



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

IN REPLY PLEASE
REFER TO OUR FILE

July 15, 2010

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

Re: A-00121227
C-2010-2163673

Re: Pennsylvania Public Utility Commission
v.
Leroy Mickens, III, t/a Big Time's Night Train

Answer to Petition for Reinstatement

Dear Secretary McNulty:

Pursuant to 52 Pa. Code §5.572, the Bureau of Transportation and Safety has the right to file an Answer to the above-captioned Petition for Reinstatement that was served on this Commission on June 16, 2010.

Enclosed, please find the Bureau of Transportation and Safety's Answer to the above Petition for Reinstatement. 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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**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
Bureau of Transportation and Safety :
vs. : Docket No. C-2010-2163673
Leroy Mickens, III :
t/a Big Time's Night Train :

**ANSWER
To
PETITION FOR REINSTATEMENT**

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

1. BTS requests that this Answer be accepted nunc pro tunc because due to an administrative error, the petition was not timely processed.
2. That Petitioner, Leroy Mickens, III, t/a Big Time's Night Train (Mickens or Petitioner) advertises a principal place of business at 5824 Malvern Avenue, Philadelphia, PA 19540.
3. That the Commission issued a Certificate of Public Convenience to Leroy Mickens, III, t/a Big Time's Night Train on July 8, 2005, at Docket No. A-00121227.

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4. That on March 29, 2009, BTS sent Petitioner a letter informing it that needed to correct its tariff so that its rates are based on one half hour increments, rather than one quarter hour increments.
5. That Petitioner did not file a new tariff or respond in any way to BTS' letter.
6. That on August 22, 2009, BTS filed a complaint against Petitioner for failing to file a tariff with its limousine rates based solely on time with a minimum of 30 minute time periods and increments, for which Petitioner was fined two hundred fifty dollars (\$250.00).
7. That Petitioner did not respond to the complaint.
8. That the Commission issued a Secretarial letter on November 17, 2009, advising Petitioner that it was required to pay the two hundred fifty dollars (\$250.00) fine.
9. That the Commission sent two letters to Petitioner, dated December 8, 2009, and January 8, 2010, advising it that it had not paid its two hundred fifty dollars (\$250.00) fine.
10. That Petitioner did not respond to any of the Commission's correspondence.
11. That on April 2, 2010, the Bureau of Transportation and Safety sent via certified mail a Complaint at C-2010-2163673 against Mickens alleging failure to pay outstanding fines totaling two hundred fifty dollars (\$250.00) for failure to file an acceptable tariff with this Commission as required by a Commission Secretarial Letter issued on November 17, 2009 at C-2009-2126024. Failure to pay the fine is a violation of the Public Utility Code at 66 Pa. C.S. §501(c).

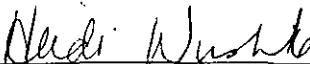
12. That Bureau of Transportation and Safety notified Mickens that it must file an Answer to the Complaint in accordance with 52 Pa. Code §5.61, within twenty days of the date of service. The Notice further specified that if Mickens failed to answer the Complaint within twenty days the Bureau of Transportation and Safety would request the Commission to issue an Order cancelling Mickens' Certificate of Public Convenience, requesting the Pennsylvania Department of Transportation to place an administrative hold on its motor vehicle registrations, and notifying the Pennsylvania Department of Revenue and its insurance carrier that its Certificate is revoked.
13. That on April 6, 2010, the above complaint was delivered to Petitioner via certified mail.
14. That Mickens did not file an answer to the complaint.
15. That by Order entered June 3, 2010, the Commission sustained the Complaint and cancelled Mickens' Certificate. Additionally, the June 3, 2010 Order imposed a civil penalty of \$100 for failing to comply with the provisions of 66 Pa. C.S.A. §501 (c). Mickens was also advised in the Order that it must file a Petition for Reinstatement within fifteen days of receipt of the Commission's Order if it wanted to provide transportation again in the Commonwealth. The Commission's Order was served on the Petitioner on or about June 6, 2010.
16. That on June 16, 2010 Mickens filed a Petition requesting reinstatement.
17. On June 17, 2010, the Commission received a check in the amount of \$350 from Mickens.

18. That Petitioner paid \$5,448 for its delinquent assessments, which the Commission credited on June 30, 2010.
19. That BTS opposes a grant of Mickens' Petition for Reinstatement for the following reasons:
 - a. Record of Violations: Mickens' history reveals a record of failing to comply with the Commission's regulations. The record shows that a total of five complaints were filed against Mickens. In addition to the complaint which resulted in the cancellation of its Certificate, Mickens has been issued complaints for failure to maintain evidence of insurance, operating while insurance coverage had lapsed, failure to file an acceptable tariff, and failure to pay assessments.
 - b. Respondent's Outstanding Obligations: Although all fines and assessments have been paid, it should be noted that Mickens' assessments have been delinquent for the years 2008, 2009, and 2010. Mickens did not pay these assessments until it attempted to file the instant petition and was told that it would not be accepted until the assessments were paid. Additionally, Mickens does not have an acceptable tariff on file at this time and the Commission has received a Form K cancelling Mickens bodily injury property damage liability insurance.
 - c. Reasonableness of Excuse: Mickens' only excuse is that it claims that it lacked knowledge of the Commission's regulations that requires carriers with limousine authority to utilize 30 minute time increments. Petitioner was sent numerous correspondences from the Commission informing it of

this obligation. Specifically, on March 29, 2009, BTS sent Petitioner a letter informing it of its tariff error. On August 22, 2009, BTS filed a complaint against Petitioner for failing to have a correct tariff on file. On November 17, 2009, the Commission sent Petitioner a Secretarial letter informing it of its failure to file a tariff. On April 2, 2010, BTS filed against Petitioner a complaint, which also informed Petitioner that its tariff must use 30 minute increments. Finally, on June 3, 2010, the Commission adopted an Order cancelling Petitioner's certificate. This Order also stated that Petitioner did not have an acceptable tariff on file with the Commission. Despite these correspondences informing Petitioner that it does not have an acceptable tariff on file with the Commission, Petitioner has still not filed a corrected tariff. Therefore, Petitioner's excuse that it lacked knowledge of the Commission's regulations is not acceptable. Moreover, Petitioner's excuse does not account for its failure to respond to Commission's complaints until its Certificate was cancelled.

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

Respectfully submitted,



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

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement, 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: 7-15-10

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

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CERTIFICATE OF SERVICE

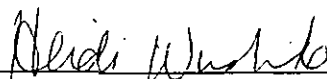
I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of 52 Pa. Code §1.54, relating to service by a participant.

Office of Special Assistants
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

Leroy Mickens, III
t/a Big Time's Night Train
5824 Malvern Avenue
Philadelphia, PA 19131

Segal, Berk, Gaines & Liss
Atten: Stephen Ernst, Esq.
The Windsor
Penthouse Suite
1700 Benjamin Franklin Parkway
Philadelphia, PA 19103

Dated this 15 Day of July, 2010.



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

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