



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

IN REPLY PLEASE  
REFER TO OUR FILE  
A-2009-2148204

June 25, 2010

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

Re: A-2009-2148204

Re: Application of Kennedy Transfer, Inc., for the right to transport, as a common carrier, by motor vehicle, household goods in use, which is to be a transfer of all household goods in use rights authorized under the certificate issued at A-00089629 to Robert R. Kennedy and Lois J. Kennedy, d/b/a Kennedy Transfer, subject to the same limitations and conditions.

The Bureau of Transportation & Safety's Nunc Pro Tunc Reply to Petition for Reconsideration

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.572, the Bureau of Transportation and Safety has the right to file a Reply to the above-captioned Petition for Reconsideration that was served on this Commission on May 28, 2010.

Enclosed, please find the Bureau of Transportation and Safety's Reply to the above Petition for Reconsideration. It is verified, pursuant to 52 Pa. Code §1.36, and a Certificate of Service is attached, pursuant to 52 Pa. Code §1.57 and §1.58.

Respectfully submitted,

Heidi Wushinske  
Assistant Counsel  
Law Bureau  
For Bureau of Transportation and Safety

Enclosure

Pc: Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services and Enforcement Division

Robert Bingaman, Compliance Office Manager  
Motor Carrier Services and Enforcement Division

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SECRETARY'S BUREAU

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**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Re: Application of Kennedy Transfer, Inc., for the right to transport, as a common carrier, by motor vehicle, household goods in use, which is to be a transfer of all household goods in use rights authorized under the certificate issued at A-00089629 to Robert R. Kennedy and Lois J. Kennedy, d/b/a Kennedy Transfer, subject to the same limitations and conditions.	:	Docket No. A-2009-2148204
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**NUNC PRO TUNC REPLY TO  
PETITION FOR RECONSIDERATION**

AND NOW, comes the Bureau of Transportation and Safety (BTS), by and through its counsel, Heidi Wushinske, and files the within Reply as set forth below.

1.       BTS requests that this Reply be accepted nunc pro tunc because Petitioner failed to serve its Petition on BTS, or otherwise provide BTS with a courtesy copy of the Petition. Petitioner has had previous communications regarding this matter directly with BTS and is aware that BTS is affected. BTS only recently became aware of Petitioner's request for reconsideration of the Commission's March 26, 2010 Order approving its application. This Reply has been drafted in a timely fashion, given that BTS learned of Petitioner's filing well after the fact. Therefore, BTS respectfully requests that its Reply be accepted nunc pro tunc.
  
2.       Petitioner, Kennedy Transfer, Inc., A-2009-2148204, advertises a principal place of business at 63 Kennedy Lane, Du Bois, Clearfield County, PA 15801.

3. On October 27, 2009, Petitioner filed a transfer application for the right to transport, as a common carrier by motor vehicle, household goods in use. This application was a transfer of all the household goods in use rights authorized under the certificate issued at A-00089629 to Robert R. Kennedy and Lois J. Kennedy, d/b/a Kennedy Transfer, subject to the same limitations and conditions.
4. By letter dated December 3, 2009, BTS rejected the Petitioner's original October 30, 2009 application for transfer and the accompanying "Appendix A" for failure to sufficiently define the authority sought for transfer as required by Form PUC 190, section 12a. Specifically, BTS advised the Petitioner that it would be required to restate the rights it believed were transferable and not simply identify all rights presently held by the transferor. This request was made due to the intermingling of both property and household goods rights in the transferor's authority. In this letter, BTS also advised the Petitioner that property rights were non-transferable.
5. In response to this request, Petitioner filed an extract of its household goods rights that it believed accurately reflected its certificate. This extract is attached to Petitioner's Petition as Exhibit "B."
6. In its extract, Petitioner inaccurately restated the rights at A-00089629, F.1. Petitioner provided the following restatement of the right in question, "[t]o transport *household goods in use* between points in the city of DuBois, Clearfield County, and within ten (10) miles by the usually traveled highways of the limits of said city." The actual ordering paragraph for A-00089629, F.1 specifically states, "[t]o transport *property* between points in the city of DuBois, Clearfield County, and within ten (10) miles by the usually traveled highways of the limits of said city" (emphasis added).
7. By Order entered March 26, 2010, the Commission approved Petitioner's Application for a common carrier of household goods certificate. The Commission

granted Petitioner the right to transport household goods in use by transfer of the rights authorized under the certificate of public convenience issued at A-00089629 to Robert R. Kennedy and Lois J. Kennedy, d/b/a Kennedy Transfer, subject to the same limitations and conditions.

8. By letter dated March 30, 2010, and addressed to BTS, Petitioner contended that the Commission neglected to transfer the property portion of the Transferor's authority at Folder 1. Petitioner asked that the March 26, 2010 Order be corrected to include the transfer of the property portion of the Transferor's authority. Petitioner asserted that because this portion of the Transferor's authority "did not specifically exclude household goods in use, it would be deemed to include household goods in use."
9. On May 14, 2010, BTS informed Petitioner that the above interpretation was incorrect and that if it desired the additional authority, Petitioner must file an application for amendment or a petition to reconsider.
10. On May 28, 2010, Petitioner filed a Petition for Reconsideration based on its belief that transferable portions of the rights of Robert R. Kennedy and Lois J. Kennedy, d/b/a Kennedy Transfer, issued at A-00089629, were not included in the final ordering paragraph.
11. BTS opposes a grant of Kennedy Transfer, Inc.'s Petition for Reconsideration.
  - a. Property rights are not transferable. On December 20, 1994, the Commission adopted a Final Order, effective January 1, 1995, that eliminated the transfer of property rights by property carriers. The Final Order at P-00940884, further stated that, "[w]e wish to emphasize that motor carriers of property will not be authorized to conduct transportation which is usually deemed to be household goods transportation . . . carriers of property . . . will be authorized to transport property, except household good in use" (emphasis original). *Regulation of*

*Motor Carriers of Property*, Docket No.P-00940884, (Order Entered December 20, 1994). Consistent with this Order, any existing authority that does not specifically include “household goods in use” in the ordering paragraph is to be treated strictly as a property right and is to be considered to be non-transferable. *See Regulation of Motor Carriers of Property*, Docket No. P-00940884, (Order Entered December 20, 1994). The rights at issue at this case are property rights. Therefore, Petitioner’s request to transfer the Transferor’s property rights at Folder 1 should be denied.

- b. Petitioner’s interpretation of the term “property” is not supported by the Commission’s regulations. In its Petition, Petitioner alleges that “‘property’ . . . by definition include[s] the right to transport ‘household goods.’” However, 52 Pa. Code § 31.1 defines property as “[t]angible property other than household goods in use” (emphasis added). At 52 Pa. Code § 21.1(i), “household goods in use” is defined as, “personal effects and property used or to be used in a dwelling, when part of the equipment or supply of the dwelling, and similar property if the transportation of the effects or property is arranged and paid for by either the householder or another party.” By definition, property of specified use may be considered part of household goods, but household goods are specifically restricted from the definition of property. Petitioner’s argument that property includes the right to transport household goods is not supported by the regulations. 52 Pa. Code §§ 31.1, 21.1(i).
- c. Contrary to Petitioner’s allegation, the Commission has not previously determined that the authority to transfer “property” includes the authority to transport “household goods.” *See* Petitioner’s Petition ¶ 7. In support of its argument,

Petitioner cites *Re: Application of Central Van & Storage of Charleston Inc. t/d/b/a/ Central Van & Storage Company, Inc.*,

A-00121979, attached as Petitioner's Exhibit "E." However, a clear reading of this case does not support Petitioner's argument. Although *Central Van* involved modification of a Commission Order transferring household goods in use rights, the transfer at issue in *Central Van* was household goods in use from one company to another; not the transfer of property rights to household good in use rights. This case is clearly distinguishable from *Central Van* and, Petitioner's argument that "[t]he Commission has in the past consistently determined that authority to transport 'property' includes authority to transport 'household goods'" is erroneous. See Petitioner's Petition ¶ 7.

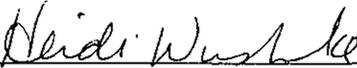
- d. Petitioner suggests that because it has always transported household goods under its property authority, it should be permitted to continue this practice. See Petitioner's Petition at ¶ 10-13. This argument is without merit. First, Petitioner's previously filed tariffs clearly show that it has property authority "between points in the city of DuBois, Clearfield County, and within ten (10) miles by the usually traveled highways of the said city." See Petitioner's Exhibit "A." That Petitioner may have been operating outside of its tariff for many years does not expand its property authority to include household goods authority. Second, Petitioner argues that it always included the transportation of household goods in its published tariff rates. See Petitioner's Petition ¶ 12. In fact, Petitioner's tariff includes no such designation, but rather states a general hourly rate. A copy of Petitioner's tariff is attached to this Reply as Respondent's Exhibit "A." Furthermore, Petitioner's position that the Commission did not take

prior action about it possibly operating outside the scope of its operating authority  
in the past is irrelevant.

12. This Reply represents the position of BTS. The Commission must still act in order to grant or deny Kennedy Transfer, Inc.'s petition for reconsideration.

THEREFORE, BTS requests that the Commission deny the Petition for Reconsideration.

Respectfully submitted,

  
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Heidi Wushinske  
Assistant Counsel  
Law Bureau  
For Bureau of Transportation and Safety

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**TRISTATE HOUSEHOLD GOODS TARIFF CONFERENCE, INC.**

11th Revised Page 48 Cancels 10th Revised Page 48

FREIGHT PA. P.U.C. NO. 50

**SECTION IV**

♦ **TRANSPORTATION RATE TABLE H - CLASS 1 SHIPMENTS (ITEM 3)**

Subject to Notes AA and BB and 1 to 6 below, the transportation charges on any shipment shall be a COMBINATION of the applicable TRAVELING CHARGE named in Column 1 plus HOURLY CHARGE at applicable rates named in Columns 2, 3 and 4.

Hourly rates apply only from time of arrival of vehicles and men at first point of origin (continued during all loading, transportation from first point of origin to final destination, and unloading) until completion of unloading and dismissal of vehicles and men by shipper at destination.

Traveling charges cover traveling to first point of origin and traveling from final destination, irrespective of actual time involved in such traveling.

EQUIPMENT AND MEN	COLUMN 1	COLUMN 2	▲ COLUMN 3	▲ COLUMN 4
	TRAVELING CHARGES ANY DAY (Flat Charges in Dollars)	SUNDAYS AND HOLIDAYS (ANY HOUR)	HOURLY RATES (In Dollars)	
			WEEKDAYS 6:01 AM to 4:30 PM	SATURDAY (ANY HOUR) AND *WEEKDAYS 4:31 PM to 6:00 AM
VEHICLE and Driver ....	See Note AA and BB	68.00	44.00	56.00
Additional men, each .....		48.00	24.00	36.00
SUPERVISORS, each .....		54.00	27.00	40.50

NOTE 1 - Traveling Charges (Column 1) are in addition to Hourly Rates (Columns 2, 3 and 4).

NOTE 2 - Hourly Rates (Columns 2, 3 and 4), are based on the day or days, or periods of days, as indicated, during which services are performed.

NOTE 3 - Hourly Rates (Columns 2, 3 and 4) computed in half-hour periods; fractions of one-half hour considered one-half hour.

▲ NOTE 4 - MINIMUM TRANSPORTATION CHARGE: Sundays and Holidays: 8 hours at rates named in Columns 1 and 2. Saturdays (any hour) or Weekdays 4:31 PM to 6:00 AM: 4 hours at rates named in Columns 1 and 4.

NOTE 5 - Rates in Column 4 apply only from 4:31 PM to 12:00 Midnight on any day when a higher rate is shown for the following day.

NOTE 6 - Carrier will supply and charge for supervisor or supervisors as requested by shipper. Hourly rate for each supervisor will be computed from time of arrival of vehicles and men at first point of origin until completion of unloading and dismissal of vehicles and men at final destination unless other time of arrival or dismissal of supervisor is provided by agreement between shipper and carrier.

NOTE AA - When distance from original point of origin to final destination is 10 miles or less, the flat charge shall be for one-half hour at the rates applicable.

When distance from original point of origin to final destination is over 10 miles but less than 20 miles, the flat charge shall be for one hour at the rates applicable.

When distance from original point of origin to final destination is 20 miles and less than 30 miles, the flat charge shall be for one and one-half hours at the rate applicable.

When distance from original point of origin to final destination is 30 miles and over (to 40 miles inclusive), the flat charge shall be for two hours at the rates applicable.

NOTE BB - A flat charge based on two hours at the applicable transportation rates shown in Columns 2, 3 or 4 will be assessed by carrier when travel from carrier's place of business to original point of origin is more than 25 miles. Charges applicable under Note AA will not apply when carrier assesses traveling charge under Note BB.

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TRANSPORTATION & SAFETY

\* - When requested by shipper.

Abbreviations, Reference Marks and Symbols are explained on last page of tariff.

ISSUED: MARCH 19, 2004

EFFECTIVE: JULY 26, 2004

Issued by: KENNETH D. SATALOFF, Executive Secretary	P. O. Box 1385	Mt. Laurel, NJ 08054-7385
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Issued in accordance with the Commission order at R-00049619 dated July 23, 2004.

EXHIBIT A

# VERIFICATION

I, Robert J. Bingaman, Compliance Officer Manager, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief. I expect to 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: June 25, 2010

Robert J. Bingaman  
Robert J. Bingaman, Compliance Office Manager  
Motor Carrier Services and Enforcement Division

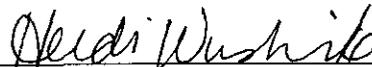
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document, Reply to Petition for Reconsideration in accordance with the requirements of 52 Pa. Code § 1.57 and § 1.58.

**Notification by first class mail addressed as follows:**

Vuono & Gray, LLC  
310 Grant Street  
Suite 2310 Grant Building  
Pittsburgh, PA 15219-2383



Heidi Wushinske  
Assistant Counsel  
Attorney ID #93792

P.O. Box 3265  
Harrisburg, PA 17105-3265

DATE: June 25, 2010

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