



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

February 23, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Diamond Cargo Express LLC
Docket No. C-2023-3037641
I&E 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 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 black ink that reads 'Alphonso Arnold III'. The signature is written in a cursive, slightly slanted style.

Alphonso Arnold III
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 318487
(717) 787-3836
alphonarno@pa.gov

AA/jfm
Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3037641
	:	
Diamond Cargo Express LLC,	:	
Respondent	:	

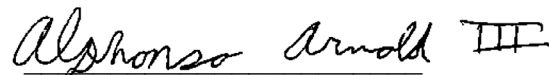
NOTICE TO PLEAD

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
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Additionally, you must serve a copy on the undersigned prosecutor.


Alphonso Arnold III
Prosecutor
PA Attorney ID No. 318487

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-3836
alphonarno@pa.gov

Dated: February 23, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3037641
	:	
Diamond Cargo Express LLC,	:	
Respondent	:	

MOTION FOR DEFAULT JUDGMENT

NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorney, and files this Motion for Default Judgment against Diamond Cargo Express LLC (“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 18, 2023, by filing an assessment-related Complaint.
2. The Complaint alleged that Respondent violated Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b), by failing to file assessment reports for the 2019 and 2020 calendar years.
3. The Complaint also alleged that Respondent violated Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c), by failing to satisfy its 2021-2022 Fiscal Year assessment in that it did not pay the amount due within thirty (30) days of receipt of the assessment invoice.
4. On January 18, 2023, the Complaint was served by first-class certified mail to Respondent at Diamond Cargo Express LLC, 1728 Route 30, Clinton PA 15026, which is the last known address that Respondent provided to the Commission.

5. Attached to the Complaint was a Notice advising Respondent that it must file an Answer within twenty (20) days of service of the Complaint.

6. 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.

7. The twenty (20) days to file an Answer to the Complaint expired on February 7, 2023.

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

9. 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).

10. 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).

11. Respondent did not pay the outstanding assessment balance of \$14 for the 2021-2022 Fiscal Year or the civil penalty of \$50¹ that was sought in the Complaint for Respondent's failure to pay the 2021-2022 Fiscal Year assessment within thirty days of receipt of the assessment invoice.

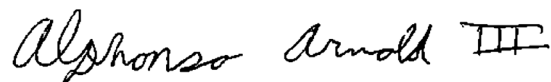
¹ I&E anticipates that this level of penalty will provide a sufficient deterrent against future violations by Respondent.

12. Respondent did not pay the civil penalty of \$500² that was sought in the Complaint for Respondent's failure to report its gross intrastate operating revenues for the 2019 and 2020 calendar years in failing to file annual assessment reports for those years.

13. I&E respectfully requests that the Commission enter an Order against Respondent that:

- a. Directs Respondent to pay a total of \$564, which consists of its outstanding 2021-2022 Fiscal Year assessment balance of \$14 and the requested cumulative civil penalty of \$550, within thirty (30) days of the entry date of the Commission's Order;
- b. Directs Respondent to file assessment reports on a going-forward basis;
- c. Directs the Bureau of Technical Utility Services to cancel Respondent's Certificate of Public Convenience at A-00121989 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;
- d. Directs the Bureau of Administration, 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,



Alphonso Arnold III
Prosecutor
PA Attorney ID No. 318487

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-3836
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Date: February 23, 2023

² See *supra* note 1.

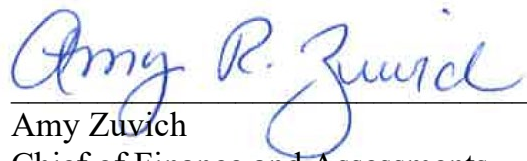
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Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3037641
	:	
Diamond Cargo Express LLC,	:	
Respondent	:	

VERIFICATION

I, Amy Zuvich, Chief of Finance and Assessments, Bureau of Administration, 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: February 23, 2023



Amy Zuvich
Chief of Finance and Assessments
Bureau of Administration
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

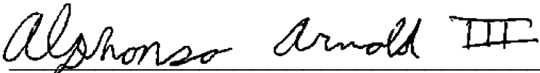
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Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
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	:	
Diamond Cargo Express LLC,	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

Served via First-Class Certified Mail

Diamond Cargo Express LLC
1728 Route 30
Clinton, PA 15026



Alphonso Arnold III
Prosecutor
PA Attorney ID No. 318487

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-3836
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Dated: February 23, 2023