



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

July 17, 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-2018-2641950

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,

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

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.	:	Docket No. C-2018-2641950
	:	
William D. Mercer Jr.,	:	
Respondent	:	

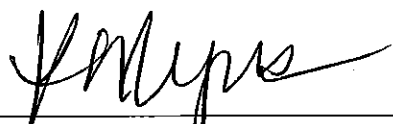
NOTICE TO PLEAD

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.



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 705-4366
komyers@pa.gov

Dated: July 17, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2018-2641950
	:	
William D. Mercer Jr.,	:	
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 William D. Mercer Jr. (“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 January 10, 2018 by filing a Complaint.
2. On January 10, 2018, the Complaint was served by certified mail to Respondent at 336 Montmorenci Road, Ridgway, PA 15853.
3. On January 10, 2018, I&E also served the Complaint by first class mail to Respondent at 169 Peaceful Way, Brockway, PA 15824.
4. These are the last known mailing addresses that Respondent provided to the Commission.
5. On January 22, 2018, the Complaint served by certified mail was returned to the Commission by the United States Postal Service and was marked as “Forward

Time Exp; Rtn to Send” with a forwarding address for Respondent at 169 Peaceful Way, Brockway, PA 15824-2947.

6. There is no record that the Complaint served by first class mail was returned to the Commission.

7. On January 23, 2018, the Complaint was re-served to Respondent by certified mail at 169 Peaceful Way, Brockway, PA 15824.

8. On February 21, 2018, the Complaint was returned to the Commission by the United States Postal Service and was marked as “Return to Sender; Unclaimed; Unable to Forward.”

9. On February 28, 2018, the Complaint was re-served to Respondent by certified mail at 169 Peaceful Way, Brockway, PA 15824.

10. On March 28, 2018, the Complaint was returned to the Commission by the United States Postal Service and was marked as “Return to Sender; Unclaimed; Unable to Forward.”

11. Since the Commission was unable to serve Respondent at his last known mailing addresses, I&E published the Complaint in the *Pennsylvania Bulletin* on May 26, 2018 pursuant to the Commission’s regulation at 52 Pa. Code § 1.53(e) (related to alternative service). *See* 48 Pa. Bull. 3188 (May 26, 2018).

12. Attached to the Complaint was a Notice advising Respondent that he must file an Answer within twenty (20) days.

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

14. Respondent did not file an Answer to the 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. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

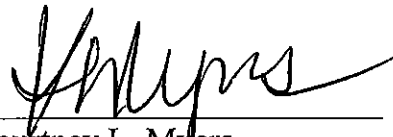
17. Respondent did not pay his outstanding assessment balance of \$4,140 for the July 1, 2016 to June 30, 2017 Fiscal Year ("2016-2017 Fiscal Year") or the total civil penalty of \$2,035¹ that was sought in the Complaint for Respondent's failure to timely pay the assessment and file an assessment report demonstrating revenues earned during the 2015 calendar year.

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

¹ This civil penalty is based on a review of Respondent's history of compliance with the Public Utility Code and Commission regulations and orders for three years prior to the date that I&E filed its Complaint in this matter, the need to deter future violations, and prior Commission decisions in similar situations pursuant to 52 Pa. Code §§ 69.1201(c)(6), (8), and (9). Due to Respondent's unacceptable compliance history, I&E requested that Respondent pay a total civil penalty of \$2,035, which is 25% of Respondent's outstanding assessment related to the 2016-2017 Fiscal Year or \$1,035 and \$1,000 regarding Respondent's failure to file an assessment report for the 2015 calendar year.

- a. Directs Respondent to pay a total of \$6,175, which consists of his outstanding assessment of \$4,140 for the 2016-2017 Fiscal Year and the requested civil penalty of \$2,035, 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-2010-2169665 if Respondent fails to pay the total set forth in subparagraph (a), above, 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 Respondent fails to pay the total set forth in subparagraph (a), above, 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 total set forth in subparagraph (a), above, if Respondent fails to pay that total within thirty (30) days of the entry date of the Commission's Order.

Respectfully submitted,



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

Date: July 17, 2018

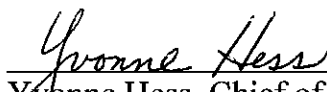
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
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	:	
William D. Mercer Jr.,	:	
Respondent	:	

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: July 17, 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,
Complainant

v.

William D. Mercer Jr.,
Respondent

Docket No. C-2018-2641950

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:

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

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



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

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Dated: July 17, 2018