



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

March 3, 2017

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. Atlantic Express of PA, Inc.
Docket No. C-2016-2573198

Dear Secretary Chiavetta:

Enclosed for electronic filing please find 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,

A handwritten signature in blue ink that reads "Stephanie M. Wimer".

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service
Kourtney Myers, I&E

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

Atlantic Express of PA, Inc.,
Respondent

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Docket No. C-2016-2573198

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: March 3, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2016-2573198
	:	
Atlantic Express of PA, Inc.,	:	
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 Atlantic Express of PA, Inc. (“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 October 28, 2016 by filing a Complaint.
2. On October 28, 2016, the Complaint was served by certified mail to Respondent at 3740 East Thompson Street, Philadelphia, PA 19137.
3. Also on October 28, 2016, I&E provided Respondent with a copy of the Complaint via first class mail sent to 7 North Street, Staten Island, NY 10302.
4. These are the last known mailing addresses that Respondent provided to the Commission.
5. On November 17, 2016, the Complaint mailed to 3740 East Thompson Street, Philadelphia, PA 19137 was returned to the Commission by the United States Post Office and was marked as “Return to Sender; Refused; Unable to Forward.”
6. On November 22, 2016, the Complaint was again served to Respondent by First Class Mail at 3740 East Thompson Street, Philadelphia, PA 19137.

7. There is no record that the Complaint served by first class mail to 3740 East Thompson Street, Philadelphia, PA 19137 was returned to the Commission.

8. 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).

9. Even though the Complaint is presumed to have been delivered, out of an abundance of caution, I&E published the Complaint in the *Pennsylvania Bulletin* on January 21, 2017 pursuant to the Commission's regulation at 52 Pa. Code § 1.53(e) (related to "Alternative Service"). See 47 Pa. Bull. 398 (January 21, 2017).

10. Included with the Complaint was a Notice advising Respondent that it must file an Answer within twenty (20) days.

11. 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.

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

13. 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).

14. 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).

15. Respondent did not pay the outstanding assessment balance of \$17,563 for the July 1, 2014 to June 30, 2015 ("2014-2015") and July 1, 2015 to June 30, 2016 ("2015-2016") Fiscal Years or the civil penalty of \$3,634 that was sought in the Complaint for Respondent's failure to timely pay the assessment and file an assessment report demonstrating revenues earned during the 2014 calendar year.

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

- a. Directs Respondent to pay its outstanding assessment of \$17,563 for the 2014-2015 and 2015-2016 Fiscal Years and the requested civil

penalty of \$3,634 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-00111639 if the outstanding assessment and civil penalty set forth in subparagraph (a), above, for a total of \$21,197 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 \$21,197, if that total is not paid within thirty (30) days of the entry date of the Commission's Order.

Respectfully submitted,



Stephanie M. 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: March 3, 2017

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
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v.

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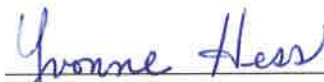
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Docket No. C-2016-2573198

VERIFICATION

I, Yvonne Hess, Chief of Finance and Assessments, 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: March 3, 2017



Yvonne Hess
Chief of Finance and Assessments
Finance and Assessment Section
Bureau of Administrative Services
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
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v.

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Docket No. C-2016-2573198

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:

Atlantic Express of PA, Inc.
3740 East Thompson Street
Philadelphia, PA 19137-1421

Atlantic Express of PA, Inc.
7 North Street
Staten Island, NY 10302



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.772.8839
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Dated: March 3, 2017