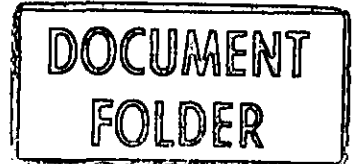
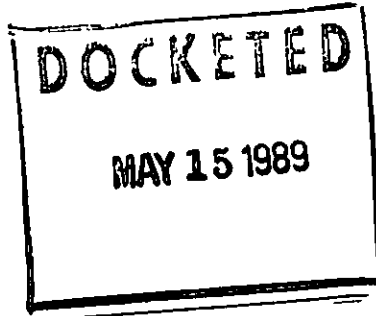


April 10, 1989

A-107645

Harold E. Miller, Esquire
Mellon Bank Building
Altoona, PA 16601



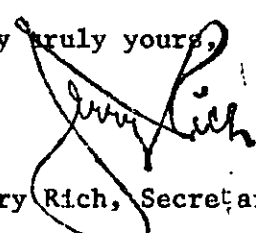
James M. Simondale, t/d/b/a James M. Simondale Trucking & Excavating;
Letter-Petition for Reinstatement of Operating Authority.

To Whom It May Concern:

This is to advise you that an Order has been adopted by the
Commission in public meeting held March 30, 1989.

An Executed Order has been enclosed for your records.

Very truly yours,



Jerry Rich, Secretary

lg
Encls.
Cert. Mail

law Bureau
Bureau of S & C
Mr. McCarthy
Bureau of Trans.
Frances Jones
Tariff

DOCKETED

MAY 15 1989

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held March 30, 1989

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice Chairman
Joseph Rhodes, Jr., Commissioner
Frank Fischl, Commissioner

DOCUMENT
FOLDER

James M. Simondale, t/d/b/a James M.
Simondale Trucking & Excavating;
Letter-Petition for Reinstatement
of Operating Authority.

Docket No.
A-00107645

O R D E R

BY THE COMMISSION:

On January 20, 1988, the Commission entered an Order at A-00107645, approving the application of James M. Simondale, t/d/b/a James M. Simondale Trucking & Excavating (Simondale). The Order was conditioned on the filing and acceptance of evidence of insurance and a tariff within sixty (60) days. By Secretarial Letter dated October 31, 1988, Simondale was informed that his tariff had not been filed and that his application had been dismissed for failure to do so. In December of 1988, Simondale filed his tariff, and, on January 24, 1989, he filed a Letter-Petition to Reinstate the January 20, 1988 Order approving his application.

Decisions 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 that are particularly relevant to the determination of a petition to reinstate: (1) the amount of time elapsed between the cancellation of the authority or the dismissal of the compliance order and the filing of the petition to reinstate, Falcone Cab Co., A-00095400 (Order adopted January 22, 1982); (2) the petitioner's record of compliance with the Public Utility Code

and the rules and regulations of the Commission, Radio Cab Co., A-00094012 (Order adopted January 14, 1982); and (3) the reasonableness of the excuse given for the violation which caused the authority to be cancelled, Radio Cab Co.

The first factor to be considered is the amount of time which elapsed between the dismissal of the compliance order and the filing of the petition to reinstate. In the present case, Simondale filed his Petition approximately three months after dismissal of the application. This weighs in favor of reinstatement.

The second factor is whether Petitioner has a record of habitually violating the Public Utility Code. Simondale does not have any violations of record.

The third factor is the reasonableness of the excuse given for the violation that caused the dismissal of the application. In the instant Petition, it is alleged that Simondale's attorney was at fault for the failure to file a tariff. He believed that the tariff contained in the contract that was filed was sufficient to comply with our Commission order. While it is Simondale's responsibility to comply with the filing requirements, this explanation is not so unreasonable as to require denial of the Petition. Also, the fact that he has recently filed the tariff weighs in favor of reinstatement. THEREFORE,

IT IS ORDERED:

1. That the Letter-Petition to Reinstate an Order filed by James M. Simondale, t/d/b/a James M. Simondale Trucking & Excavating on January 24, 1989 at A-00107645, is hereby granted.
2. That this Commission's letter dated October 31, 1988, dismissing Simondale's application, is hereby rescinded.

3. That the January 20, 1988 Order at A-00107645, approving Simondale's application for authority is hereby reinstated.

BY THE COMMISSION,


Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: March 30, 1989

ORDER ENTERED: APR 10 1989

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
 Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. (Extra charge) 2. Restricted Delivery (Extra charge)

3. Article Addressed to: <i>A-107645 order</i> <i>Harold C. Miller,</i> <i>Cap.</i>	4. Article Number 44752
5. Signature - Address <i>X</i> <i>[Signature]</i>	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise
6. Signature - Agent <i>X</i>	Always obtain signature of addressee or agent and DATE DELIVERED. 8. Addressee's Address (ONLY if requested and fee paid)
7. Date of Delivery <i>4-12-89</i> <i>4/7/89</i>	