

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                                         |   |                         |
|-----------------------------------------|---|-------------------------|
| In the Matter of Jenny Triplett, Notice | ) |                         |
| of Apparent Violation and Intent to     | ) | Case No. 19-1762-TR-CVF |
| Assess Forfeiture.                      | ) |                         |
|                                         | ) |                         |

---

**MOTION TO DISMISS**

---

**Dave A. Yost**  
Ohio Attorney General

**John H. Jones**  
Section Chief

**Werner L. Margard III**  
Assistant Attorney General  
Public Utilities Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215-3414  
614.644.8768 (telephone)  
866.818.6152 (facsimile)  
werner.margard@ohioattorneygeneral.gov

**On Behalf of the Staff of  
The Public Utilities Commission of Ohio**

December 24, 2019

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                                         |   |                         |
|-----------------------------------------|---|-------------------------|
| In the Matter of Jenny Triplett, Notice | ) |                         |
| of Apparent Violation and Intent to     | ) | Case No. 19-1762-TR-CVF |
| Assess Forfeiture.                      | ) |                         |
|                                         | ) |                         |

---

**MOTION TO DISMISS**

---

The Staff of the Public Utilities Commission of Ohio (Staff) hereby moves to dismiss this case for good cause as shown in the memorandum in support below.

Respectfully submitted,

**Dave A. Yost**  
Ohio Attorney General

**John H. Jones**  
Section Chief

*/s/ Werner L. Margard III*

---

**Werner L. Margard III**  
Assistant Attorney General  
Public Utilities Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215-3414  
614.644.8768 (telephone)  
866.818.6152 (facsimile)  
werner.margard@ohioattorneygeneral.gov

**On Behalf of the Staff of  
The Public Utilities Commission of Ohio**

## **MEMORANDUM IN SUPPORT**

Staff moves to dismiss this case because it is an improper attempt to re-open a matter that is already the subject of a final Commission order. As shown below, Respondent Jenny Triplett failed to avail herself of opportunities to contest the violation and, consequently, the Commission found the Respondent in default and referred the assessed forfeiture to the Attorney General's office for collections. Respondent should not be permitted to now seek a hearing on the same violation.

On March 15, 2019, a vehicle driven by Respondent was inspected by the Ohio State Highway Patrol. Respondent was issued an inspection report noting three violations, including a violation of 49 C.F.R. 391.11(B)(4) (driver not physically qualified; failure to wear corrective lenses). A Notice of Apparent Violation and Intent to Assess Forfeiture was sent to Respondent on March 19, 2019. That Notice contained detailed instructions on how she could request a conference. Respondent obviously received the Notice, as she requested a conference. She was then sent a Notice scheduling the conference for April 23, 2019. The conference was held that date, and was conducted by Staff Compliance Officer Cheryl Sheets.

Following the conference, a Notice of Preliminary Determination (NPD) was issued to Respondent on May 3, 2019 and served in accordance with the Commission's rules. It was sent to the same address to which the Notice of Apparent Violation and the notice scheduling the conference were sent. A copy of this notice is attached as Exhibit A. The NPD informed Respondent that she had thirty days in which to either pay the assessed

forfeiture of \$250.00 or request an administrative hearing. The Notice contained detailed instructions on how she could request an administrative hearing.

Respondent neither paid the forfeiture nor requested a hearing within the thirty-day period. On July 17, 2019 the Commission issued a Finding and Order specifically finding Ms. Triplett to be in default and liable for the full assessed forfeiture amount of \$250.00.<sup>1</sup> Ms. Triplett was granted a final opportunity to demonstrate why she was not in default, and directed to show cause in writing by August 6, 2019 why the matter should not be referred to collection. The Respondent was served with the Finding and Order at the same address to which all of the previous notices had been sent. Once again, Respondent did not act within the time allowed.

On August 8, 2019, Staff sent Respondent a letter advising her that the forfeiture remained unpaid.<sup>2</sup> A copy of the July 17, 2019 Finding and Order was attached to the letter. Once again, this letter was sent to the same, correct address. And, once again, Respondent failed to act. It was not until August 29, 2019 that Respondent filed a request for an administrative hearing.

As shown by these facts, Respondent repeatedly ignored notices that were sent to her at her proper address. All notices, including the Notice of Preliminary Determination, were sent to the same address. Although Ms. Triplett responded to the Notice of Intent, the notice scheduling the conference, and the Unpaid Civil Forfeiture notice, she failed to respond to

---

<sup>1</sup> *In the Matter of the Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14 of the Ohio Administrative Code*, Case No. 19-1175-TR-CVF (Finding and Order) (Jul. 17, 2019)

<sup>2</sup> Letter dated August 28, 2019 from John D. Williams to Jenny Triplett (copy attached as Exhibit B)

either the Notice of Preliminary Determination or the Commission's July 17, 2019 "show cause" order. She was afforded ample opportunity to contest the violation and forfeiture but failed to do so in a timely manner.

On December 17, 2019, Respondent Jenny Triplett filed an "Entry" with the Commission's Docketing Division. Respondent's filing is in the nature of a motion. Specifically, Respondent requests that the hearing be removed from the Commission's calendar, a "rehearing," and that the "citation be dismissed." Staff respectfully submits that Respondent was provided with her full due process rights, which she ignored to her peril. It is the case – the request for hearing – that should be dismissed, not the forfeiture assessment.

The Commission's July 17, 2019 Finding and Order was a final order. Upon entry of that decision, Respondent had the statutory right to file an application for rehearing and, if unsuccessful, an appeal to the Court of Appeals for Franklin County. R.C. 4903.10; 4923.99(C). Therefore, that judgment is now **final** and Respondent **may not** use a "back door" to avoid the consequences of her failure to act promptly. See *In re Complaint of Pilkington*, 145 Ohio St.3d 125, 2015-Ohio-4797 at ¶35.

In sum, there is already a final Commission decision concerning the same violation at issue here. Respondent should not be permitted to now contest that violation. The Commission should dismiss this case, and refer the matter to the Ohio Attorney General for collection.

Respectfully submitted,

**Dave A. Yost**  
Ohio Attorney General

**John H. Jones**  
Section Chief

*/s/ Werner L. Margard III*

---

**Werner L. Margard III**

Assistant Attorney General

Public Utilities Section

30 East Broad Street, 16<sup>th</sup> Floor

Columbus, Ohio 43215-3414

614.644.8768 (telephone)

866.818.6152 (facsimile)

werner.margard@ohioattorneygeneral.gov

**On Behalf of the Staff of**  
**The Public Utilities Commission of Ohio**

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Motion to Dismiss** submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named party via United States mail, this 24<sup>th</sup> day of December, 2019.

/s/ Werner L. Margard III

**Werner L. Margard III**  
Assistant Attorney General

### **Party of Record:**

**Jenny Triplett**  
4171 Mistymorn Way  
Powder Springs, GA 30127  
678.229.8773 (telephone)

*Pro Se Respondent*



**Public Utilities  
Commission**

Sam Randazzo, Chairman

**Commissioners**

M. Beth Trombold  
Lawrence K. Friedman  
Dennis P. Deters  
Daniel R. Conway

May 3, 2019

Exhibit A

JENNY TRIPLETT  
4171 MISTYMORN  
POWDER SPRINGS, GA 30127

RE: **NOTICE OF PRELIMINARY DETERMINATION**  
Case No. OH0616006191D

Dear Sir or Madam:

On 03/15/2019, a vehicle operated by BULLETFAST LLC, and driven by, JENNY TRIPLETT was inspected within the state of Ohio. As a result of discovery of the following violation(s) of the Commission's rules, Staff of the Commission timely notified JENNY TRIPLETT pursuant to rule 4901:2-7-07, Ohio Administrative Code (OAC), that it intended to assess a civil forfeiture against JENNY TRIPLETT in the following amount:

| <u>CODE</u>  | <u>GROUP</u> | <u>VIOLATION</u>                | <u>FORFEITURE</u> |
|--------------|--------------|---------------------------------|-------------------|
| 391.11B<br>4 | Group 4      | Driver not physically qualified | \$ 250.00         |

**Original Amount Due:** \$250.00

A conference was conducted pursuant to Rule 4901:2-10, OAC, at which JENNY TRIPLETT had a full opportunity to present reasons why the violation(s) did not occur as alleged, mitigating circumstances regarding the amount of any forfeiture, and any other information relevant to the action proposed to be taken by the Staff.

As a result of the conference, staff has made a preliminary determination that the commission should assess a civil forfeiture against JENNY TRIPLETT in the following amount:

| <u>CODE</u>  | <u>GROUP</u> | <u>VIOLATION</u>                | <u>FORFEITURE</u> |
|--------------|--------------|---------------------------------|-------------------|
| 391.11B<br>4 | Group 4      | Driver not physically qualified | \$ 250.00         |

**New Amount Due:** \$250.00

180 East Broad Street  
Columbus, Ohio 43215-3793

(614) 466-3016  
www.PUCO.ohio.gov



Within 30 days of this notice you must either; 1) pay the assessed civil forfeiture or, 2) submit a written Request for an Administrative Hearing.

Failure to comply with either option above shall constitute a waiver of your right to further contest the violation(s) and will conclusively establish the occurrence of the violation(s). Such failure shall also constitute a waiver of your right to further contest liability to the State of Ohio for the civil forfeiture described in the notice and will result in the forfeiture amount being referred to the Ohio Attorney General's Office for collection. In addition, your Ohio operating authority and/or commercial driving privileges may be sanctioned as permitted by law.

Please consult the enclosed instruction sheet for additional information regarding this "Notice of Preliminary Determination."

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Williams", is positioned above the printed name.

John D. Williams, Director  
Transportation Department

cc: Cheryl Streets



# INSTRUCTION SHEET

## NOTICE OF PRELIMINARY DETERMINATION

Please read these instruction sheets carefully. They contain information about your rights and responsibilities in regard to this "Notice of Preliminary Determination."

You have received a "Notice of Preliminary Determination" as described in 4901:2-7-12, Ohio Administrative Code (OAC). Within 30 days of this notice you must either; 1) pay the assessed civil forfeiture or, 2) submit a written Request for an Administrative Hearing. **If you do not pay the forfeiture or request a hearing within 30 days of this notice, your case will be placed in our default process. Additionally, your Ohio operating authority and/or your commercial driving privileges may be sanctioned as permitted by law.**

### How to pay the forfeiture

**Online** <https://public.puco.ohio.gov/s/>  
Enter the case number and PIN located on the enclosed invoice.

**Mail** Public Utilities Commission of Ohio  
Attn: Fiscal Section  
180 E. Broad Street, 4<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

Send check/money order (no foreign checks/money orders) made payable to "**Public Utilities Commission of Ohio**". To ensure proper credit, write the case number on the face of the check or money order.

\* Payments cannot be completed by telephone

### How to make a Request for an Administrative Hearing

If you wish to further contest the violations described in this notice, you should file a "Request for an Administrative Hearing" with the Commission's Docketing Division as described in Rule 4901:2-7-13, OAC.

Your "Request for an Administrative Hearing" must be in writing and must contain the case number found at the top of the "Notice of Preliminary Determination." Also, please include the contact name, address, and telephone number of the person to whom further communications should be directed. The request shall be signed by the Respondent or the Respondent's authorized representative. A copy of the "Notice of Preliminary Determination" must be attached to your request.

Your "Request for an Administrative Hearing" must be mailed or hand-delivered within 30 days of this notice to the following address:

Public Utilities Commission of Ohio  
ATTN: Docketing Division  
180 E. Broad Street, 11<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

### Failure to submit a Request for Administrative Hearing

If you do not serve a timely "Request for an Administrative Hearing" in the manner described above, you will forfeit your right to further contest the violations described in this notice and the occurrence of the violations will be conclusively established. Such failure shall also constitute a waiver of your right to further contest liability to the state of Ohio for the civil forfeiture described in this notice and will result in the forfeiture amount being referred to the Ohio Attorney General's Office for collection. Also, your Ohio operating authority and/or your commercial driving privileges may be sanctioned as permitted by law.

### Codes, Violation Groups, and Forfeiture Amounts

"Code" in this notice identifies the rule violated. Numbers in a 100 or 300 series refer to specific sections of the Hazardous Materials Regulations or the Federal Motor Carrier Safety Regulations located in Title 49 of the Code of Federal Regulations (CFR). Some section numbers may have suffixes beyond those appearing in the CFR. These are used for internal data collections purposes. Codes in other formats refer to violations of Ohio's statutes or regulations.

"Violations Group" identifies the assigned numerical group (1-4) for the violation for purposes of calculating the civil forfeiture. Section 4923.99, Ohio Revised Code (ORC) authorizes the Public Utilities Commission of Ohio to assess civil forfeiture up to \$25,000 for each day of each violation. The amount of any forfeiture is dependent upon the nature, gravity, circumstances, and extent of the violation, the offender's degree of culpability for the violation, and the offender's violation history. "Total Amount Due" is the total amount of the civil forfeiture assessed for all violations described in this notice.



## **ATTENTION DRIVER**

### **Potential Disqualification**

If the roadside inspection leading to this letter identified an alleged violation of one or more of the below noted regulations, your CDL may be disqualified. If you are convicted of violating any of these regulations, notice of the conviction will be forwarded to the Ohio Bureau of Motor Vehicles (BMV). The BMV may disqualify you from operating a commercial motor vehicle for a minimum of 60 days. Any BMV sanction is **in addition to** sanctions imposed by the Public Utilities Commission of Ohio (PUCO).

|               |               |                                                                                                                                                                                   |
|---------------|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 177.804B1     | 177.804(b)(1) | Failure to comply with 49 CFR Section 392.12 Complying With Safe Clearance Requirements For Highway-Rail Grade Crossings.                                                         |
| 177.804B2     | 177.804(b)(2) | Failure to comply with 49 CFR Section 392.80 Texting While Operating a CMV When Transporting Select Agents or Toxins or HM Requiring Placarding.                                  |
| 177.804B3     | 177.804(b)(3) | Failure to comply with 49 CFR Section 392.82 Using a Cell Phone While Operating a CMV When Transporting Select Agents or Toxins or HM Requiring Placarding.                       |
| 177.804C      | 177.804(c)    | Failure to comply with 49 CFR Section 392.82 Using a Handheld Mobile Phone While Operating a CMV When Transporting Select Agents or Toxins or HM Requiring Placard.               |
| 2-5-07D       | 392.2         | Operating a CMV after Driver or Vehicle declared out of service.                                                                                                                  |
| 383.23A2      | 383.23(a)(2)  | Operating a CMV without a CDL.                                                                                                                                                    |
| 383.51A       | 383.51(a)     | Driving a CMV while disqualified from holding a CDL.                                                                                                                              |
| 383.51A-NSIN  | 383.51(a)     | Driving a CMV while CDL is suspended for a non-safety-related reason and in the state of driver's license issuance.                                                               |
| 383.51A-NSOUT | 383.51(a)     | Driving a CMV while CDL is suspended for a non-safety-related reason and outside the state of driver's license issuance.                                                          |
| 383.51A-SIN   | 383.51(a)     | Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance.                                                            |
| 383.51A-SOUT  | 383.51(a)     | Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance.                                                     |
| 383.91A       | 383.91(a)     | Operating a CMV with improper CDL group.                                                                                                                                          |
| 383.93B1      | 383.93(b)(1)  | No double or triple trailer endorsement on CDL when required.                                                                                                                     |
| 383.93B2      | 383.93(b)(2)  | No passenger vehicle endorsement on CDL when required.                                                                                                                            |
| 383.93B3      | 383.93(b)(3)  | No tank vehicle endorsement on CDL when required.                                                                                                                                 |
| 383.93B4      | 383.93(b)(4)  | No hazardous materials endorsement on CDL when required.                                                                                                                          |
| 383.93B5      | 383.93(b)(5)  | Operating a School Bus without a school bus endorsement as described in 383.93(b)(5).                                                                                             |
| 391.15A       | 391.15(a)     | Driving a CMV while disqualified.                                                                                                                                                 |
| 391.15A-NSIN  | 391.15(a)     | Driving a CMV while disqualified. Suspended for non-safety-related reason and in the state of driver's license issuance.                                                          |
| 391.15A-NSOUT | 391.15(a)     | Driving a CMV while disqualified. Suspended for a non-safety-related reason and outside the state of driver's license issuance.                                                   |
| 391.15A-SIN   | 391.15(a)     | Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of drivers license issuance.                                                    |
| 391.15A-SOUT  | 391.15(a)     | Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance.                                            |
| 392.10A1      | 392.10(a)(1)  | Failure to stop at railroad crossing - Bus transporting passengers.                                                                                                               |
| 392.10A2      | 392.10(a)(2)  | Failure to stop at railroad crossing - CMV transporting Division 2.3 Chlorine.                                                                                                    |
| 392.10A3      | 392.10(a)(3)  | Failure to stop at railroad crossing - CMV requiring display of HM placards.                                                                                                      |
| 392.10A4      | 392.10(a)(4)  | Failure to stop at railroad crossing - HM Cargo Tank vehicle.                                                                                                                     |
| 392.11        | 392.11        | Commercial Vehicle failing to slow down approaching a railroad crossing.                                                                                                          |
| 392.12        | 392.12        | No Driver of a Commercial Motor Vehicle Shall Drive Onto a Highway-Rail Grade Crossing Without Having Sufficient Space to Drive Completely Through the Crossing Without Stopping. |
| 392.4A        | 392.4(a)      | Driver on duty and under the influence of, or using a narcotic drug / amphetamine, which renders the driver incapable of safe operation.                                          |
| 392.5A2-UI    | 392.5(a)(2)   | Operating a CMV while under the influence of an intoxicating beverage regardless of its alcohol content.                                                                          |
| 392.5C2       | 392.5(c)(2)   | Violating OOS order pursuant to 392.5(a)/(b) - Alcohol prohibitions.                                                                                                              |
| 392.80A       | 392.80(a)     | Driving a commercial motor vehicle while Texting.                                                                                                                                 |
| 392.82A1      | 392.82(a)(1)  | Using a hand-held mobile telephone while operating a CMV.                                                                                                                         |
| 395.13D       | 395.13(d)     | Driving after being declared out-of-service for HOS violation(s).                                                                                                                 |
| 396.9C2       | 396.9(c)(2)   | Operating an out-of-service vehicle.                                                                                                                                              |

Federal regulations define "conviction" as, "An un-vacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an un-vacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.





# Public Utilities Commission

Sam Randazzo, Chairman

## Commissioners

M. Beth Trombold  
Lawrence K. Friedeman  
Dennis P. Deters  
Daniel R. Conway

JENNY TRIPLETT

4171 MISTYMORN  
POWDER SPRINGS, GA 30127

Invoice #: 19-00011146

Date: 04-30-2019

Due Date: 05-30-2019

PIN #: 614A

2019

| Item #            | Type                           | Description                     | Amount Due |
|-------------------|--------------------------------|---------------------------------|------------|
| INVD-0013437      | Civil Forfeiture Non<br>HazMat | Driver not physically qualified | \$ 250.00  |
| Payments Received |                                |                                 | \$ 0.00    |
| Total Amount Due  |                                |                                 | \$ 250.00  |

Please visit <https://community.puco.ohio> to make your online payments.

Questions concerning this invoice should be addressed to our call center at 1-800-686-7826.

---

(Remittance for mailed check payment)

Please make checks payable to:

Public Utilities Commission of Ohio  
180 East Broad Street  
4<sup>th</sup> Floor Finance  
Columbus, OH 43215

JENNY TRIPLETT

4171 MISTYMORN  
POWDER SPRINGS, GA 30127

Invoice #: 19-00011146

Date: 04-30-2019

Due Date: 05-30-2019





**Public Utilities  
Commission**

Sam Randazzo, Chairman

**Commissioners**

M. Beth Trombold  
Lawrence K. Friedeman  
Dennis P. Deters  
Daniel R. Conway

August 8, 2019

Exhibit B

JENNY TRIPLETT  
4171 MISTYMORN  
POWDER SPRINGS, GA 30127

RE: **Unpaid Civil Forfeiture**  
Case No: OH0616006191D  
PIN #: Gw2eiJEN  
Docketing No: 19-1175-TR-CVF

Dear Sir or Madam:

As a result of the violations at issue in the case referenced above, you were notified that a civil forfeiture of \$250.00 was assessed against you. Of the civil forfeiture amount assessed, a balance of \$250.00 remains unpaid. Enclosed is a copy of an order of the Public Utilities Commission of Ohio, ordering you to pay, by **08/16/2019**, the forfeiture amount.

You may make payment online at: <https://www.puco.ohio.gov/sc/mcos/>. You will need your case number and PIN located at the top of this document. Otherwise, your payment may be made by check or money order payable to "Public Utilities Commission of Ohio," and may be mailed to the PUCO at:

Public Utilities Commission of Ohio  
Attn: CF Processing  
180 E. Broad Street, 4th Floor  
Columbus, Ohio 43215-3793

**In order to ensure proper credit, you must write the case number referenced above on the face of the check or money order.** Questions regarding this matter may be directed to the Compliance Division at (614) 466-0351.



Failure to pay the civil forfeiture by the deadline will result in the forfeiture amount being referred to the Ohio Attorney General's office for collection and may result in additional sanctions of your Ohio operating authority and/or driving privileges.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Williams". The signature is fluid and cursive, with the first name "John" being the most prominent part.

John D. Williams, Director  
Transportation Department

Enclosure



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/24/2019 9:30:34 AM**

**in**

**Case No(s). 19-1762-TR-CVF**

Summary: Motion to Dismiss electronically filed by Mrs. Kimberly M Naeder on behalf of  
PUCO