

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: October 15, 1992	:	2. BUREAU AGENDA NO.
3. BUREAU: Law	:	OCT-92-L-571*
4. SECTION(S): Motor Carrier	:	5. PUBLIC MEETING DATE:
6. APPROVED BY: Director: Povilaitis 7-5000 Supervisor: House 3-3713	:	October 22, 1992
7. PERSON IN CHARGE: 3-3713 Janet M. Sloan	:	
8. DOCKET NO.: A-00106599	:	

9. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation

(a) Broadway Moving and Storage, Inc.; Petition for Reinstatement.

(b) Now before the Commission for disposition is the Petition of Broadway Moving and Storage, Inc. (Broadway) for reinstatement of its cancelled certificate of public convenience at A-00106599. The Commission cancelled Broadway's certificate of public convenience by an order dated July 2, 1992, for failure to maintain proper evidence of current insurance. Broadway's Petition for Reinstatement was filed with the Commission on July 16, 1992.

(c) The Law Bureau recommends that the Petition for Reinstatement be granted and that the certificate be reinstated.

DOCKETED
DEC 08 1992

DOCUMENT FOLDER

HLS

10. **MOTION BY:** Commissioner Chm. Rolka Commissioner Holland - Yes
 Commissioner
SECONDED: Commissioner Rhodes Commissioner

CONTENT OF MOTION: Staff recommendation adopted.



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

October 27, 1992

IN REPLY PLEASE
REFER TO OUR FILE

A-00106599

HL S

JACK F ASCHINGER ESQUIRE
THOMAS THOMAS ARMSTRONG NIESEN
PO BOX 9500
HARRISBURG PA 17108-9500



Broadway Moving and Storage, Inc.;
Trenton, NJ;
Petition for Reinstatement

To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission in Public Meeting on October 22, 1992 in the above entitled proceeding.

A copy of this Order has been enclosed for your records.

Very truly yours,

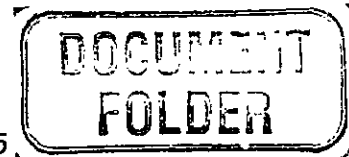
John G. Alford, Secretary

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Encls.
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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265



Public Meeting held October 22, 1992

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice Chairman
Wendell F. Holland, Commissioner

Broadway Moving and Storage,
Inc.; Trenton, NJ;
Petition for Reinstatement

Docket No.
A-00106599

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O R D E R

BY THE COMMISSION:

Now before the Commission for disposition is the Petition of Broadway Moving and Storage, Inc. (Broadway) for reinstatement of its cancelled certificate of public convenience at A-00106599. The Commission cancelled Broadway's certificate of public convenience by an order dated July 2, 1992, for failure to maintain proper evidence of current insurance. Broadway's Petition for Reinstatement was filed with the Commission on July 16, 1992.

Decisions as to whether to grant a petition to reinstate are left to the Commission's discretion and will be reversed only if that discretion is abused. Hoskins Taxi Service v. Pennsylvania Public Utility Commission, 87 Pa. Commonwealth Ct. 30, 486 A.2d 1030 (1985). In ruling upon a petition to reinstate, the Commission will examine all relevant factors to reach an equitable result. Medical Transportation, Inc., 57 Pa. P.U.C. 79 (1983).

The Commission has identified three factors which are particularly relevant to the determination of a petition to reinstate: (1) the amount of time which elapsed between cancellation of the certificate and the filing of a petition to reinstate; (2) the petitioner's record of compliance with the Public Utility Code and the rules and regulations of the Commission; and (3) the reasonableness of the excuse given for the violation which caused cancellation of its certificate. Re Bishop, 58 Pa. P.U.C. 519 (1984).

Broadway filed its Petition for Reinstatement approximately two weeks after the cancellation of its certificate. This expeditious filing favors reinstatement of its certificate.

Upon reviewing the second factor, Broadway's record of compliance with Commission regulations is not good. The certificate of public convenience was issued to Broadway on December 22, 1987. Since that time, the Commission has had to send Notices of Suspension for failure to submit proper evidence of insurance on no less than seven occasions. However, this is the first time that Broadway has not responded so as to cause the cancellation of its certificate of public convenience.

We do not lightly disregard Broadway's filing deficiencies. To fulfill our statutory authority under Section 512 of the Public Utility Code, 66 Pa. C.S. § 512, to prescribe motor carrier insurance requirements necessary to protect motor carriers' patrons and their property as well as the public, we have promulgated insurance regulations at 52 Pa. Code §§ 32.12 to 32.16. In particular, subsection 32.2(a) states that a motor carrier must have, on file with the Commission, evidence of insurance "in the form prescribed and approved by the Commission." Specifically, the Commission requires that a motor carrier's insurance company file, with the Commission as evidence of current insurance, a Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability certificate of insurance, and where appropriate, a Form UCPC 31 or Form H for Cargo loss and damage liability. An insurance company's filing of one of these forms signifies that the insurer is providing liability coverage of the levels and types enumerated in the Commission's regulations for the kinds of transportation rendered by the named, insured motor carrier in Pennsylvania intrastate operations. E.g., Metro Transportation Co. t/a Yellow Cab Co. v. North Star Reinsurance Company, 912 F.2d 672 (3rd Cir. 1990); Metro Transportation Company, t/a Yellow Cab Company v. Balboa Insurance Company, 677 F.Supp. 376 (E.D. Pa. 1988).

Nevertheless, inasmuch as Broadway readily corrected all but its last reporting-filing problem at A-00106599, we do not consider Broadway's performance history before the Commission to be so egregious as to compel a denial of reinstatement at this time. We strongly caution Broadway to adhere to the filing requirements of the Commission and to seek appropriate extensions of time for filing where appropriate. In the future, we may hesitate to reinstate Broadway's certificate if cancellation of the certificate again results from non-compliance with the report-filing requirements of the Commission.

As to the third factor, Broadway states in its Petition for Reinstatement that it became embroiled in a controversy with its insurance carrier and that the insurance carrier then failed

to submit the proper evidence of insurance. Respondent further contends that it relied upon the assurances of its insurance agent that the agent had filed an answer to the Commission's Order to Show Cause. Based upon that reliance, Broadway did not answer the Order to Show Cause. Subsequent to its submission of a Petition for Reinstatement, Broadway has filed several supplements to that Petition. Included in the supplements are various letters regarding insurance procurement by Broadway. Commission records show that Broadway has tendered acceptable evidence of insurance.


While Broadway's showing in the present matter is far from strong, the Commission will exercise its discretion in favor of this carrier and afford it another opportunity to operate its authority pursuant to the provisions of the Public Utility Code and the rules and regulations of the Commission.

As stated above, however, this Commission will not accept a succession of administrative violations of the Public Utility Code nor of the rules and regulations of this Commission. Broadway is hereby strongly cautioned to conform its operations to the letter of the law. THEREFORE, IT IS ORDERED:

1. That the Petition for Reinstatement filed by Broadway Moving and Storage, Inc. on July 16, 1992, is hereby granted.

2. That the certificate of public convenience at Docket No. A-00106599 is hereby reinstated.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: October 22, 1992

ORDER ENTERED: October 27, 1992

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, a, & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
A-20106599

4a. Article Number
44392

Jack F. Aschinger, Esq

4b. Service Type

- Registered Insured
- Certified COD
- Express Mail Return Receipt for Merchandise

7. Date of Delivery
OCT 28 1992

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)
Chris York

Thank you for using Return Receipt Service.