



each filing is posted on the electronic docket that is accessible to all parties 24-hours a day, seven days a week. The most minimal diligence would require checking the docket to insure that the Petition was filed, accepted and docketed. Hoy, a large national corporation, is represented by experienced counsel and failing to mail a protest and not noticing this failure for over 7 weeks is not a “reasonable excuse.” Additionally, Hoy’s late Petition has the potential to delay the proceedings and broaden the issues since, if Hoy is permitted to intervene, Appalachian will now need to analyze and prepare to respond to an additional party while having far less time to do so.

In order for a party to be eligible to intervene, it must have “an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.”<sup>2</sup> Such right may be one that is: (1) conferred by statute; (2) directly affected and not adequately represented by existing parties; (3) in the public interest.<sup>3</sup>

There are two other intervenors in this matter, who are not currently represented by legal counsel, yet who managed to timely file their protests, and who already adequately represent the interests expressed in Hoy’s Petition. Therefore, Hoy’s claimed interest does not meet the Commission’s eligibility criteria.

Finally, Appalachian’s lateness in answering Hoy’s untimely Petition should be excused since Hoy did not serve a Notice to Plead with its Petition and therefore, Appalachian, who was unrepresented at the time, was not aware of its obligation or opportunity to object to Hoy’s Petition. Pursuant to 231 Pa. Code Rule 1026, “no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead.” Hoy should not be permitted yet another inadvertent mistake, to file a late Petition for Protest, under the guise of a Petition to Intervene, without attaching the required Notice to Plead.

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<sup>2</sup> 1 Pa. Code § 35.28; 52 Pa. Code §5.72(a).

<sup>3</sup> Id.

1. ADMITTED. By way of further response, Appalachian avers that the Pennsylvania Bulletin Publication required: “Formal protests and **petitions to intervene** must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings **must be made** with the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, **on or before June 23, 2014.**” 44 Pa.B. 3480 (emphasis added). 52 Pa. Code §5.74(b)(2) requires that Petitions to Intervene be filed “no later than the date fixed for filing protests as published in the *Pennsylvania Bulletin* except for good cause shown.” As described herein, Hoy has failed to demonstrate good cause for its late filing.

2. DENIED. Appalachian is without sufficient knowledge or information to know of what Hoy advised its counsel on June 11, 2014. This statement is therefore DENIED, as is the implication that failing to timely mail, e-file or walk-in Hoy’s Petition to Intervene warrants allowing a late filing.

3. DENIED. Appalachian is without sufficient knowledge or information to know what counsel for Hoy did or did not do that prevented them from timely filing Hoy’s protest in this matter. This statement is therefore, DENIED, and by way of further response, Hoy, which was represented by counsel, should not be permitted to do an “end around” of the Commission’s deadline for Protests by sneaking in same by way of a “Petition to Intervene” which, under the directive contained in the PA Bulletin, was also seven weeks late.

4. ADMITTED in part and DENIED in part. It is ADMITTED that Appalachian was served Interrogatories by Hoy and by way of further response, Appalachian not yet having engaged counsel and not yet having received any Protest from Hoy, did not know what if anything was to be done with the subject interrogatories. Appalachian is without specific knowledge or information to

know what Hoy's counsel believed or what transpired between Hoy and the Commission and, therefore, this portion of the paragraph 4 is specifically DENIED.

5. DENIED. Appalachian is without knowledge or information to know what Hoy's counsel knew.

6. DENIED. Appalachian is without knowledge or information to know what Hoy's counsel did or did not know. By way of further response it is specifically DENIED that Hoy did not have explicit means of establishing whether a Protest was filed, immediately after Hoy's erroneous presumption that such was filed, since the Commission provides, free of charge, a full docket listing of all filed documents for this and every docket under the Commission's jurisdiction. This docket could have and should have been used to verify any assumed filing.

7. DENIED. It is specifically DENIED that the submission of a Protest that is more than seven (7) weeks past the deadline set by the Commission is simply "an inadvertent oversight." By way of further response, the Commission explicitly required that any protests and petitions to intervene in this case "**must be made** with the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, with a **copy served on the applicant, on or before June 23, 2014.**" 44 Pa.B. 3480 (emphasis added). The Commission will only grant late-filed interventions when (1) the petitioner has a reasonable excuse for missing the protest due date; (2) the proceeding is contested at the time of the filing of a petition for intervention; (3) a grant of intervention will not delay the orderly progress of the case; and (4) the grant of intervention will not broaden significantly the issues, or shift the burden of proof.<sup>4</sup> Appalachian DENIES that Hoy has demonstrated that good cause exists such that it should be allowed to file a protest and intervene in this matter after the time set for filing such a protest and intervention has long passed.

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<sup>4</sup> *Re Pennsylvania-American Water Company*, Docket No. A-212285F0096, A-230073F0004 (Order Entered May 9, 2002).

8. ADMITTED in part and DENIED in part. It is admitted that two other companies timely filed their Protests. By way of further response, Appalachian has been preparing its response to these two timely filed Protests since they were filed. It is specifically DENIED that two other intervenors' timely filing is in any way persuasive as to whether Hoy should be permitted to intervene in this matter after failing to abide by the deadline set out by the Commission. Such a lapse in enforcing the timelines set forth by the Commission would make a mockery of all Commission timelines. By way of further response, Hoy claims that its intervention and protest should be granted because there are already 2 other entities that have intervened. Hoy cannot have it both ways. Either the two other entities adequately cover Hoy's objections to Appalachian's Application or Hoy's objections add a new layer of arguments for which Appalachian has not had proper time to prepare. In either case, Hoy's request for late intervention in order to lodge a protest should be denied.

9. DENIED. It is specifically DENIED that there has not been a hearing scheduled in this matter as the hearing is set for October 23, 2014.

10. DENIED. It is specifically DENIED that Appalachian will not be prejudiced by Hoy's intervention and protest. By way of further response, Hoy's untimely filed Protest is disguised as an intervention which was filed without a Notice to Plead. Without such Notice to Plead, Appalachian, which was unrepresented by counsel at the time of Hoy's filing, would not know how or when or even if to respond to such a pleading. Hoy, on the other hand, is a national corporation represented by counsel who are experienced in practice before the Commission and, as such, should not be permitted to attempt to sneak into this matter its Protest disguised as an intervention without a Notice to Plead.

11. DENIED. Appendix I attached to Hoy's Protest is a writing and speaks for itself and therefore no response is required. To the extent a response is required this paragraph is specifically DENIED.

WHEREFORE, for the reasons set forth above, Appalachian Movers, LLC respectfully requests that Hoy Transfer, Inc.'s Petition to Intervene and Protest be denied.

  
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Counsel for Appalachian Movers, LLC

Dated: September 25, 2014


## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

### **BY FIRST CLASS MAIL**

Honorable Dennis J. Buckley  
Pennsylvania Public Utility Commission  
Commonwealth Keystone building  
400 North Street  
Harrisburg, PA 17120

William A. Gray, Esquire  
Vuono & Gray, LLC  
310 Grant Street, Suite 2310  
Pittsburgh, PA 15219-2383

  
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Judith D. Cassel

Dated this 25<sup>th</sup> day of September 2014.