

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

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1. **REPORT DATE:** November 18, 1992 : 2. **BUREAU AGENDA NO.** NOV-92-L-594
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3. **BUREAU:** Law :
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4. **SECTION(S):** Motor Carrier : 5. **PUBLIC MEETING DATE:** November 24, 1992
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6. **APPROVED BY:** :
- Director: Povilaitis 7-5000 :
 Supervisor: House # A.P. 3-3713 :
-
7. **PERSON IN CHARGE:** 3-3713 :
Angela T. Jones :
-
8. **DOCKET NO.:** A-00107793, F.2 :
-
9. (a) **CAPTION** (abbreviate if more than 4 lines)
 (b) **Short summary of history & facts, documents & briefs**
 (c) **Recommendation**
- (a) Trans American Trucking Service, Inc.; Letter/Petition for Reinstatement.
- (b) By Order entered September 9, 1992, the Commission cancelled the certificate of public convenience held by Trans American Trucking Service, Inc. (Trans American) for failure to file its 1991 Annual Report with this Commission. On September 28, 1992, Trans American filed a Letter/Petition to Reinstate seeking reinstatement of its cancelled certificate. Commission records indicate that Trans American filed its 1991 Annual Report on September 28, 1992.
- (c) The Law Bureau recommends that the Letter/Petition for Reinstatement filed by Trans American Trucking Service, Inc. on September 28, 1992 be granted subject to the condition contained herein.

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

SECONDED: Commissioner Rhodes Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

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 FEB 05 1993

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FOLDER

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

December 2, 1992

IN REPLY PLEASE
REFER TO OUR FILE

A-00107793, F.2

LOUIS J CARTER ESQUIRE
7300 CITY LINE AVENUE
PHILADELPHIA PA 19151-2291

Trans American Trucking Service, Inc.;
Letter/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 November 24, 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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FOLDER

DOCKETED
DEC 28 1992

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held November 24, 1992

Commissioners Present:

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

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Trans American Trucking Service, Inc.; Letter/Petition for Reinstatement. Docket No. A-00107793, F.2

Louis J. Carter, Esq.
for Petitioner

DOCKETED
DEC 28 1992

ORDER

BY THE COMMISSION:

This matter comes before the Commission on a Letter/Petition for Reinstatement filed by Louis J. Carter, Esquire, counsel for Trans American Trucking Service, Inc. (hereinafter, "Trans American") on September 28, 1992. Trans American requests reinstatement of its certificate of public convenience, which was cancelled by order entered on September 8, 1992 for failure to file its 1991 Annual Report. Commission records indicate that Trans American filed its 1991 Annual Report on September 28, 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).

Addressing the first factor, Trans American filed its Petition to Reinstate approximately three (3) weeks after cancellation occurred. Such an expedient response weighs heavily in favor of reinstatement.

Next, we will review Trans American's record of compliance with the Public Utility Code and the rules and regulations of the Commission. A review of the Commission records indicates that on August 31, 1990 at Docket No. A-00107793C9001 an Order to Show Cause was entered for failure to file a 1989 Annual Report. Our records indicate that Trans American did submit its 1989 Annual Report and the complaint was marked closed on October 11, 1990. However, the 1989 Annual Report was filed only after the Commission initiated enforcement proceedings in the matter.

At Docket No. A-00107793C9201, an Order to Show Cause was entered on July 8, 1992 for Trans American's failure to file its 1991 Assessment Report. Our records indicate the 1991 Assessment Report was filed on July 24, 1992. Consequently, the Order to Show Cause at Docket No. A-00107793C9201 should be discharged. However, the filing occurred only after the Commission initiated the enforcement proceeding.

At Docket No. A-00107793C9202, the present proceeding, an Order to Show Cause was entered on July 8, 1992 for Trans American's failure to file its 1991 Annual Report. The Show Cause Order was duly served but Trans American failed to answer or otherwise respond to it. Consequently, an order cancelling the certificate of public convenience was entered on September 8, 1992. Our records do indicate that the 1991 Annual Report of Trans American was filed on September 28, 1992. However, filing of the required report occurred only after these series of enforcement proceedings were initiated by the Commission.

Timely filing of Annual Reports and Assessment Reports is required by the Commission's Regulations at 52 Pa. Code §§ 31.9 and 31.10 respectively, which implement section 504 of the Public Utility Code, 66 Pa. C.S. § 504. While Trans American's compliance record does not compel a denial of reinstatement at this time, we caution Trans American to adhere to future report filing requirements of the Commission.

To explain its failure to respond to the Commission's Show Cause Order at A-00107793C9201 concerning failure to file a timely 1991 Annual Report, Trans American asserts that it received the Show Cause Order for its 1991 Assessment Report

coincident with the Show Cause Order for its 1991 Annual Report. Its personnel believed that the Orders referred to the same violation and one order was just a copy for its files. Consequently, Trans American acted upon the 1991 Assessment Report while unknowingly leaving the 1991 Annual Report not filed. Trans American should have been more careful in reviewing these matters. Basic common sense dictates a more prudent approach, particularly when one's operating rights hang in the balance. Thus, the excuse offered is not persuasive and is unacceptable to the Commission as reasonable for the untimely filing of requirement reports.

On October 7, 1992, Trans American filed a Petition for Review at Docket No. 2132 C.D. 1992 in the Commonwealth Court of Pennsylvania referencing this matter. The Petition for Review stated that the Commission order in question was entered on July 8, 1992. Consequently, the Commonwealth Court ruled on October 9, 1992 that the Petition for Review should have been filed on or before August 7, 1992, and having been filed on October 7, 1992, the Commonwealth Court dismissed the Petition for Review as untimely filed.

On October 22, 1992, Trans American filed a Petition for Reconsideration at Docket No. 2132 C.D. 1992 in the Commonwealth Court of Pennsylvania referencing this matter. Reconsideration was sought of that Court's dismissal of Trans American's Petition for Review at that docket. Trans American stated and the Commission records confirmed that the order in question by the Commission was entered September 8, 1992 and was erroneously stated as July 8, 1992 in the Petition for Review. Consequently, on November 5, 1992 the Commonwealth Court vacated its order of October 9, 1992, granted the Petition for Reconsideration, and reinstated the Petition for Review.

Pursuant to Rule 1701(a) of the Rules of Appellate Procedures, the Commission no longer has jurisdiction to entertain this present Petition to Reinstate. Despite Trans American's administrative deficiencies however, its overall record with the Commission is void of any outstanding penalties, safety or tariff violations. Thus, reinstatement of Trans American's certificate of convenience is appropriate, however any such grant must be contingent upon Trans American's withdrawal of its Petition for Review in the Commonwealth Court of Pennsylvania. We do caution Trans American that administrative requirements, specifically timely filing of reports should be strictly adhered to in the future; THEREFORE,

IT IS ORDERED:

1. That the Petition to Reinstate filed by Trans American Trucking Service, Inc. on September 28, 1992 is hereby granted.

2. That the certificate of public convenience issued to Trans American Trucking Service, Inc. at Docket No. A-00107793, F.2 is hereby reinstated.

3. That the foregoing is expressly conditioned upon Trans American withdrawing its Petition for Review at Docket No. 2132 C.D. 1992 in the Commonwealth Court of Pennsylvania within thirty (30) days of the date of entry of this Order.

4. That if Trans American fails to withdraw its Petition in Commonwealth Court within the time period prescribed by this Order, then this Order shall be rescinded and the Petition to Reinstate will be deemed dismissed without further Commission action.

5. That the order to Show Cause at Docket No. A-00107793C9201 is hereby discharged.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: November 24, 1992

ORDER ENTERED: DEC 0 2 1992

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and 2 or additional services.
- Complete items 3, and 4a & 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 to receive the following (for an extra fee):

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

Consult postmaster for fee.

3. Article Addressed to:
A-88087793, F-2

4a. Article Number
342502

Louis J. Carter, Esq

4b. Service Type

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

5. Signature (Addressee)
John G. Givens

7. Date of Delivery
12-4-92

6. Signature (Agent)

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

Thank you for using Return Receipt Service.

342502