

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU
C-2015-2494049

Pennsylvania Public Utility Commission :
Bureau of Investigation and Enforcement :
:
v. :
:
David C. Millard t/a David Millard :
Trucking :

Docket No. C-2015-

AMENDED COMPLAINT

NOW COMES the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), by its prosecuting attorneys, and files this Amended Complaint against David C. Millard t/a David Millard Trucking (Respondent), pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701. I&E's Complaint has been amended to reflect the appropriate amount of Respondent's outstanding assessment balance. In support of its Amended Complaint, I&E respectfully represents the following:

Parties and Jurisdiction

1. The Pennsylvania Public Utility Commission, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*

2. 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).

3. Complainant is represented by:

Stephanie M. Wimer
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.772.8839
stwimer@pa.gov

Kourtney L. Myers
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.705.4366
komyers@pa.gov

Michael L. Swindler
Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

4. Respondent is David C. Millard t/a David Millard Trucking and maintains his principal place of business at 266 East Schiestle Road Mercer, PA 16137.

5. Respondent is a "public utility" as that term is defined at 66 Pa.C.S. § 102, as he is engaged in transporting property in the Commonwealth of Pennsylvania for compensation.

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6. The Commission issued Respondent a certificate of public convenience on or about November 15, 1999, at A-00116303, for truck authority.

7. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.

8. Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, authorizes the Commission to, *inter alia*, hear and determine complaints against public utilities for a violation of any law or regulation that the Commission has jurisdiction to administer.

9. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility, or any other person or corporation subject to the Commission's authority, for violation(s) of the Public Utility Code and/or Commission regulations.

10. Respondent, in transporting property, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations.

11. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto.

Factual Background

Prior Case

12. On October 26, 2012, I&E filed a Complaint against Respondent at Docket No. C-2012-2331119, alleging that Respondent violated Section 510(b) and (c) of the

Public Utility Code, 66 Pa.C.S. § 510(b)-(c), by failing to file assessment reports for the 2007, 2008, 2009 and 2010 calendar years and failing to timely pay his assessment for the 2008-2009, 2009-2010, 2010-2011 and 2011-2012 fiscal years.

13. On November 27, 2012, a Certificate of Satisfaction was filed pursuant to 52 Pa. Code § 5.24, noting that Respondent satisfied the outstanding assessment and civil penalty requested in I&E's Complaint.

2013-2014 Fiscal Year

14. On or about February 7, 2013, the Commission mailed to Respondent an assessment report for Respondent to report his gross intrastate operating revenues for the 2012 calendar year.

15. The assessment report was accompanied by a letter, which notified Respondent that the report was to be completed and returned to the Commission on or before March 31, 2013.

16. Respondent failed to file an assessment report stating his 2012 calendar year revenues.

17. On or about September 12, 2013, the Commission sent Respondent, through certified mail, an assessment invoice for the July 1, 2013 to June 30, 2014 Fiscal Year (2013-2014 Fiscal Year) that was based, in part, on Respondent's estimated revenues for the 2012 calendar year. Respondent's assessment was \$318.

18. On September 18, 2013, Respondent signed a certified mail card, which indicated that he received an assessment invoice for the 2013-2014 Fiscal Year.

19. Accompanying the assessment invoice was a notice that informed Respondent that he was obligated to pay the amount listed on the assessment invoice within thirty (30) days or file objections within fifteen (15) days.

20. The Commission received no objections from Respondent to this assessment.

21. On or about November 26, 2013, the Commission issued a credit to Respondent in the amount of \$41.00.

22. On or about December 12, 2013, the Commission received a check from Respondent in the amount of \$318 to satisfy his assessment for the 2013-2014 Fiscal Year.

23. On or about January 24, 2014, Respondent's check was rejected due to insufficient funds.

24. On or about January 24, 2014, a \$20 fee was applied to Respondent's assessment balance for providing a check associated with an account holding insufficient funds.

25. Respondent failed to pay the amount of his 2013-2014 Fiscal Year assessment invoice and owes \$297 for this Fiscal Year.

2014-2015 Fiscal Year

26. On or about February 7, 2014, the Commission mailed to Respondent an assessment report for Respondent to report his gross intrastate operating revenues for the 2013 calendar year.

27. The assessment report was accompanied by a letter, which notified Respondent that the report was to be completed and returned to the Commission on or before March 31, 2014.

28. Respondent failed to file an assessment report stating his 2013 calendar year revenues.

29. On or about September 11, 2014, the Commission sent Respondent, through certified mail, an assessment invoice for the July 1, 2014 to June 30, 2015 Fiscal Year (2014-2015 Fiscal Year) that was based, in part, on Respondent's estimated revenues for the 2013 calendar year. Respondent's assessment was \$274.

30. On September 18, 2014, Respondent signed a certified mail card, which indicated that he received an assessment invoice for the 2014-2015 Fiscal Year.

31. Accompanying the assessment invoice was a notice that informed Respondent that he was obligated to pay the amount listed on the assessment invoice within thirty (30) days or file objections within fifteen (15) days.

32. The Commission received no objections from Respondent to this assessment.

33. Respondent failed to fully pay the amount of his 2014-2015 Fiscal Year assessment invoice.

34. By letter dated July 30, 2015, the Assessment Division of the Bureau of Administrative Services notified Respondent that a credit in the amount of \$41.00 was erroneously applied to his assessment invoice for the 2013-2014 Fiscal Year.

35. The letter advised Respondent to pay all past due assessments within thirty (30) days. A copy of this letter is attached as Exhibit 1.

36. The total outstanding assessment balance for Respondent is \$612.

Violations

COUNTS 1-2

37. That Respondent failed to report his gross intrastate operating revenues for the 2012 and 2013 calendar years in that he did not file assessment reports for those years. If proven, this is a violation of Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b). I&E's proposed civil penalty for this violation is \$3,000. This civil penalty is based, in part, on Respondent's history of non-compliance with the Public Utility Code involving a failure to file assessment reports, as set forth above.

COUNTS 3-4

38. That Respondent failed to satisfy his 2013-2014 and 2014-2015 Fiscal Year assessments in that he did not pay the amounts due within thirty (30) days of receipt of the invoice and letter dated July 30, 2015. If proven, this is a violation of Section 510(c) of the Public Utility Code, 66 Pa. C.S. § 510(c). I&E's proposed civil penalty for this violation is 25% of the outstanding assessment balance or \$153. This civil penalty is based, in part, on Respondent's history of non-compliance with the Public Utility Code involving a failure to timely pay assessments, as set forth above.

WHEREFORE, for all the foregoing reasons, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement respectfully requests that:

- (a) Respondent be ordered to pay a total of \$3,765, which consists of his outstanding assessment balance of \$612 and a total civil penalty of \$3,153 for the above-described violations;
- (b) Respondent be directed to file assessment reports on a going-forward basis; and
- (c) If payment of the civil penalty and assessment is not made, the Bureau of Investigation and Enforcement requests that:
 - (1) the Commission issue an Order to cancel the Certificate of Public Convenience issued to Respondent;
 - (2) this matter be referred to the Pennsylvania Office of Attorney General for appropriate action; and
 - (3) the Commission certify automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation.

Respectfully submitted,



Stephanie M. Wimer
Prosecutor

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.772.8839
stwimer@pa.gov

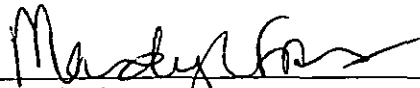
Date: September 2, 2015

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VERIFICATION

I, Mandy Freas, Accountant, Bureau of Administrative Services, Assessment Section, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: September 2, 2015



Mandy Freas, Accountant
Assessment Section
Bureau of Administrative Services
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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EXHIBIT 1

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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

July 30, 2015

IN REPLY PLEASE
REFER TO OUR FILE
704025

DAVID C MILLARD
266 EAST SCHIESTLE ROAD
MERCER PA 16137

Dear Sir or Madam:

Recently it has come to the Commission's attention that your Company received a refund from the overpayment of your 2013-14 invoice.

Your utility received check number 00599799-dated 3/13/2014 for \$41.00 from the State Treasury. This was a refund from the 2013-14 invoice overpayment due to an incorrect assessment factor. The Commission then erroneously failed to apply the refund to your account.

You are required to pay the above past due assessment balance of \$612.00 within thirty (30) days after receipt of this letter. If you fail to pay this assessment, the Commission will institute appropriate legal action against you.

Please make your check payable to "Commonwealth of Pennsylvania" and mail the check and a copy of this letter to the following address:

Pennsylvania Public Utility Commission
Bureau of Administrative Services
Assessment Section
P. O. Box 3265
Harrisburg, PA 17105-3265

Should you have any questions regarding this matter, please contact the Bureau of Administrative Services, Assessment Division at 717-265-7548.

Sincerely,

Yvonne R. Hess

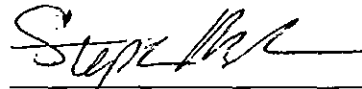
Yvonne R. Hess, Chief
Finance and Assessment Division
Bureau of Administration

CERTIFICATE OF SERVICE

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

Notification by First Class Mail:

David C. Millard
David Miller Trucking
266 East Schiestle Road
Mercer, PA 16137



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

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Dated: September 2, 2015

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