



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

September 21, 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. Christopher T. Stack
Docket No. C-2016-2544674
(Motion for Default Judgment)

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Motion for Default Judgment in the above referenced matter. 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 "Step 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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

Christopher T. Stack,
Respondent

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Docket No. C-2016-2544674

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: September 21, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Christopher T. Stack,
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Docket No. C-2016-2544674

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 Christopher T. Stack (“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:

I. BACKGROUND

1. Respondent is Christopher T. Stack.
2. Respondent has not been authorized by the Commission to operate as a motor carrier of passengers between points within the Commonwealth 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 (Order entered August 11, 2011) at p. 5.
4. On May 6, 2016, at 10:31 PM, and again on May 7, 2016, at 12:06 AM, I&E Motor Carrier Enforcement Officers Ryan Balestra and Christopher Urey observed Respondent’s

2006 Lexus sedan, bearing Pennsylvania license plate number JSY-9561, operating on Carson Street in the South Side of Pittsburgh.

5. The vehicle had a dome light, as would generally be seen on taxis, mounted on the roof. The dome light was illuminated and the word "TAXI" appears on the light.

6. Officers Balestra and Urey took photographs of the vehicle with the illuminated dome light.

7. On May 20, 2016, I&E filed a Complaint against Respondent at Docket No. C-2016-2544674 alleging that Respondent violated Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101, by holding out to provide passenger transportation service between points in Pennsylvania while not having operating authority from the Commission.

8. I&E also alleged that Respondent violated Section 29.314(d) of the Commission's regulations, 52 Pa. Code § 29.314(d), for affixing a taxi dome light to the roof of his vehicle.

9. I&E's Complaint sought a civil penalty in the amount of \$1,000 and suspension of Respondent's vehicle registration with the Pennsylvania Department of Transportation ("PennDOT").

10. On June 15, 2016, Respondent attempted to respond to I&E's Complaint. However, Respondent's Answer was returned to him by Secretarial Letter dated June 20, 2016 because it did not contain an original signature. Respondent was given ten (10) days to refile an Answer with his original signature.

11. Respondent filed an Answer on June 29, 2016 alleging that he found the dome light while garbage hunting with friends and that the light was not capable of being illuminated because it had no wire attached. Respondent averred that he and his friends drove on East

Carson Street in Pittsburgh with the dome light “as a joke” and that Respondent was merely driving back to his house with the dome light.

12. On July 18, 2017, I&E filed an Amended Complaint, which appended copies of four color photographs marked as I&E Exhibit 1 depicting Respondent’s vehicle operating on Carson Street with an illuminated dome light that read “TAXI.”

13. I&E’s Amended Complaint also updated one of the alleged violations averred in the original Complaint to indicate that Respondent violated 52 Pa. Code § 29.402(1) and 67 Pa. Code § 175.66(h), and not 52 Pa. Code § 29.314(d), by affixing a prohibited ornamental lamp on his vehicle when the vehicle was used in common carrier service.

14. By Secretarial Letter dated July 28, 2017, I&E’s Amended Complaint was served by first class mail.

15. By Secretarial Letter dated August 24, 2017, I&E’s Amended Complaint was served again, this time by certified mail, to Respondent at 245 Albert Street, Pittsburgh, PA 15211.

16. Included with the Amended Complaint was a Notice advising Respondent that he must file an Answer within twenty (20) days of service of the Amended Complaint.

17. The Notice also advised Respondent that if he failed to file an answer to the Amended Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Amended Complaint.

18. The Notice further provided Respondent with detailed instructions related to filing an Answer to the Amended Complaint.

19. On August 26, 2017, Respondent received the Amended Complaint. A true and correct copy of proof of delivery of the Amended Complaint is attached as Exhibit 1.

20. Respondent did not Answer the Amended Complaint.

II. MOTION FOR DEFAULT JUDGMENT

21. Pursuant to Section 5.61(a) of the Commission's regulations, answers to complaints shall be filed with the Commission within 20 days after the date of service. 52 Pa. Code § 5.61(a).

22. 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).

23. 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).

24. Respondent received I&E's Amended Complaint and failed to respond.

25. For the reasons set forth above, Respondent should be deemed in default for his failure to answer the Amended Complaint and I&E's Amended Complaint should be sustained.

III. I&E's REQUESTED RELIEF

26. In the Amended Complaint, I&E appropriately requested relief in the form of a \$1,000 civil penalty and suspension of Respondent's vehicle registration with PennDOT. Both remedies are consistent with what is requested for allegations of operating as a motor common carrier without a Certificate of Public Convenience issued by the Commission in violation of 66 Pa.C.S. § 1101. *See PUC Motor Carrier Services & Enforcement Penalty Guidelines*, effective

April 1, 2011, at p. 2.¹

27. Should the Commission deem it necessary to apply the Policy Statement concerning Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations, 52 Pa. Code § 69.1201, the imposition of a \$1,000 civil penalty and suspension of Respondent's vehicle registration remains appropriate. Alternatively, if the Commission determines that the combination of the \$1,000 civil penalty and suspension of Respondent's vehicle registration is too severe, then I&E would argue that the \$1,000 civil penalty be upheld. The following contains an analysis of the Commission's Policy Statement:

- a. The first factor for consideration is whether the conduct at issue was of a serious nature, 52 Pa. Code § 69.1201(c)(1). Providing or offering to provide unauthorized passenger transportation service in violation of 66 Pa.C.S. § 1101 is serious due to its impact on public safety. The Commission was unable to inspect Respondent's vehicle, review his driving history, conduct a criminal background check or verify that Respondent maintained adequate insurance.
- b. The second factor examines whether the resulting consequences of the conduct were of a serious nature, 52 Pa. Code § 69.1201(c)(2). Respondent held himself out to provide uncertificated passenger transportation. Each trip that was potentially taken from Respondent's unauthorized transportation service subjected the public to harm as the Commission could not ensure that Respondent followed

¹ In the Amended Complaint, I&E could have sought an additional civil penalty for Respondent's violation of 52 Pa. Code § 29.402(1) and 67 Pa. Code § 175.66(h) for affixing a prohibited ornamental lamp on his vehicle while the vehicle was used in common carrier service, but I&E elected to only request \$1,000.

the Commission's regulations pertaining to vehicle safety, driver integrity and insurance.

c. The third factor considers whether the conduct was intentional or negligent, 52 Pa. Code § 69.1201(c)(3). Respondent's conduct was intentional. Respondent placed a prohibited ornamental lamp on the roof of his vehicle. He was then observed by I&E Motor Carrier Enforcement Officers twice on the same evening a few hours apart operating with an illuminated "TAXI" sign on Carson Street in Pittsburgh. Respondent claims that the "TAXI" sign had no wires and thus could not be illuminated, however, I&E Exhibit 1 of the Amended Complaint demonstrates that Respondent's claim is patently false.

d. The fourth factor considers whether the entity made efforts to change its practices and prevent similar conduct in the future, 52 Pa. Code § 69.1201(c)(4). I&E is unaware of whether Respondent continues to hold himself out as a passenger motor carrier by operating his vehicle with the illuminated "TAXI" dome light.

e. The fifth factor concerns the number of customers affected and the duration of the violation, 52 Pa. Code § 69.1201(c)(5). It is unknown to I&E how many passengers were subjected to Respondent's unauthorized passenger transportation. The violation occurred over a period of a couple of hours – between 10:31 PM on May 6, 2016 and 12:06 AM on May 7, 2016.

f. The sixth factor considers Respondent's compliance history, 52 Pa. Code § 69.1201(c)(6). The instant Complaint proceeding is Respondent's first violation.

- g. The seventh factor examines whether the entity cooperated with the Commission's investigation, 52 Pa. Code § 69.1201(c)(7). Respondent arguably did not cooperate as evidenced by the representations he made in his Answer. The dome light clearly was capable of being illuminated. *See* Exhibit 1 of I&E's Amended Complaint.
- h. The eighth factor concerns the amount of the civil penalty necessary to deter future violations, 52 Pa. Code § 69.1201(c)(8). As noted above, a civil penalty of \$1,000 is the recommended civil penalty that is consistently requested for operating as a motor common carrier without a Certificate of Public Convenience issued by the Commission.
- i. The ninth factor considers past Commission decisions in similar situations, 52 Pa. Code § 69.1201(c)(9). Past Commission decisions support the imposition of a \$1,000 civil penalty for each instance of providing or holding out to provide uncertificated passenger transportation service. *Pa. Pub. Util. Comm'n v. Cintron*, Docket No. C-2015-2473286 (Initial Decision issued December 24, 2015) (Final Order entered February 1, 2016) (imposing a \$1,000 civil penalty and suspension of the respondent's vehicle registration for posting an advertisement on Craigslist to transport persons as a common carrier). *See also Pa. Publ. Util. Comm'n, Bureau of Transp. and Safety v. Corey Transport, LLC*, Docket No. C-2010-2155103 (Initial Decision issued January 19, 2012) (Final Order entered March 22, 2012) (sustaining the enforcement bureau's complaint requesting the imposition of a \$1,000 civil penalty for each instance of providing or holding itself out to provide passenger transportation service while uncertificated).

IV. CONCLUSION

For the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Commission enter a default judgment against Christopher T. Stack that sustains the Amended Complaint, directs Respondent to pay a \$1,000 civil penalty and refers Respondent's vehicle registration to the Pennsylvania Department of Transportation for suspension. In the alternative, should the Commission deem the imposition of the \$1,000 civil penalty and suspension of Respondent's vehicle registration to be too severe, then the Bureau of Investigation and Enforcement requests that the \$1,000 civil penalty be imposed.

Respectfully submitted,



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

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Bureau of Investigation and Enforcement
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VERIFICATION

I, David W. Loucks, Chief, Motor Carrier Enforcement, Bureau of Investigation and 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 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 21, 2017



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

EXHIBIT 1

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

[Track Another Package](#) +

[Remove](#) X

Tracking Number: 9171969009350143657649

 Delivered

Expected Delivery By: Saturday, August 26, 2017 ⓘ
Product & Tracking Information

[See Available Actions](#)

Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
August 26, 2017, 12:29 pm	Delivered, Left with Individual ▲	PITTSBURGH, PA 15211
Your Item was delivered to an individual at the address at 12:29 pm on August 26, 2017 in PITTSBURGH, PA 15211.		
August 26, 2017, 4:03 am	Departed USPS Regional Destination Facility	PITTSBURGH PA DISTRIBUTION CENTER
August 25, 2017, 11:47 am	Arrived at USPS Regional Destination Facility	PITTSBURGH PA DISTRIBUTION CENTER
August 25, 2017, 5:02 am	Departed USPS Regional Facility	HARRISBURG PA DISTRIBUTION CENTER

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