



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

January 10, 2018

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. William D. Mercer Jr.
Docket No. C-2018-_____

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Complaint in the above referenced case on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in black 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

Enclosures

cc: As per Certificate of Service

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint.

The date of service is the mailing date as indicated at the top of the Secretarial Letter. *See* 52 Pa. Code §1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

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

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, emailed to Mr. Swindler at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the requested relief.

C. You may elect not to contest this Complaint by paying the past due assessment and civil penalty within 20 days. Send only a certified check or money order made payable to the "Commonwealth of Pennsylvania," with the docket number indicated, and mail to:

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

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the requested relief set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2018-
	:	
William D. Mercer Jr.	:	

COMPLAINT

NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by its prosecuting attorneys, and files this Complaint against William D. Mercer Jr. (“Respondent”), pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701. In support of its Complaint, I&E respectfully represents the following:

Parties and Jurisdiction

1. The Pennsylvania Public Utility Commission, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*
2. Complainant is the Commission’s Bureau of Investigation and Enforcement and is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308.2(a)(11). *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) at 5 (transferring authority to prosecute assessment cases to I&E).

3. Complainant is represented by:

Kourtney L. Myers
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.705.4366
komyers@pa.gov

Timothy K. McHugh
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.772.8582
timchugh@pa.gov

Michael L. Swindler
Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

4. Respondent is William D. Mercer Jr. and maintains his principal place of business at 336 Montmorenci Road, Ridgway, PA 15853, Attention: William D. Mercer Jr.

5. Respondent is a "public utility" as that term is defined at 66 Pa.C.S. § 102, as he is engaged in transporting property in the Commonwealth of Pennsylvania for compensation.

6. The Commission issued Respondent a Certificate of Public Convenience on or about June 1, 2010, at A-2010-2169665, for truck authority.

7. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.

8. Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, authorizes the Commission to, *inter alia*, hear and determine complaints against public utilities for a violation of any law or regulation that the Commission has jurisdiction to administer.

9. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility, or any other person or corporation subject to the Commission's authority, for violation(s) of the Public Utility Code and/or Commission regulations. Section 3301(a)-(b) of the Public Utility Code, 66 Pa.C.S. § 3301(a)-(b), allows for the imposition of a separate civil penalty for each violation and each day's continuance of such violation(s).

10. Respondent, in transporting property as a common carrier for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations.

11. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto.

Factual Background

PRIOR ASSESSMENT-RELATED COMPLAINT

12. On July 1, 2016, I&E filed a Complaint against Respondent at Docket No. C-2016-2554237, alleging that Respondent violated Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c), by failing to satisfy his assessment for the July 1, 2015 to June 30, 2016 Fiscal Year (“2015-2016 Fiscal Year”) in the amount of \$5,001. In addition to payment of the outstanding assessment, I&E sought payment of a civil penalty in the amount of \$750.

13. On December 4, 2017, I&E filed a Certificate of Satisfaction pursuant to 52 Pa. Code § 5.24, noting that Respondent satisfied his outstanding assessment for the 2015-2016 Fiscal Year and the civil penalty sought in I&E’s Complaint.

2016-2017 FISCAL YEAR

14. On or about February 14, 2016, the Commission mailed to Respondent an assessment report for Respondent to report his gross intrastate operating revenues for the 2015 calendar year.

15. The assessment report was accompanied by a letter, which notified Respondent that the report was to be completed and returned to the Commission on or before March 31, 2016.

16. Respondent failed to file an assessment report stating his 2015 calendar year revenues.

17. On or about September 7, 2016, the Commission mailed to Respondent, by certified mail, an assessment invoice for the July 1, 2016 to June 30, 2017 Fiscal Year

("2016-2017 Fiscal Year") that was based, in part, on Respondent's estimated revenues for the 2015 calendar year. Respondent's assessment was \$4,140.

18. Accompanying the assessment invoice was a notice that informed Respondent that he was obligated to pay the amount listed on the assessment invoice within thirty (30) days or file objections within fifteen (15) days.

19. The assessment invoice and notice of assessment were mailed to Respondent at 336 Montmorenci Road, Ridgway, PA 15853.

20. On September 19, 2016, the assessment invoice and notice of assessment were returned to the Commission by the United States Postal Service with no forwarding address.

21. On or about September 19, 2016, the Commission re-mailed to Respondent, by first class mail, the assessment invoice and notice of assessment.

22. On September 28, 2016, the assessment invoice and notice of assessment were returned to the Commission by the United States Postal Service and marked "Temporarily Away."

23. On or about October 11, 2016, the Commission re-mailed to Respondent, by first class mail, the assessment invoice and notice of assessment.

24. On October 20, 2016, the assessment invoice and notice of assessment were returned to the Commission by the United States Postal Service and marked "Temporarily Away."

25. Respondent is obligated to promptly apprise the Commission of changes to its current address pursuant to Section 1.53(d) of the Commission's regulations, 52 Pa. Code § 1.53(d).

26. The Commission was unable to effectively serve the 2016-2017 Fiscal Year Assessment Invoice and notice of assessment upon Respondent due to Respondent's failure to provide the Commission with its current address.

27. The Commission received no objections from Respondent to the assessment amount set forth in the 2016-2017 Fiscal Year Assessment Invoice.

28. Respondent failed to pay the amount of the 2016-2017 Fiscal Year Assessment Invoice.

29. The total outstanding assessment balance for Respondent related to the 2016-2017 Fiscal Year is \$4,140.

Violations

COUNT 1

30. That Respondent failed to report his gross intrastate operating revenues for the 2015 calendar year in that he did not file an assessment report for that year. If proven, this is a violation of Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b). The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$1,000.¹ This civil penalty, consistent with past Commission decisions,² is

¹ I&E anticipates that this level of penalty will provide a sufficient deterrent against future violations by Respondent.

² See *Pa. Pub. Util. Comm'n v. Juan Genet Enter., LLC t/a Safe Destinations*, Docket No. C-2014-2450660 (Order entered August 3, 2017); *Pa. Pub. Util. Comm'n v. Leo Movers & Storage, Inc.*, Docket No. C-2015-2494528 (Order entered August 3, 2017); *Pa Pub. Util. Comm'n v. Hoffman Landscaping &*

based on Respondent's unacceptable history of compliance with the Public Utility Code and Commission's regulations,³ the amount of Respondent's outstanding assessment balance related to the 2016-2017 Fiscal Year, and the need to deter future violations of the Public Utility Code and the Commission's regulations pursuant to 52 Pa. Code § 69.1201.⁴

COUNT 2

31. That Respondent failed to satisfy his 2016-2017 Fiscal Year Assessment in that he did not pay the amount due within thirty (30) days of receipt of the invoice. If proven, this is a violation of Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c). The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is 25% of the outstanding assessment balance or \$1,035.⁵ This civil penalty, consistent with past Commission decisions,⁶ is based on Respondent's unacceptable history of compliance with the Public Utility Code and Commission's regulations,⁷ the

Trucking, LLP, Docket No. C-2015-2495061 (Order entered September 21, 2017); *Pa. Pub. Util. Comm'n v. Deer Haven, LLP*, Docket No. C-2015-2498095 (Order entered October 26, 2017); *Pa. Pub. Util. Comm'n v. Reach for the Stars Limousine Serv. Inc.*, Docket No. C-2015-2499276 (Order entered October 26, 2017).

³ A review of the Commission's records for a period of three (3) years prior to the date of the filing of this Complaint demonstrates that Respondent has an unacceptable compliance history with the Commission as Respondent failed to timely pay his 2015-2016 Fiscal Year Assessment of \$5,001 to the Commission. See *supra* ¶¶ 12-13. Respondent also failed to update his current address with the Commission. See *supra* ¶¶ 20-24

⁴ The Commission promulgated a Policy Statement at 52 Pa. Code § 69.1201 as a guideline that sets forth ten factors that are to be considered when evaluating whether and to what extent a civil penalty for violating a Commission order, regulation, or statute is warranted. Among these factors are the compliance history of the regulated entity that committed the violation, the amount of the civil penalty necessary to deter future violations, and past Commission decisions in similar situations. 52 Pa. Code §§ 69.1201(c)(6), (8), (9).

⁵ I&E anticipates that this level of penalty will provide a sufficient deterrent against future violations by Respondent.

⁶ See *supra* note 2.

⁷ See *supra* note 3.

amount of Respondent's outstanding assessment balance related to the 2016-2017 Fiscal Year, and the need to deter future violations of the Public Utility Code and the Commission's regulations pursuant to 52 Pa. Code § 69.1201.

WHEREFORE, for all the foregoing reasons, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement respectfully requests that:

- (a) Respondent be ordered to pay a total of \$6,175, which consists of his outstanding assessment balance of \$4,140 and a total civil penalty of \$2,035 for the above described violations. Said payment should be made by certified check or money order, made payable to the "Commonwealth of Pennsylvania" with the docket number of this proceeding listed, and mailed to the Secretary's Bureau of the Commission;
- (b) Respondent be directed to file assessment reports on a going-forward basis;
- (c) Respondent be directed to update his address with the Commission; and
- (d) If payment of the assessment and civil penalty is not made, the Bureau of Investigation and Enforcement requests that:
 - (1) the Commission issue an Order to cancel the Certificate of Public Convenience issued to Respondent;
 - (2) this matter be referred to the Pennsylvania Office of Attorney General for appropriate action; and

(3) the Commission certify automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Myers', written in a cursive style.

Kourtney L. Myers
Prosecutor

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.705.4366
komyers@pa.gov

Date: January 10, 2018

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

v.

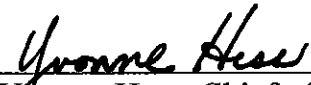
William D. Mercer Jr.

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: Docket No. C-2018-
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VERIFICATION

I, Yvonne Hess, Chief of Finance and Assessments, Bureau of Administrative Services, Finance and 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 10, 2018



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

v.

William D. Mercer Jr.

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: Docket No. C-2018-
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CERTIFICATE OF SERVICE

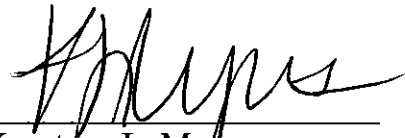
I hereby certify that I have this day served a true copy of the foregoing Complaint upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by Certified Mail:

William D. Mercer Jr.
336 Montmorenci Road
Ridgway, PA 15853

Notification by First Class Mail:

William D. Mercer Jr.
169 Peaceful Way
Brockway, PA 15824



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.705.4366
komyers@pa.gov

Dated: January 10, 2018