



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

IN REPLY PLEASE
REFER TO OUR FILE

December 8, 2016

Via Electronic Filing

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. Charles H. Edwards Jr.
Docket No. C-2016-2537014
Motion for Judgment on the Pleadings

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's Motion for Judgment on the Pleadings with regard to 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,

A handwritten signature in blue ink, appearing to read "K. Myers", is written over a light blue horizontal line.

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosure

cc: Honorable Mary D. Long
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

Docket No. C-2016-2537014

v.

Charles H. Edwards Jr.

NOTICE TO PLEAD

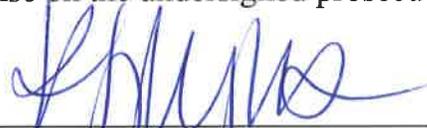
To: *Charles H. Edwards Jr.*

Pursuant to 52 Pa. Code § 5.102(b), you are hereby notified to file a written response to the enclosed Motion for Judgment on the Pleadings of the Bureau of Investigation and Enforcement (I&E) within twenty (20) days from the date of service of this notice. If you do not file a written response denying the enclosed Motion for Judgment on the Pleadings within twenty (20) days of service, an Administrative Law Judge may rule on this Motion without further input.

All pleadings, such as answers to motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned prosecutor.



Kourtney L. Myer
Prosecutor
PA Attorney ID No. 316494

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: December 8, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	Docket No. C-2016-2537014
v.	:	
	:	
Charles H. Edwards Jr.	:	

**MOTION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
FOR JUDGMENT ON THE PLEADINGS**

TO THE HONORABLE MARY D. LONG:

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission or PUC), by and through its prosecuting attorneys, files this Motion for Judgment on the Pleadings, pursuant to 52 Pa. Code § 5.102, on the grounds that there are no material facts in dispute and based on those facts, I&E is entitled to judgment in its favor as a matter of law. In support of this Motion, I&E states the following:

I. BACKGROUND

1. Respondent is Charles H. Edwards Jr. and maintains his principal place of business at 1611 Sandusky Court, Apartment 245, Pittsburgh, Pennsylvania 15212.
2. The Commission has not issued to Respondent a Certificate of Public Convenience (Certificate) to operate as a motor carrier of passengers between points within the Commonwealth of Pennsylvania for compensation.
3. The Bureau of Investigation and Enforcement is the bureau established to take enforcement actions against public utilities and other entities subject to the

Commission's jurisdiction. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) at p. 5.

4. On March 24, 2016, PUC Enforcement Officer Ryan Balestra observed Respondent operating his vehicle, a 2003 Hyundai SUV bearing Pennsylvania license plate number JVJ3490, with a taxi dome light affixed to the roof of such vehicle on Carson Street in Pittsburgh, Pennsylvania.

5. On April 26, 2016, I&E filed a Complaint against Respondent alleging that Respondent violated Section 29.314(d) of the Commission's Regulations, 52 Pa. Code § 29.314(d), by affixing a taxi dome light to the roof of his vehicle when dome lights are only permitted on vehicles operated by call and demand carriers and Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101, for holding out to provide passenger transportation service between points in Pennsylvania for compensation without first obtaining a Certificate from the Commission. I&E seeks a civil penalty in the amount of \$1,000 and requests that Respondent's vehicle registration be suspended by the Pennsylvania Department of Transportation.¹

6. On May 18, 2016, I&E filed an Amended Complaint alleging the same violations therein and modifying the year of Respondent's vehicle from 2013 to 2003 in Paragraph 2 of the Amended Complaint.

7. On June 6, 2016, Respondent filed a letter in response to I&E's Amended Complaint wherein he apologized to the Commission for violating 52 Pa. Code

¹ The Commission is authorized to seek the suspension of the registration of any vehicle determined to have been operating as a common carrier without Commission approval. *See* 75 Pa.C.S. § 1375.

§ 29.314(d) and admitted that he bought a taxi sign for his vehicle so that he could pay his bills. Respondent further stated in his letter-response to I&E's Amended Complaint to "please call me and let me know what you decide." Respondent did not contest any of the facts or violations alleged in I&E's Complaint.

II. MOTION FOR JUDGMENT ON THE PLEADINGS

8. Section 5.102(a) of the Commission's regulations, 52 Pa. Code § 5.102(a), permits a party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing.

9. Pursuant to Section 5.102(d)(1) of the Commission's regulations, 52 Pa. Code § 5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

10. "Judgment on the pleadings is only appropriate where no material facts remain in dispute." *Williams v. Lewis*, 466 A.2d 682, 683 (Pa. Super. Ct. 1983), citing *Pa. Ass'n of State Mental Hosp. Physicians, Inc. v. State Employee Ret. Bd.*, 399 A.2d 93 (Pa. 1979).

11. A fact is material if "its resolution could affect the outcome of the case under the governing law." *Farabaugh v. Pa. Tpk. Comm'n*, 911 A.2d 1264, 1267 (Pa. 2006).

12. "Only where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should a judgment on the pleadings be entered." *Williams*, 466

A.2d at 683, citing *Nevling v. Natoli*, 434 A.2d 187 (Pa. Super. Ct. 1981). See also *Mahn v. PECO Energy Co.*, Docket No. C-2014-2444240 (Initial Decision issued November 18, 2014) (Final Order adopting Initial Decision entered January 26, 2015).

13. “When ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts he specifically admits.” *Reuben v. O’Brien*, 496 A.2d 913, 915 (Pa. Super. Ct. 1985). “Judgment on the pleadings should be entered only when the case for determination is clear and free from doubt.” *Id.*

14. A hearing is necessary only to resolve disputed questions of fact and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593 (Pa. Cmwlth. 2003).

15. Further, the Commission’s regulations at 52 Pa. Code § 5.61(b)(1)-(4) require that an answer be set forth in numbered paragraphs corresponding with the Complaint, advise the parties and the Commission as to the nature of the defense, specifically admit or deny all material allegations of the Complaint, and concisely state the facts and matters of law relied upon.

16. Here, the material factual averments in I&E’s Amended Complaint are not in dispute.

17. Respondent specifically admits violating 52 Pa. Code § 29.314(d). Section 29.314(d) of the Commission’s regulations provides, in pertinent part, the following: “Unless otherwise permitted by the Commission, vehicles operated by call and demand carriers must have a dome light affixed to the roof of the vehicle.” 52 Pa. Code

§ 29.314(d). The purpose of the dome light requirement is to aid the public in identifying taxicabs available for service. *In Re Final Rulemaking Amending 52 Pa. Code Chapters 29 & 31*, L-00020157 (Order entered August 16, 2005).

18. In the first sentence of Respondent's letter, Respondent states, "I owe you an apologize [sic] for violating 52 Pa. Code § 29.314(d)." He explains that he used to work as a driver for Yellow Cab, but decided to find another way to pay bills because business had slowed and it was difficult to pay Yellow Cab. Respondent then admitted to buying a taxi sign from Amazon.com, from which he derived income, or sought to derive income, to pay his bills. Because Respondent specifically admits displaying a dome light on his vehicle, that fact must be considered against him.

19. Respondent's letter also provides *prima facie* evidence that he violated 66 Pa.C.S. § 1101 by holding himself out as a motor carrier of passengers to the public for compensation. Section 1101 of the Public Utility Code provides, in pertinent part, as follows:

Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth.

66 Pa.C.S. § 1101. Section 1101 of the Public Utility Code clearly requires an individual or company to first obtain a Certificate of Public Convenience before providing intrastate transportation for compensation. *Collins v. Public Service Commission*, 84 Pa. Super 58 (1924).

20. In the letter, Respondent states that he bought the taxi dome light to pay his bills. The clear implication from Respondent's admission is that he held himself out to the public as an uncertificated motor carrier of passengers and sought to receive compensation from his service. Officer Balestra observed Respondent's vehicle in public view displaying a dome light and Respondent did not deny this fact.

21. Thus, there are no material facts in dispute regarding I&E's allegation that Respondent violated Section 29.314(d) of the Commission's regulations, 52 Pa. Code § 29.314(d) and Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101.

22. Consequently, as the letter filed by Respondent did not contest any of the facts of I&E's Amended Complaint and did not raise any defense, Respondent's letter should be deemed to admit the relevant facts stated in I&E's Amended Complaint.

23. Because there is no genuine issue of material fact, a hearing in this case is not necessary or in the public interest and would be a fruitless exercise. I&E is entitled to judgment as a matter of law.

24. A hearing in this matter would especially be a fruitless exercise as Respondent purports to indicate his in letter that he does not intend to appear at the hearing and merely requests to be informed of the decision.

25. Additionally, Respondent's letter in response to I&E's Amended Complaint should not be considered an "answer" pursuant to the Commission's regulations at 52 Pa. Code § 5.61(b)(1)-(4). Respondent's letter was not set forth in numbered paragraphs corresponding with the Amended Complaint, failed to advise the Commission as to the nature of his defense, did not specifically admit or deny each material allegation in I&E's

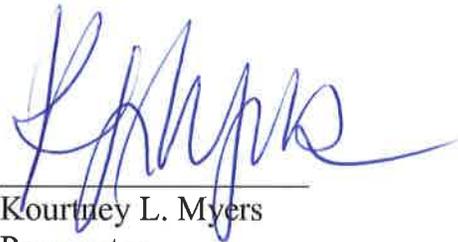
Amended Complaint, and failed to concisely state the facts and law upon which he relies for his defense. Therefore, Respondent's failure to file an answer should be deemed in default and the relevant facts stated in I&E's Amended Complaint should be deemed admitted pursuant to 52 Pa. Code § 5.61(c).

26. Subsequent to this filing of the instant Complaint, I&E filed yet another complaint against Respondent at Docket No. C-2016-2544672 alleging the same violations that are at issue in the instant proceeding because Respondent was again observed by PUC motor carrier enforcement officers on May 6, 2016 driving on Carson Street with a dome light affixed to the roof of his vehicle. Respondent also did not contest the allegations set forth in I&E's complaint docketed at C-2016-2544672. Thus, Respondent's conduct in offering uncertificated passenger transportation service is a recurring event and a message should be sent to deter the unlawful behavior.

III. CONCLUSION

For the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Office of Administrative Law Judge and Pennsylvania Public Utility Commission enter a judgment against Charles H. Edwards Jr. that sustains I&E's Amended Complaint, directs Respondent to pay the requested civil penalty of \$1,000 and to cease and desist from further violations of the Public Utility Code and the Commission's regulations, and requests the Pennsylvania Department of Transportation to suspend the registration of any vehicle registered to Charles H. Edwards Jr.

Respectfully submitted,



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
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(717) 705-4366
komyers@pa.gov

Dated: December 8, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

Docket No. C-2016-2537014

v.

Charles H. Edwards Jr.

VERIFICATION

I, David W. Loucks, Chief of Enforcement, Bureau of Investigation and Enforcement, Motor Carrier Enforcement, 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 of Investigation and Enforcement 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 8, 2016



David W. Loucks, Chief
Motor Carrier Enforcement
Bureau of Investigation and Enforcement
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Pennsylvania Public Utility Commission, :
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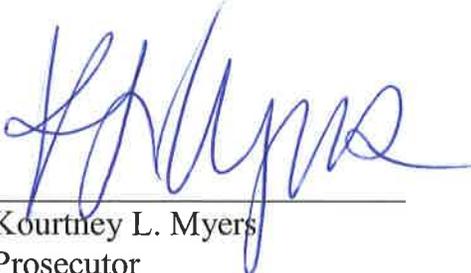
CERTIFICATE OF SERVICE

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).

Service by First Class Mail:

Charles H. Edwards Jr.
1611 Sandusky Court
Apartment 245
Pittsburgh, PA 15212

Charles H. Edwards Jr.
601 Pressley Street
Apartment 307
Pittsburgh, PA 15212



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

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Dated: December 8, 2016