



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

January 7, 2016

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. David C. Millard t/a David Millard Trucking
Docket No. C-2015-2494049

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

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Enclosures

cc: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

David C. Millard t/a David Millard Trucking,
Respondent

Docket No. C-2015-2494049

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 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.

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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: January 7, 2016

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

v. :

David C. Millard t/a David Millard Trucking, :
Respondent :

Docket No. C-2015-2494049

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 David C. Millard t/a David Millard Trucking (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 21, 2015 by filing a Complaint.
2. On July 22, 2015, the Complaint was served by certified mail to Respondent at 266 East Schiestle Road Mercer, PA 16137.
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 July 24, 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 11, 2015.

7. Respondent did not file an Answer to the Complaint.
8. On September 2, 2015, I&E filed an Amended Complaint.
9. On September 10, 2015, the Amended Complaint was served by first class mail to Respondent at 266 East Schiestle Road Mercer, PA 16137.
10. Attached to the Amended Complaint was a Notice advising Respondent that it must file an Answer within twenty (20) days of service of the Amended Complaint.
11. There is no record that the Amended Complaint, which was served by first class mail, was returned to the Commission.
12. Depositing a properly addressed, prepaid letter in the mail raises a presumption that it reached its destination and mailing a letter in such a way is *prima facie* evidence that it was received by the person to whom it was addressed. See *Cameron Estate*, 130 A.2d 173 (Pa. 1957); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); and *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997).
13. The twenty (20) days to file an Answer to the Amended Complaint expired on September 30, 2015.
14. Respondent did not file an Answer to the Amended Complaint.
15. 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).
16. 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).
17. Respondent did not pay the total outstanding assessment balance of \$612 for the July 1, 2013 to June 30, 2014 Fiscal Year (2013-2014 Fiscal Year) and July 1, 2014 to June 30, 2015 Fiscal Year (2014-2015 Fiscal Year), or the civil penalty of \$3,153 that was sought in the Amended Complaint for Respondent's failure to timely pay the assessments and file assessment reports demonstrating revenues earned during the 2012 and 2013 calendar years.
18. I&E respectfully requests that the Commission enter a Default Order against Respondent that:

- a. Directs Respondent to pay its outstanding assessment of \$612 for the 2013-2014 and 2014-2015 Fiscal Years, and the requested civil penalty of \$3,153 within thirty (30) days of the entry date of the Commission's Order;
- b. Directs the Bureau of Technical Utility Services to cancel Respondent's Certificate of Public Convenience at A-00116303 if the outstanding assessment and civil penalty set forth in subparagraph (a), above, for a total of \$3,765, is not paid within thirty (30) days of the entry date of the Commission's Order;
- c. 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
- d. 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 \$3,765, if that total is not paid within thirty (30) days of the entry date of the Commission's Order.

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: January 7, 2016

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

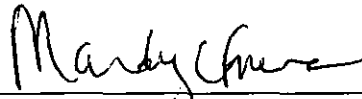
David C. Millard t/a David Millard Trucking,
Respondent

Docket No. C-2015-2494049

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: January 7, 2016



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

My Online Services

Profile Print Guide Export

Systems

Reports

E-Services

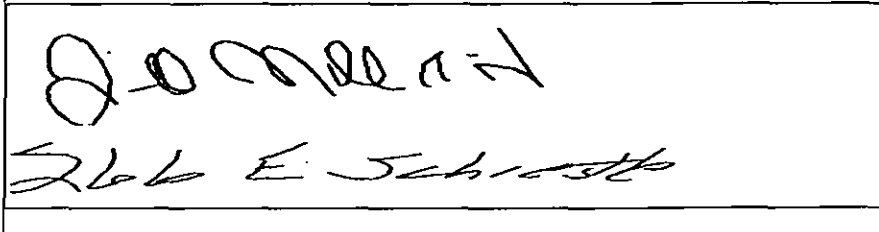
Supplies

Home > E-Services > Status History

Status History ?

Tracking Number Information			
Meter:	12650040	Mailing Date:	07/22/15 03:13 PM
Tracking Number:	9171969009350083619318	Sender:	
Current Status:	OK : Delivered	Recipient:	
Class of Mail	FC	Zip Code:	16137
Service:	ERR	City:	MERCER
Value	\$0.925	State:	PA

[Proof of delivery](#)



Status Details	
Status Date	Status
Fri, 07/24/15, 12:00:00 PM	OK : Delivered
Fri, 07/24/15, 07:59:00 AM	Out for Delivery
Fri, 07/24/15, 07:49:00 AM	Sorting / Processing Complete
Fri, 07/24/15, 07:47:00 AM	Arrival at Unit
Fri, 07/24/15, 07:47:00 AM	Arrival at Unit
Thu, 07/23/15, 08:37:00 PM	Dispatched from Sort Facility
Thu, 07/23/15, 04:41:00 PM	Processed (processing scan)
Thu, 07/23/15, 11:46:00 AM	Processed (processing scan)
Thu, 07/23/15, 01:09:00 AM	Dispatched from Sort Facility
Wed, 07/22/15, 06:52:00 PM	Processed (processing scan)
Wed, 07/22/15, 06:40:00 PM	OK: USPS acknowledges reception of info
Wed, 07/22/15, 05:37:00 PM	Origin Acceptance

Note: Delivery status updates are processed throughout the day and posted upon receipt from the Postal Service.

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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:

David C. Millard
1/a David Millard Trucking
266 East Schiestle Road
Mercer, PA 16137



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
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