**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held December 3, 2015 |
| Commissioners Present:  Gladys M. Brown, Chairman  John F. Coleman, Jr., Vice Chairman  Pamela A. Witmer  Robert F. Powelson  Andrew G. Place |  |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v.  William T. Malloy t/a Are You Moving | C-2014-2445774 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Motion for Default Judgment (Motion), filed by the Commission’s Bureau of Investigation and Enforcement (I&E) on February 27, 2015, relative to the above-captioned proceeding. No Answers to the Motion have been filed. For the reasons stated below, we shall grant the Motion, in part, and sustain the Complaint, consistent with the discussion set forth herein.

**Procedural History**

William T. Malloy t/a Are You Moving (Respondent) was issued a Certificate of Public Convenience (Certificate) on September 23, 1996, at Docket No. A‑00106620, for household goods carrier authority.

On October 2, 2014, I&E filed the above-captioned Complaint. On October 3, 2014, the Secretary’s Bureau served the Complaint on the Respondent by certified mail. On October 31, 2014, the Complaint was returned to the Commission by the United States Postal Service as undeliverable. On November 7, 2014, the Secretary’s Bureau re-served the Complaint. While there is no record that the Complaint was returned to the Commission, I&E was unable to obtain certification that the Respondent received the Complaint. Motion at 1. On January 24, 2015, the Complaint was published in the *Pennsylvania Bulletin* at 45 *Pa. B*. 480.

In the Complaint, I&E alleged that the Respondent violated Section 510(b) of the Public Utility Code (Code), 66 Pa. C.S. § 510(b), by failing to file an assessment report demonstrating its gross intrastate operating revenue for the 2011 calendar year. I&E recommended a civil penalty of $1,000 for this violation. In addition, I&E alleged that the Respondent violated Section 510(c) of the Code, 66 Pa. C.S. § 510(c), by failing to pay the Commission’s assessment of $109 for the July 1, 2012 to June 30, 2013 Fiscal Year. I&E recommended a civil penalty of $16 for this violation.[[1]](#footnote-1) Complaint at 5.

I&E requested that the Respondent be ordered to pay a total of $1,125, consisting of the outstanding assessment balance of $109 and a civil penalty of $1,016 for the alleged violations. I&E also requested that if the Respondent did not pay the civil penalty and the assessment, the Commission issue an Order cancelling the Respondent’s Certificate. *Id*. at 6.

A Notice was attached to the Complaint and informed the Respondent that it must file an Answer within twenty days of the date of service of the Complaint. The Notice also informed the Respondent that if it failed to answer the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint. No Answer to the Complaint was filed.

As stated above, I&E filed its Motion on February 27, 2015. No Answer to the Motion was filed.

On May 1, 2014, at Docket No. A-2014-2423938, an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights was filed with this Commission by 1-800-PACK-RAT, LLC (PACK-RAT), seeking approval to acquire all of the operating rights held by the Respondent. PACK-RAT is a common carrier holding operating authority from the Commission at Docket No. A-8911793.

On October 20, 2014, the Commission issued a Secretarial Letter stating that PACK-RAT’s Application had been reviewed and approved, and advising PACK-RAT that it would not be permitted to operate under the motor carrier rights set forth in the Secretarial Letter until PACK-RAT had provided specific information to the Commission as enumerated in the Secretarial Letter. Subsequently, on January 6, 2015, the Commission issued a Secretarial Letter indicating that PACK-RAT had complied with the necessary requirements, and granted a Certificate of Public Convenience to PACK-RAT evidencing the Commission’s approval of its right to operate pursuant to the authority that it sought to have transferred to it in its Application.

On January 12, 2015, the Commission issued a Secretarial Letter indicating that all rights granted to the Respondent under the certificate issued at Docket No. A‑00106620, F.2 had been transferred to PACK-RAT at Docket No. A‑8911793, that these rights are now contained under the certificate issued to PACK-RAT, and that the Respondent has no other operating authority with the Commission. The January 12, 2015 Secretarial Letter further indicated that the Respondent’s operating rights and the Certificate of Public Convenience issued to it at Docket No. A-00106620, F.2 had been canceled, and all rights, powers and privileges granted to the Respondent would thereby cease and terminate. A Certificate of Public Convenience evidencing the cancelation of the Respondent’s operating authority was issued on January 12, 2015, at Docket No. A‑00106620, F.2.

**Discussion**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are 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);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

In its Motion, I&E states that the twenty-day time frame for filing an Answer to the Complaint has expired and the Respondent did not file an Answer. I&E also states that the Respondent did not pay its outstanding assessment balance of $109, and the civil penalty of $1,016, that was requested in the Complaint. Motion at 2. Accordingly, I&E requests that the Commission enter a Default Order against the Respondent that: (1) directs the Respondent to pay its outstanding assessment and civil penalty within thirty days of the entry date of this Opinion and Order; (2) directs the Bureau of Technical Utility Services to cancel the Respondent’s Certificate if the past-due assessments and civil penalty are not timely paid; (3) notifies the Respondent that a copy of this Opinion and Order will be sent to the Pennsylvania Department of Transportation for the suspension or revocation of vehicle registrations that were used under the Respondent’s operating authority; and (4) directs the Bureau of Administrative Services, Assessment Section to refer this matter to the Pennsylvania Office of Attorney General for collection of the unpaid assessment. *Id*. at 2-3.

Pursuant to Section 5.61(c) of our Regulations, 52 Pa. Code § 5.61(c), a Respondent who fails to file an Answer within the twenty-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. The Commonwealth Court has upheld our authority to sustain complaints that are not answered within twenty days. *See*, *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). In this case, I&E published the Complaint and the Notice in the *Pennsylvania Bulletin* on January 24, 2015. Such publication constitutes service pursuant to 52 Pa. Code § 1.53(e). Accordingly, the Respondent was provided with adequate notice of the alleged violations against it and had the opportunity to respond and to request a hearing. The Respondent was also clearly advised that if it did not file an Answer within twenty days, then I&E would request that we issue an Order imposing the penalties set forth in the Complaint. Under the circumstances in this case, we find that it is appropriate to sustain the Complaint.

However, because the Respondent’s operating authority already has been canceled pursuant to the Secretarial Letter and Certificate of Public Convenience issued January 12, 2015, as noted above, we find that I&E’s request to cancel the Respondent’s Certificate has been rendered moot. We shall grant the Motion in all other respects, inasmuch as the Respondent’s obligations to pay its outstanding assessment and civil penalty are based on violations committed by the Respondent while its prior operating authority was still in effect.

**Conclusion**

Based on our review of the record, the averments in the Motion, and the applicable law, we shall grant I&E’s Motion, in part, and sustain the Complaint, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Motion for Default Judgment filed by the Bureau of Investigation and Enforcement on February 27, 2015, is granted, in part, consistent with this Opinion and Order.

2. That the allegations in the Bureau of Investigation and Enforcement’s Complaint are deemed admitted, and the Complaint is thereby sustained.

3. That, within thirty (30) days of the entry date of this Opinion and Order, William T. Malloy t/a Are You Moving shall remit $1,125 payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA, 17105-3265

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

5. That a copy of this Opinion and Order shall be served upon the Bureau of Technical Utility Services for monitoring of compliance.

6. That if William T. Malloy t/a Are You Moving fails to make the payment required by Ordering Paragraph No. 3, above, within thirty (30) days of the entry date of this Opinion and Order:

a. The Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for appropriate action; and

b. A copy of this Opinion and Order shall be served upon the Pennsylvania Department of Transportation, pursuant to Chapter 13 of the Vehicle Code, 75 Pa. C.S. §§ 1301-1379, and the Commission will request that the Pennsylvania Department of Transportation put an administrative hold on

William T. Malloy t/a Are You Moving’s vehicle registrations. William T. Malloy t/a Are You Moving will not be able to register any new vehicles or renew any existing vehicle registrations until all past due assessments are paid, all past due fines are paid, all insurance filings are up to date, and it holds an active Certificate of Public Convenience issued by this Commission.

7. That after William T. Malloy t/a Are You Moving remits $1,125 as required by Ordering Paragraph No. 3, above, the Secretary’s Bureau shall mark this proceeding closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 3, 2015

ORDER ENTERED: December 3, 2015

1. I&E’s recommended $16 civil penalty is approximately 15% of the $109 outstanding assessment amount due. [↑](#footnote-ref-1)