvania Code, 52 Pa. Code § 5.41(b) (relating to service of petitions), petitions for relief must be served on all persons directly affected and on other parties whom the petitioner believes will be affected by the petition, as well as on the Commission’s Bureau of Investigation and Enforcement³ (I&E), the Pennsylvania Office of Consumer Advocate (OCA) and the Pennsylvania Office of Small Business Advocate (OSBA), as evidenced by a certificate of service filed with the petition. The December 2020 Petition offered no evidence Evolve complied with Section 5.41(b) of our regulations by serving the December 2020 Petition on I&E, OCA, OSBA, the TRS Advisory Board or any other interested stakeholder that may collect and remit monies to or be affected by TRS service supported by the Pa. TRS Fund. While the December 2020 Petition was procedurally deficient, the Commission chose not to exercise its discretion and authority to reject or return the filing for failing to conform to the filing requirements found in Chapter 5 of our regulations.⁴

For the Commission to grant the relief requested by the December 2020 Petition, the Company was required to prove that (1) its services were not subject to the TRS Surcharge, and (2) its representation of incorrectly remitted payments into the TRS Fund were true and accurate. Upon review of the record presented, the *June 2021 Order* concluded that Evolve had failed to meet its burden of proof on both counts.

In the December 2020 Petition, Evolve asserted that it was entitled to the requested refund of Pa. TRS Fund payments because it does not provide services subject to the Pa. TRS System as referenced in 52 Pa. Code § 63.37. However, Evolve did not explain either how or why the services it offers were not subject to the Pennsylvania TRS System. The *June 2021 Order* further explains that while Evolve was not a Pennsylvania

³ Formerly known as the Office of Trial Staff.

⁴ 52 Pa. Code §§ 1.91(a)-(b).

certificated telecommunications provider, that fact alone did not absolve the Company from the requirement to support the TRS Fund.⁵

Additionally, the Commission noted in the *June 2021 Order* that, even were Evolve entitled to a refund, the Company failed to provide verified or conclusive proof of monies that it claimed to have remitted to the TRS Fund in the amount of \$249,913.13 between June 1, 2019, and January 31, 2020.⁶ As such, the Commission was unable to consider any form of relief.

Finally, the Commission noted that Evolve had failed to cite any statutory authority that would expressly grant the Commission the ability to refund monies remitted to and received by the TRS Fund. Accordingly, the *June 2021 Order* found that Evolve had neither provided sufficient evidence for the Commission to conclude that its claim for a refund was valid, nor had it provided any legal authority to allow the Commission to conclude that it is entitled to a refund of any TRS Fund payments. Therefore, on June 17, 2021, the Commission denied Evolve's December 2020 Petition.

B. 2023 Rescission Petition

On May 31, 2023, Evolve filed the present Petition, once again requesting the Commission to issue refund of TRS remittances that it avers to have erroneously remitted to the TRS Fund.⁷ In the Petition, Evolve slightly amends its prior averments by reducing the claimed TRS Fund remittances from \$249,913.13 to \$188,301.60, and now claims that the payments were remitted between August 1, 2019, and January 31, 2020.⁸ The Company still maintains that it files and remits Pennsylvania GRT on a timely basis

⁵ Service Providers offering fixed, interconnected, intrastate VoIP services within the Commonwealth are not exempted by Pennsylvania's VoIP Freedom Act, 73 P.S. §§ 2251.1-2251.4, from paying TRS surcharges and supporting the TRS Fund. 73 P.S. § 2251.6; *and see*, *June 2021 Order* at 5, n. 5.

⁶ *June 2021 Order* at 5..

⁷ *Petition* at 1.

⁸ *Id.* at ¶¶ 4, 11. This abbreviated time period was fully captured in the December 2020 Petition.

as required by 72 Pa. Stat. Ann. § 8101, and that the monies remitted to the TRS Fund were instead meant for Revenue.⁹

In the Petition, which is not verified, Evolve states that its business is the provision of cloud-based desktop services to customers nationwide, and that these services unify collaboration and communications, SaaS, hosted applications, access management, cloud desktops, and contact centers to allow remote workers to work effectively.¹⁰ Based upon the aforementioned services, Evolve maintains that it does not provide services subject to the Pa. TRS System. Additionally, the Company's Petition provides copies of the TRS remittance forms and cleared checks for monies it remitted to the TRS Fund for the period covering August 1, 2019, through January 31, 2020.¹¹

Finally, Evolve requests that the Commission confirm and explain the process that should be used to request a refund of overpayments made to the TRS Fund as necessitated by the Due Process Clause of the United States Constitution.¹²

DISCUSSION

A. Nature of the Filing

We begin by considering the nature of the filing before us, to determine the applicable legal standard of review. The Petition before us is nearly identical to the December 2020 Petition, bearing limited alterations to the claimed amount and date range of the claims. As such, treatment of this Petition as if it were the Company's first attempt to seek a TRS refund is barred by the doctrine of *res judicata*, as this exact matter was considered by the Commission in its *June 2021 Order*. However, Subsections 703(f) and 703(g) of the Public Utility Code (Code), 66 Pa.C.S. 703(f)-(g), establish a party's right

⁹ *Id.* at ¶ 7.

¹⁰ *Id.* at ¶¶ 5-6.

¹¹ *Petition* at ¶ 11; *Petition Exhibit III*.

¹² *Petition* at ¶¶ 9-10.

to seek relief following the Commission’s issuance of a final decision and the party seeking that relief is also required to comply with 52 Pa. Code § 5.572(c)-(d).

Section 5.572(c) of the Code provides that a petition for reconsideration shall be filed within 15 days of an order being entered by the Commission.¹³ This fifteen-day limit provides more than enough time for a party to review our orders and seek remedy for any perceived discrepancies.¹⁴ “Further, it provides a necessary measure of certainty to the other parties involved, allowing for finality in the administrative process.”¹⁵ Evolve filed the present Petition almost two years after the Commission entered the *June 2021 Order*, and therefore failed to meet the fifteen-day requirement for reconsideration. Therefore, we cannot properly interpret this Petition as one of reconsideration and must instead construe the Petition as a request for rescission of the Commission’s *June 2021 Order*¹⁶ pursuant to Section 5.572(d) of Commission regulations.

B. Legal Standards

The Code provides that the Commission may, at any time, after notice and an opportunity to be heard by all affected parties, rescind or amend any order made by the Commission, pursuant to 66 Pa. C.S. § 703(g) (relating to rescission and amendment of orders). A request for relief pursuant to Section 703(g) must be brought as a petition for relief consistent with 52 Pa. Code § 5.572(d). Section 5.572(d) provides that a petition for rescission or amendment may be filed at any time.¹⁷

When exercising Commission authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated, “[b]ecause

¹³ 52 Pa. Code § 5.572(c)

¹⁴ *Richard Feleccia v. PPL Electric Utilities Corporation, d/b/a PPL Utilities and Barbara A. Lima*, Docket No. C-20016210 (Opinion and Order entered March 7, 2023) (Feleccia)

¹⁵ *Id.*

¹⁶ 52 Pa. Code § 5.572(d).

¹⁷ *Id.*

such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.”¹⁸

The Commission’s standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Philip Duick, et al. v. Pennsylvania Gas and Water Company (Duick)*¹⁹:

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 on the grounds that the decision or ruling of the Commission on a matter or issue was either unwise or in error.

In this regard, we agree with the Court in the *Pennsylvania Railroad Company* case, wherein the Court said,

[b]ut the grounds for reconsideration should be restricted to the new matters and new or changed conditions set up in the joint petition, which had arisen since and were not presented in the several petitions of these appellants...and dismissed by the Commission...and not appealed from. Parties...cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them and not appealed from....²⁰

With respect to petitions for rescission, specifically, we have stated that in order “[t]o establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law.”²¹ A Commission decision to deny a petition for rescission or amendment is a matter squarely within its discretion, subject to being overturned only where a reviewing

¹⁸ See, *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); see also, *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1056 (Pa. Cmwlth. 1995) (West Penn Power); see also, *Feleccia*, slip op. at 3.

¹⁹ *Philip Duick, et. al, v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) (*Duick*).

²⁰ *Pennsylvania Railroad Co. v. Public Service Commission*, 179 A. 850 at 854 (Pa. Super. 1395).

²¹ *Feleccia*, slip op. at 3 (citing *Duick* at 559)

court finds “the agency’s decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power.”²²

Finally, we note that any argument not specifically discussed herein 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.²³

C. Disposition

After careful consideration of the Petition, the record, and all filings in this matter, we deny Evolve’s Petition as we are unpersuaded that rescission of the Commission’s *June 2021 Order* is warranted based upon the contents of the Petition.²⁴

1. Defects of the 2023 Rescission Petition

a. Defect of Service

In its Petition, Evolve has partially corrected the procedural deficiency found in the December 2020 Petition by serving a copy of the petition on I&E, OCA, and OSBA; however, it again fails to fully comply with Section 5.41(b). In the *June 2021 Order*, the Commission explained that the Code required Evolve serve its petition for relief on all persons directly affected and on other parties whom the petitioner believes will be affected by the petition. The *June 2021 Order* explicitly listed the TRS Advisory Board as a party requiring service, and Evolve still has not served its Petition on the TRS Advisory Board.²⁵ Unless the Commission expressly orders otherwise, simple acceptance of the filing does not waive a failure to comply applicable filing requirements, and such a failure may be cause for striking all or any part of the filing. The Commission has the discretion and authority to reject or return any filing that does not conform to any

²² *West Penn Power*, 659 A.2d at 1065.

²³ *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993).

²⁴ *See Duick*.

²⁵ *June 2021 Order* at 3.

of the applicable filing requirements set forth in Chapter 5 (relating to special provisions and formal proceedings).²⁶

Notwithstanding this explicit authority to reject and return deficient filings, the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties and can liberally construe its regulations to secure a just, reasonable, speedy and inexpensive determination in every action or proceeding to which it is applicable.²⁷ While Evolve has again failed to serve its Petition on interested stakeholders as required by our administrative rules, and no request has been made for a waiver of this requirement, or exception to this provision of Chapter 5 accompanied in its filing as prescribed by 52 Pa. Code § 1.91, the Commission nonetheless exercises its discretion and will consider the merits of the Petition.

b. Representation before the Commission

Ryan submits with its Petition, marked as Exhibit I, Revenue Form REV-677 Power of Attorney and Declaration of Representative (POA Form) as proof of its authority to represent Evolve before the Commission. This POA Form is used by Revenue to provide limited authority allowing Revenue to communicate with designated third parties and this authority is limited to the tax period, tax type and the specific issue/purpose identified.²⁸ Specifically, the POA Form appoints Dustin Davis, Tod Matthiessen, and Walter Kopec (representing Ryan, LLC) “as attorney-in-fact to represent the taxpayer before *any office of the PA Department of Revenue* for the following tax matter(s)... [t]he attorney-in-fact is authorized, subject to revocation, to receive confidential information and perform any and all acts the principal can perform with respect to the above-specified tax matters, excluding the power to receive refund checks....”²⁹ This POA Form does not grant Ryan the authority to represent Evolve

²⁶ 52 Pa. Code § 1.91(a) and (b).

²⁷ 52 Pa. Code § 1.2.

²⁸ *Petition Exhibit I* at 1. (emphasis added)

²⁹ *Id.*

outside of matters before Revenue, and therefore this POA Form grants Ryan no authority to represent Evolve before the Commission.

Furthermore, even if the POA Form were to grant Ryan the power it claims, the Form does not contain the requisite information under sections 1.21 and 1.22 of the Commission's regulations for Ryan to represent Evolve in what is a non-adversarial proceeding before the Commission.³⁰ The POA Form makes no claim that the listed appointees are attorneys, partners, or bona fide officers of a corporation, trust or association, and instead specifically lists them as the "Taxpayer's Representative."³¹ While these failures in and of themselves are sufficient to warrant rejection of the Petition, the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties and can liberally construe its regulations to secure a just, reasonable, speedy and inexpensive determination in every action or proceeding to which it is applicable.³² In light of the disposition discussed below, we therefore nonetheless address the Petition on its merits.

2. Substantive Merits

A petition for rescission requires that Evolve "establish the existence of newly discovered evidence, a substantial change in circumstances, or an error in fact or law."³³ Our *June 2021 Order* specifically identified two things that Evolve was required to provide: (1) evidence proving the claim that Evolve erroneously made payments into the TRS Fund were accurate and true; and (2) an explanation why Evolve's services are not subject to payments into the TRS Fund.

³⁰ 52 Pa. Code §§ 1.21-1.22.

³¹ *Petition Exhibit I* at 2.

³² 52 Pa. Code § 1.2.

³³ *Feleccia*, slip op. at 3 (citing *Duick* at 559).

In the instant Petition,³⁴ Evolve provides the Remittance Forms for Monthly TRS Surcharge Collections that it submitted to U.S. Bank Institutional Trust & Custody for the months covering August 1, 2019, through January 31, 2020.³⁵ It is questionable whether these documents can be considered new evidence, as no explanation is provided to explain why these documents were neither included with the December 2020 Petition nor provided with a request for reconsideration within the fifteen day period following the *June 2021 Order*. Furthermore, it must be noted that these documents would have been available to Evolve at the time it filed the December 2020 Petition but were not submitted to the Commission until the filing of this Petition nearly two years after the *June 2021 Order* was entered. Beyond that, Evolve provides no explanation for the reduction in the claimed payments from \$249,913.13 to \$188,301.60. Further, Evolve failed to provide a verification of the facts averred in its Petition, whether by Ryan or any other representative.³⁶ However, even were the Commission to overlook the lack of explanation for the failure to produce the monetary documentation in a timely manner, Evolve still failed to explain in detail why it is not required to make payments to the TRS Fund.

In the December 2020 Petition, Evolve merely stated that it does not provide services subject to the Pennsylvania TRS System,³⁷ and the Commission's *June 2021 Order* subsequently determined that Evolve had failed to provide sufficient proof that it was not responsible to make such payments. Evolve's Petition now states that it is engaged in the business of providing cloud-based desktop services that unify collaboration and communications, SaaS, hosted applications, access management, cloud desktops, and contact centers to allow remote workers to work effectively.³⁸ However,

³⁴ *Petition Exhibit III*.

³⁵ U.S. Bank International Trust & Custody and U.S. Bank N.A. is the entity that receives both the TRS Remittance Forms and monetary payments to the TRS Fund.

³⁶ *See*, 52 Pa. Code § 1.36 (relating to Verification).

³⁷ December 2020 Petition at 1, 3.

³⁸ *Petition* at ¶¶ 5,6.

this explanation of Evolve's services does not explain how or why these services are not subject to the TRS Surcharge. Nor are any of the facts averred by the Company verified. As the Commission stated in the *June 2021 Order*, to be granted a refund of the claimed deposited TRS surcharge revenues Evolve must present sufficient evidence in its Petition to demonstrate that its services in the Commonwealth are not subject to the Pa. TRS System.³⁹ The simple, unverified statement that Evolve provides cloud-based IP services does not negate that those services are subject to the Pennsylvania TRS System, and this assertion, without more, is inadequate to prove that Evolve is entitled to a refund of monies that were previously paid as subject to the Pa. TRS System.

While the Petition provides purported new evidence in support of its claims of erroneous payments into the TRS Fund, it still fails to provide evidence sufficient to explain exactly why Evolve's services are not subject to the TRS Surcharge. For these reasons, and pursuant to *Duick*, we are unpersuaded that a rescission of our *June 2021 Order* is warranted.

Finally, in response to Evolve's inquiry regarding the process by which it may request a refund from the TRS Fund, we answer by confirming the process resides within Title 52 of the Code. The petitions filed by Evolve are the process for such a request. The issue here is not one of due process, but instead one of substance and procedure under the Code and the Commission's regulations as addressed at length in the decision above.

³⁹ A review of Commission records reveals that Evolve is not a Pennsylvania certificated telecommunications provider. Certificated telecommunications carriers, however, are not the only class of voice service providers that can be required to support the TRS Fund. Service Providers offering fixed, interconnected, intrastate VoIP services within the Commonwealth are not exempted by Pennsylvania's VoIP Freedom Act, 73 P.S. §§ 2251.-2251.4, from paying TRS surcharges and supporting the TRS Fund. 73 P.S. §§ 2251.6.

CONCLUSION

For the reasons set forth above, we shall deny the Petition of Rescission filed by Evolve consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Rescission of Evolve IP, LLC filed at Docket No. P- 2023-3041041 is denied consistent with this Order.
2. That this Order shall also be filed at Docket No. M-2019-3006851.
3. That this Order be served upon Evolve IP, LLC; Ryan, LLC; the Office of Consumer Advocate; the Office of Small Business Advocate; the Commission's Bureau of Investigation and Enforcement; and the Chair of the Telecommunications Relay Services Advisory Board.
4. That this proceeding be marked closed.

BY THE COMMISSION



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: February 19, 2026

ORDER ENTERED: February 19, 2026