



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

IN REPLY PLEASE  
REFER TO OUR FILE

October 2, 2012

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

Re: Pennsylvania Public Utility Commission v. Limousine Services Transportation,  
Inc.; C-2011-2219826

Dear Secretary Chiavetta:

Pursuant to the provisions of 52 Pa. Code § 5.535, please accept for filing an original of the Exceptions filed in the above referenced matter.

Very truly yours,

Heidi L. Wushinske  
Prosecutor

Enclosures

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission** :  
**Bureau of Transportation and Safety** :  
 : **Docket No. C-2011-2219826**  
v. :  
 :  
 :  
**Limousine Services Transportation, Inc.** :

**EXCEPTIONS TO THE INITIAL DECISION OF ADMINISTRATIVE LAW**  
**JUDGE ANGELA T. JONES**

Heidi L. Wushinske  
Prosecutor

Wayne T. Scott  
First Deputy Chief Prosecutor

P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000

Dated: October 2, 2012

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The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission, through Prosecutor, Heidi L. Wushinske, files the following Exceptions to the Initial Decision of Administrative Law Judge Angela T. Jones (“ALJ”), and states as follows:

### **Exceptions**

**1. The ALJ Incorrectly Accredited the Actions and Responsibilities of the Bureau of Technical Utility Services to the Bureau of Investigation and Enforcement-Conclusion of Law #3.**

The ALJ incorrectly concluded that “I&E, failed to provide consistent judgment in commenting on the evidence of insurance filed by the insurer of Respondent.” (I.D. p. 19- 21, Conclusion of Law #3). I&E does not exercise any judgment over processing or evaluating insurance forms. As Robert J. Bingaman, Supervisor of Motor Carrier Compliance in the Commission’s Bureau of Technical Utility Services (TUS) testified, he performed the duties regarding the insurance filings at issue in this proceeding. (I.D. p. 6, Finding of Fact #3). Mr. Bingaman also testified that he supervises other TUS employees who monitor and review transportation filings. (*Id.*) There is no testimony or other evidence to support the ALJ’s finding that I&E exercises any judgment or control over insurance filings. Therefore, the ALJ’s Conclusion of Law #3 is factually incorrect.

**2. The ALJ Improperly Found that Respondent Did Not Violate the Commission’s Regulations by Failing to Maintain Evidence of Insurance on File with the Commission**

I&E disagrees with the ALJ’s finding that Respondent did not violate the Commission’s regulations by failing to maintain to evidence of insurance on file with the Commission. (I.D. 20). The ALJ bases this conclusion on “the inconsistent judgment of

I&E.” (I.D. 20). As previously stated, I&E did not and does not evaluate or handle Form E filings. In any case, the fact that TUS did not reject each and every improperly filed form does not grant Respondent the ability to continue to file incorrect forms and does not relieve it from the responsibility to have a valid Form E on file with the Commission. 66 Pa. C.S. § 512, 52 Pa. Code § 32.2 (c), 52 Pa. Code § 32.11(a).

TUS’s actions in evaluating Respondent’s Forms E and K were not inconsistent. The record shows that TUS accepted a Form K (4/29/10) and Form E (5/13/10) with Commission “A” numbers placed in the USDOT designated field. (I.D. 17-18). TUS then rejected a Form E filed on June 10, 2010, that had the “A” number placed in the USDOT field; however, this form was rejected because it was unsigned and missing the insurer address. (I.D. 17). On November 29, 2010, TUS accepted a Form K where the “A” number was placed in the USDOT designated field, but issued comments stating “A-110190 is state ID not USDOT number; correct your records.” (I.D. 18). After issuing this comment, TUS began rejecting subsequent forms with Commission A numbers placed in the USDOT designated field. The fact that TUS gave Respondent a break on its first, second, and third improperly filed forms does not require it to accept every subsequent improperly filed form, especially after informing Respondent’s insurer to correct its records.

As the ALJ correctly stated, the issue here is whether Respondent “timely filed with the Commission a valid Form E as required by regulation, to notify the Commission of valid insurance.” (I.D. 14). The evidence clearly shows that the last form accepted by the Commission was a Form K, cancelling Respondent’s insurance. (I.D. 18). Despite

the comments on this form that the “A” number was in the wrong place, Respondent’s insurer continued to file forms with the “A” number in the USDOT designated field. Therefore, TUS properly rejected the subsequently incorrectly filed forms. As the last form on file with the Commission was a Form K, cancelling Respondent’s insurance, Respondent did not have a timely filed Form E on file with the Commission.

**3. The Ultimate Responsibility For Ensuring that Valid Insurance is On File With the Commission Lies With the Carrier**

To the extent that that ALJ accepted Respondent’s argument that the carrier should be absolved of the responsibility of ensuring that valid insurance is on file with the Commission because Forms E and K are filed by the insurer , I&E disagrees for three reasons (*See* I.D. 7., Finding of Fact #14). First, the Commission’s regulations are clear that the ultimate responsibility for ensuring that valid insurance is on file with the Commission lies with the carrier, not the insurance company. 66 Pa. C.S. § 512, 52 Pa. Code § 32.2 (c), 52 Pa. Code § 32.11(a).

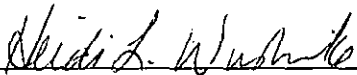
Second, the Commission has no jurisdiction over insurance companies. Therefore, absolving carriers of the responsibility to ensure that a valid Form E is on file with the Commission would render this important safety regulation unenforceable.

Third, if the Commission accepts Respondent’s argument that carriers should not be held accountable when their insurers fail to file a valid Form E, it will set the precedent and have the effect of hereafter allowing carriers to escape their responsibility of ensuring that proof of valid ensure is on file with the Commission, again rendering this important safety regulation unenforceable. The Commission should find that carriers are

ultimately responsible for ensuring that the proper forms establishing proof of insurance are on file with the Commission, as it has consistently done in the past.

WHEREFORE, for the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission requests that the Commission GRANT the above Exceptions.

Respectfully submitted,

  
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Heidi L. Wushinske  
Prosecutor

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(717) 787-5000

Dated: October 2, 2012


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**CERTIFICATE OF SERVICE**

I hereby certify that I am this 2<sup>nd</sup> day of October, 2012, serving the foregoing documents upon the persons listed below in accordance with the requirements of 52 Pa. Code §1.54:

Angela T. Jones, Administrative Law Judge  
801 Market Street  
Philadelphia, PA 19107

Derek J. Reid, Esquire  
Eastburn and Gray, P.C.  
60 East Court Street  
P.O. Box 1389  
Doylestown, PA 18901-0137

  
Heidi L. Wushinske  
Prosecutor

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