

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2023-3037385
	:	
Jerome McCree, Sr.	:	

**SECOND INTERIM ORDER**

Deny Preliminary Objections, Deny Motion to Strike  
And  
Schedule Initial Hearing

This Interim Order denies the Preliminary Objections filed by the Commission’s Bureau of Investigation and Enforcement, denies the Motion to Strike filed by the Commission’s Bureau of Investigation and Enforcement and grants Respondent’s request for an initial hearing.

On July 6, 2023, the Commission’s Bureau of Investigation and Enforcement (BIE or Complainant) filed a Formal Complaint (Complaint) against Jerome McCree, Sr. (Respondent or Mr. McCree) with the Pennsylvania Public Utility Commission (Commission). Complainant alleging Mr. McCree operated a vehicle for the purpose of transporting passengers for compensation, in call or demand service, within the Commonwealth of Pennsylvania without first receiving a certificate or authority from the Commission, in violation of 66 Pa.C.S. § 1101. BIE requested payment of a \$1,000 civil penalty and such other remedy as the Commission may deem appropriate including possible suspension of Respondent’s vehicle registration.

On July 6, 2023, the Commission served the Complaint on Respondent via Certified Mail, Return Receipt Requested, through the United States Postal Service (USPS), by mailing the same to 232 Chalfont Street, Pittsburgh, Pennsylvania 15210 (McCree address).

On August 10, 2023, the USPS returned the Complaint, noting the Complaint was unclaimed and unable to be forwarded.

On August 23, 2023, the Commission re-served the Complaint upon Respondent by mailing the same to McCree Address. The Complaint was not returned to the Commission by the USPS as undeliverable.

On September 18, 2023, Respondent filed an unsigned letter which stated:  
I, Jerome B McCree Sr., request a hearing before an administrative judge.  
At this time, I will not make any legal arguments against the allegations until I seek legal counsel.

On November 27, 2023, Respondent filed an unsigned letter which stated:  
I, Jerome B McCree Sr., request a hearing before an administrative judge.  
At this time, I will not make any legal arguments against the allegations until I seek legal counsel.

On December 28, 2023, Complainant filed and served Preliminary Objections (Preliminary Objections) on Complainant, which were endorsed with a Notice to Plead. Complainant argued Mr. McCree failed to advise the Commission or BIE what was the nature of his defense, failed to admit or deny any allegation of the Complaint and failed to state concisely the facts and matters of law upon which Mr. McCree relied upon in filing his undated responses. BIE asserted the undated responses were not “pleadings” because the documents failed to include all five required elements for an answer to a formal complaint.

Further, BIE contended, even if the presiding officer finds any of the undated and unsigned responses is a “pleading,” BIE requested the Commission determine that the responses fail to contain sufficient specificity, pursuant to 52 Pa. Code §§ 5.101(a)(3) and (c).<sup>1</sup> BIE

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<sup>1</sup> Provisions at 52 Pa. Code § 5.101, preliminary objections are available to any party and must state specifically the legal and factual grounds relied upon when requesting relief from the Commission. The six specified grounds upon which preliminary objections must be based include in sufficient specificity of a pleading and legal insufficiency of a pleading.

requested the Commission issue a decision that grants the Preliminary Objections for Legal Insufficiency and Insufficient Specificity and direct Respondent (Mr. McCree) to file an answer that conforms to the requirements of 52 Pa. Code § 5.61.

On January 10, 2024, Respondent filed an unsigned letter which stated:  
I, Jerome B McCree Sr., request a hearing before an administrative judge.  
At this time, I will not make any legal arguments against the allegations until  
I seek legal counsel.

On March 4, 2024, the Office of Administrative Law Judge assigned this proceeding to the presiding officer as a Motion Judge for purposes of ruling on Complainant's Preliminary Objections.

On March 8, 2024, the presiding officer issued the First Interim Order requiring Mr. McCree to file a more specific Answer. The presiding officer noted Mr. McCree is unrepresented by counsel but individuals such as Mr. McCree are not required to obtain the services of an attorney. The presiding officer noted individuals are permitted to represent themselves before the Commission in a formal proceeding, such as this case,<sup>2</sup> but the fact Mr. McCree has not retained an attorney (more than nine months after the Complaint was filed) is insufficient grounds to delay a hearing or to justify his failure to provide a more specific answer.

The First Interim Order required Respondent, Mr. McCree, to file a specific Answer, with the Commission's Secretary's Bureau, on or before 4:00 p.m. on Friday, April 12, 2024. The First Interim Order stated an initial hearing would be scheduled if Mr. McCree provided a specific Answer on or before April 12, 2024. The First Interim Order noted if Mr. McCree did not file a specific Answer on or before April 12, 2024, the presiding officer might grant the requests of BIE without an initial hearing.

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<sup>2</sup> 52 Pa. Code § 1.21.

No response or communication, including an Answer, was received from Mr. McCree after January 10, 2024.

On April 22, 2024, BIE filed and served a Motion for Default Judgment (Default Motion), with a Notice to Plead, upon Mr. McCree. In the Default Motion, BIE asserted it filed Preliminary Objections against Mr. McCree and alleged Respondent's earlier responses were legally insufficient and lacked sufficient specificity. BIE contended Mr. McCree must respond within 20 days by filing an answer and, if failing to do so, the presiding officer should grant the Default Motion against Respondent. In its Default Motion, BIE notes the Commission has authority pursuant to 66 Pa. C.S. § 3301 to impose civil penalties up to \$1,000 on any utility's failure to comply with the Commission's regulations or the Public Utility Code. However, BIE did not provide a justification for its request that the Commission assess a fine of \$1,000 against Respondent.

On May 7, 2024, Mr. McCree filed but did not serve a letter, dated May 6, 2024, consisting of 4 paragraphs. The letter indicated Mr. McCree was aware of BIE's request for a fine of \$1,000 but asserted the notice did not provide a detailed explanation of the grounds for the fine. Mr. McCree requested assistance to secure a hearing. Mr. McCree requested a hearing so he could review the evidence presented against him, cross-examine evidence and argue the merit and legality of the impending fine.

On May 20, 2024, the presiding officer issued a letter to BIE, with a copy to Respondent, notifying BIE that the presiding officer learned about Mr. McCree's *ex parte* letter dated May 7, 2024, until checking the official docket in this proceeding on May 17, 2024. The presiding officer granted BIE time in which to object to or comment on the letter dated May 7, 2024.

Thereafter, on May 22, 2024, BIE filed a Motion to Strike Respondent's Document (Motion to Strike), with a Notice to Plead, which concerned the document filed by Respondent on May 7, 2024. In the Motion to Strike, BIE noted Respondent to date had not filed a meaningful answer to the Complaint, despite repeated requests from BIE and the Interim

Order dated March 8, 2024. BIE asserted the letter filed on May 7, 2024, failed to comply with the Commission's regulation by not containing a Certificate of Service and by not being served upon BIE. Further, BIE argued the Default Motion should be granted because Mr. McCree's letter failed to raise any questions of law or fact in response to the Default Motion. BIE asserted Ms. McCree offered no explanation or cause for his failure to file an answer that complies with the Commission's regulations. BIE requested an initial decision that granted the Motion to Strike, grant the Default Motion, sustain the Complaint, order and assess a civil penalty of \$1,000 and refer toe matter to the Pennsylvania Office of Attorney General for collection of outstanding amounts due and any other appropriate action.

This matter is now ripe for disposition.

### Discussion

For reasons that follow, Complainant's Preliminary Objections, its Motion for Default Judgment and its Motion to Strike will be denied and this matter will be scheduled for a hearing.

As the party seeking affirmative relief from the Commission, Complainant (BIE) bears the burden of proving by substantial evidence they are entitled to the requested relief. 66 Pa.C.S.A. § 332(a). To satisfy this burden, Complainant must show Respondent utility is responsible or accountable for the problem described.<sup>3</sup> Complainant must show this fact to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.<sup>4</sup> Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon

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<sup>3</sup> *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. P.U.C. 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976).

<sup>4</sup> *Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

substantial evidence.<sup>5</sup> Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>6</sup>

### Preliminary Objections

The Commission's regulations make preliminary objections available to parties and allow for those objections to be filed in response to any pleading except a motion or prior preliminary objections. A party filing preliminary objections must include a notice to plead, must state specifically the legal and factual grounds relied upon and limit the objections to the seven grounds specified in 52 Pa.Code §5.101(a).

The party against whom preliminary objections are filed may file an answer to the preliminary objections but the answer must be filed within ten days of the date of service (of the preliminary objections).<sup>7</sup> Then the presiding officer will decide the preliminary objections within thirty days of the date the preliminary objection is assigned to the presiding officer.<sup>8</sup>

The Commission has the discretion to "dismiss any complaint without hearing if, in its opinion, a hearing is not necessary in the public interest."<sup>9</sup> A hearing is necessary only to resolve disputed questions of fact, and when the question presented is solely one of law, the Commission need not hold a hearing.<sup>10</sup>

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<sup>5</sup> *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S.A. § 704.

<sup>6</sup> *Norfolk & Western Railway v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

<sup>7</sup> 52 Pa.Code §5.101(f)(1).

<sup>8</sup> 52 Pa.Code §5.101(g).

<sup>9</sup> 66 Pa.C.S. §703(b).

<sup>10</sup> *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (1989). Also *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (1993).

The regulations permit any party in a contested proceeding before the Commission to file a preliminary objection to dismiss a pleading for legal insufficiency. In this case, BIE alleges the deficient pleading is the “Answer” filed by Mr. McCree. BIE also asserts judicial economy will be served by avoiding the time and expense of a hearing where no factual issue pertinent to the resolution of the case exists.<sup>11</sup> The only responses received from Mr. McCree repeatedly indicated he wanted a hearing and would provide a defense after retaining an attorney. Mr. McCree has not retained an attorney since the filing of the Complaint on July 6, 2023.

#### Requirement to File an Answer

The law requires a formal complaint to specify an act or thing done or admitted to be done or about to be done or admitted to be done by a party in violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.”<sup>12</sup> In a similar regard, an answer must respond with specificity to the allegations in a formal complaint. A respondent who fails to file an answer may be deemed in default and all relevant facts stated in the formal complaint may be deemed admitted.<sup>13</sup> Specifically, the Commission’s regulations require the answer to be in writing, to respond to the numbered paragraphs in the formal complaint, to indicate the nature of the defense and either admit or deny all material allegations of the formal complaint.<sup>14</sup> Failure to file an answer can result a respondent being deemed to have admitted to all well-pleaded allegations in the Complaint.

BIE avers the answer is insufficient as to substance and, pursuant to 52 Pa.Code §5.101(a)<sup>15</sup>, the formal complaint should be granted against Mr. McCree because all well-

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<sup>11</sup> See 52 Pa.Code §5.101(a); 66 Pa.C.S. §703(a); *Mulzet v. PPL Electric Utilities Corp.*, Docket No. C-2013-2367132 (Initial Decision dated July 22, 2013).

<sup>12</sup> See 52 Pa.Code §5.21(a); 66 Pa.C.S. §701.

<sup>13</sup> 52 Pa.Code § 5.61(a) and (c).

<sup>14</sup> 52 Pa.Code § 5.61(b).

<sup>15</sup> Pursuant to 52 Pa.Code §5.101(a)(3) and §5.101(a)(4), preliminary objections are available and may be granted due to “insufficient specificity of a pleading” or “legal insufficiency of a pleading.”

pleaded facts in the Complaint are deemed admitted by Mr. McCree's failure to file an answer. In essence, BIE, as Complainant, contends its formal complaint specifies a series of facts and a cause of action against Mr. McCree upon which the Commission can grant its requested relief because all well-pleaded facts therein are presumed to be true due to Mr. McCree's failure to object to any aspect or allegation of fact.<sup>16</sup> BIE seeks a judgment against Mr. McCree by default.

### Conclusion

In the one-year period since this proceeding began, Mr. McCree has not provided adequate responses, has not retained an attorney despite repeated statements that he wanted to speak with an attorney and has refused to comply to the presiding officer's interim orders. Everything about Respondent's conduct in this proceeding has been a flagrant disregard for the due process rights of Complainant as well as the Commission's rules and regulations, and the Public Utility Code. Further, Mr. McCree did not respond to BIE's allegation that his failure to act (i.e., file an answer) should be deemed as a default and an admission that all well-pleaded facts in BIE's Complaint are not in dispute. In addition, Mr. McCree has not disputed any allegation of fact by BIE in its Complaint.

Mr. McCree has responded consistently in only one manner: he wants a hearing where he can hear and respond to evidence. His position and request borders on a violation of the due process rights of BIE. Accordingly, any future attempt Mr. McCree makes to secure additional time to respond to the allegations and/or evidence presented by BIE will be denied because of Mr. McCree's flagrant disregard of the Commission's rules and regulations.

However, a hearing will be scheduled in this matter as soon as practicable because: (1) Mr. McCree consistently requested one; and (2) BIE neglected to justify, in its Preliminary Objections and various motions, why a requested civil penalty of \$1,000 is an appropriate sum pursuant to enumerated factors provided in 52 Pa. Code §69.1201.

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<sup>16</sup> *Balsbaugh v. Rowland*, 290 A.2d 85 (1972); *Engle v. Parkway Co.*, 439 Pa. 559, 266 A.2d 685 (1970).

Accordingly, this matter will be scheduled for an initial telephonic hearing as soon as practicable to afford BIE an opportunity to present its evidence and to justify the requested civil penalty. Mr. McCree will have an opportunity to confront the evidence, but Mr. McCree will not be permitted to delay the proceeding. Mr. McCree must come to the proceeding fully prepared to present such evidence he deems appropriate to defend himself against the allegations.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by the Bureau of Investigation and Enforcement in the above-captioned case are denied.
2. That the Complaint of the Bureau of Investigation and Enforcement against Jerome McCree, Sr., at Docket No. C-2023-3037385 will be scheduled for an initial telephonic hearing as soon as practicable.
3. That the Office of Administrative Law Judge will issue a hearing notice scheduling this matter for an initial telephonic hearing and will serve the same upon the parties.

Date: July 22, 2024

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/s/  
Katrina L. Dunderdale  
Administrative Law Judge

**C-2023-3037385 - BUR OF INVESTIGATION & ENFORCEMENT v. UNKNOWN  
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