



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

December 31, 2015

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Nicholas Louis Varish t/a South Mountain
Transportation
Docket No. C-2015-2495457

Dear Secretary Chiavetta:

Enclosed for filing please find an original of the Bureau of Investigation and Enforcement's Motion for Default Judgment in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

Nicholas Louis Varish,
t/a South Mountain Transportation
Respondent


Docket No. C-2015-2495457

NOTICE TO PLEAD

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) has filed a Motion for Default Judgment in the above-captioned matter, pursuant to the Commission's regulations at 52 Pa. Code §5.103. You are hereby notified to file a written response within twenty (20) days of the service of the Motion, consistent with 52 Pa. Code §5.61.

Your Answer must be verified, pursuant to 52 Pa. Code §1.36, and the original sent to:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Additionally, you must serve a copy on the undersigned prosecutor.


Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 772-8839
stwimer@pa.gov

Dated: December 31, 2015

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2495457
	:	
Nicholas Louis Varish,	:	
t/a South Mountain Transportation	:	
Respondent	:	

MOTION FOR DEFAULT JUDGMENT

NOW COMES the Pennsylvania Public Utility Commission's (Commission) Bureau of Investigation and Enforcement (I&E), by its prosecuting attorneys, and files this Motion for Default Judgment against Nicholas Louis Varish t/a South Mountain Transportation (Respondent) pursuant to Section 5.103 of the Commission's regulations, 52 Pa. Code §5.103. In support thereof, I&E respectfully represents as follows:

1. I&E commenced this action on July 29, 2015 by filing a Complaint.
2. On July 30, 2015, the Complaint was served by certified mail to Respondent at 704 Point Road Wernersville, PA 19565.
3. Attached to the Complaint was a Notice advising Respondent that it must file an Answer within twenty (20) days of service of the Complaint.
4. The Notice also advised 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.
5. On August 3, 2015, Respondent received the Complaint. A true and correct copy of proof of delivery of the Complaint is attached as Exhibit 1.

6. The twenty (20) days to file an Answer to the Complaint expired on August 19, 2015.

7. Respondent did not file an Answer to the Complaint.

8. Pursuant to Section 5.61(c) of the Commission's regulations, a Respondent who fails to file an Answer to a Complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. 52 Pa. Code §5.61(c).

9. The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. PUC*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

10. Respondent did not pay the outstanding assessment balance of \$179 for the July 1, 2014 to June 30, 2015 Fiscal Year (2014-2015 Fiscal Year) or the civil penalty of \$50 that was sought in the Complaint for Respondent's failure to timely pay the assessment.

11. I&E respectfully requests that the Commission enter a Default Order against Respondent that:

- a. Directs Respondent to pay its outstanding assessment of \$179 for the 2014-2015 Fiscal Year and the requested civil penalty of \$50 within thirty (30) days of the entry date of the Commission's Order;
- b. Notifies Respondent that a copy of this Order will be sent to the Pennsylvania Department of Transportation for the suspension or revocation of vehicle registrations that were used under Respondent's operating authority if the outstanding assessment and civil penalty is not paid within thirty (30) days of the entry date of the Commission's Order; and

- c. Directs the Bureau of Administrative Services, Assessment Section, to refer the matter to the Pennsylvania Office of Attorney General for collection of the outstanding assessment and civil penalty set forth in subparagraph (a), above, for a total of \$229, if that total is not paid within thirty (30) days of the entry date of the Commission's Order.¹

Respectfully submitted,



Stephanie Wimer
Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
stwimer@pa.gov
(717) 772-8839

Date: December 31, 2015

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¹ I&E notes that the Commission cancelled Respondent's Certificate of Public Convenience by Secretarial Letter dated August 11, 2015 at docket number C-2014-2428960. Therefore, I&E's requested relief regarding revocation of Respondent's operating authority, which is set forth in I&E's Complaint, has already been addressed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

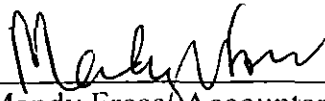
Nicholas Louis Varish,
t/a South Mountain Transportation
Respondent

Docket No. C-2015-2495457

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: December 31, 2015



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

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EXHIBIT 1

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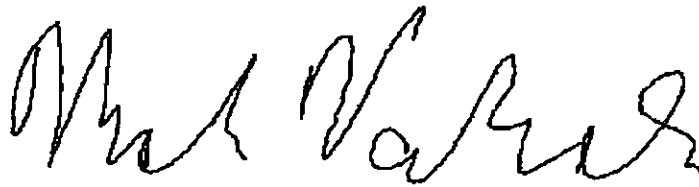


Date: August 7, 2015

brian finley:

The following is in response to your August 7, 2015 request for delivery information on your Certified Mail™ item number 9171969009350046806618. The delivery record shows that this item was delivered on August 3, 2015 at 3:21 pm in WERNERSVILLE, PA 19565. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :

204 ROBIN RIDGE

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

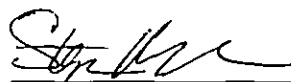
Sincerely,
United States Postal Service

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).

Notification by First Class Mail:

Nicholas Louis Varish
t/a South Mountain Transportation
704 Point Road
Wernersville, PA 19565



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
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