

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

1. <b>REPORT DATE:</b> June 9, 2005	2. <b>BUREAU AGENDA NO.</b> JUN-2005-OSA-0217*
3. <b>BUREAU:</b> Office of Special Assistants	
4. <b>SECTION(S):</b>	5. <b>PUBLIC MEETING DATE:</b> June 23, 2005
6. <b>APPROVED BY:</b> Director: C.W. Davis 7-1827 Mgr/Spvr: K. G. Sophy 7-8108 Legal Review:	
7. <b>PERSONS IN CHARGE:</b> M. Knezevich 7-1828	9. <b>EFFECTIVE DATE OF FILING:</b> N/A
8. <b>DOCKET NO.:</b> A-00108351	

**DOCUMENT  
FOLDER**

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

(a) Pennsylvania Public Utility Commission, Bureau of Transportation and Safety (BTS) v. Wayne Storage Company (Petitioner)

(b) On November 1, 2004, BTS instituted a Complaint against the Petitioner alleging that the Petitioner had failed to maintain evidence of insurance on file with the Commission. The Complaint was served on the Petitioner on November 12, 2004. By Order issued on February 7, 2005, the Commission noted that since no Answer to the Complaint had been timely filed, the allegation of the Complaint was deemed admitted, the Complaint was sustained, and the Petitioner's Certificate was cancelled. On May 18, 2005, the Petitioner filed the instant Petition for Reinstatement (Petition). No Response to the Petition has been filed.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed Opinion and Order which grants the Petition.

Order Doc. No. 547882v1

Calendar Doc. No. 547940v1

11. **MOTION BY:** Commissioner Chm. Holland

**SECONDED:** Commissioner Cawley

Commissioner Shane - Yes  
Commissioner Pizzingrilli - Yes  
Commissioner Fitzpatrick - Yes

**CONTENT OF MOTION:** Staff recommendation adopted.

**DOCKETED**  
JUL 06 2005



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

IN REPLY PLEASE  
REFER TO OUR FILE

JULY 1, 2005

A-00108351

JAMES P MELIA ESQUIRE  
KIRKPATRICK & LOCKHART  
240 NORTH THIRD STREET  
HARRISBURG PA 17101-1502

**DOCUMENT  
FOLDER**

Pennsylvania Public Utility Commission,  
Bureau of Transportation and Safety  
V.  
Wayne Storage Company

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on June 23, 2005 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
Secretary

fg  
encls  
cert. mail

BARRY D KLEBAN ESQUIRE  
TWO PENN CENTER PLAZA SUITE 1900  
PHILADELPHIA PA 19102-1799

WAYNE STORAGE COMPANY  
1237 WRIGHT'S LANE  
WEST CHESTER PA 19380

RJP

**DOCKETED**  
AUG 26 2005

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held June 23, 2005

Commissioners Present:

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Bill Shane  
Kim Pizzingrilli  
Terrance J. Fitzpatrick

Pennsylvania Public Utility Commission, Bureau of  
Transportation and Safety

A-00108351

v.

Wayne Storage Company

**DOCUMENT  
FOLDER**

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before us for consideration is the Petition for Reinstatement of Certificate of Public Convenience (Petition) filed on May 18, 2005, by Wayne Storage Company (Petitioner). No Response to the Petition has been filed.

**History of the Proceeding**

On November 1, 2004, the Commission's Bureau of Transportation and Safety (BTS) instituted a Complaint against the Petitioner, alleging that the Petitioner had failed to maintain evidence of bodily injury and property damage liability insurance on file with the Commission, a violation of 66 Pa. C.S. § 512 and 52 Pa. Code §§ 32.2(c) and

**DOCKETED**  
AUG 26 2005

32.11(a). The Complaint, with notice appended thereto, was served on the Petitioner on November 12, 2004. The Complaint advised the Petitioner that if an Answer were not filed within twenty days, BTS would request the Commission to issue an order canceling the Petitioner's Certificate of Public Convenience (Certificate).

Our Order entered herein on February 7, 2005, noted that the Petitioner had failed to file an answer to the Complaint. Accordingly, that Order, *inter alia*, cancelled the Petitioner's Certificate and assessed a civil penalty against the Petitioner in the amount of \$100.

On May 18, 2005, the Petitioner filed the instant Petition requesting reinstatement of its Certificate.

### **Discussion**

It is well settled that decisions such as whether to grant a Petition for Reinstatement are left to the Commission's discretion and will be reversed only if that discretion is abused. *Hoskins Taxi Service v. Pa. PUC*, 486 A.2d 1030 (Pa. Cmwlth. 1985). In ruling upon a petition for reinstatement, it is incumbent upon this Commission to examine all relevant factors in order to reach an equitable result. *Medical Transportation, Inc.*, 57 Pa. P.U.C. 79 (1983).

The Commission has identified five factors which are particularly relevant to the determination of a petition to reinstate: (1) the amount of time which elapsed between the cancellation of the certificate of public convenience and the filing of the petition to reinstate; (2) whether the petitioner has a record of habitually violating the Public Utility Code; (3) the reasonableness of the excuse given for the violation that caused the certificate to be cancelled, *Re: Bishop*, 58 Pa. P.U.C. 519 (1984); (4) whether

the petitioner has implemented procedures to prevent a recurrence of the circumstances giving rise to the subject complaint, *PUC v. Grimm Motors*, Docket No. A-00111048, *et al.* (May 1, 1998); and (5) whether the petitioner is in compliance with the requirement that all assessments must be current prior to reinstatement, *Re: M.S. Carriers, Inc.*, Docket No. A-00110601 (May 4, 1999).

We note that although the sole reason for the cancellation of the Petitioner's Certificate was the Petitioner's failure to maintain evidence of bodily injury and property damage liability insurance on file with the Commission, we find it necessary to evaluate all five factors in deciding whether to grant or deny the Petition.

The first factor relevant to the determination of a petition for reinstatement is the amount of time a certificate remains dormant. When the period of dormancy is short, reinstatement can be treated solely as a matter between a petitioner and the Commission. *Application of Michael LoRusso, t/d/b/a Elegance Limousine Service*, 1999 Pa. PUC LEXIS 14, \*5 (1999). The longer this period becomes, the more likely it is that another carrier would rely on the cancellation as being permanent and formulate plans to fulfill the dormant service. *Id.*

The Petitioner filed a Petition for Reinstatement on May 18, 2005. We note that only a few months elapsed between cancellation on February 7, 2005, and the filing of the instant Petition. This factor weighs favorably toward granting reinstatement.

The second reinstatement factor is whether the Petitioner has a record of habitually violating the Code or the Commission's Regulations. The Petitioner was issued its Certificate on May 24, 1989. The Petitioner avers that it has provided service for the period since its certification, during which time it has been the subject of very few shipper complaints. (Petition ¶ 5). A review of the Commission's records reveals that the

Petitioner has had only two complaints filed against it in the past five years, one of which is the Complaint which led to the Petitioner's cancellation. On review of the foregoing, we conclude that the Petitioner does not have a substantial history of violations of the Code and our Regulations. Accordingly, we conclude that this factor weighs in favor of reinstatement.

The third reinstatement factor queries the reasonableness of the excuse offered for the violation. The Petitioner avers that the violation which resulted in the cancellation of its Certificate was a result of internal administrative inefficiencies. Those inefficiencies resulted in the Petitioner not being made aware of the issuance of the Complaint. (Petition ¶ 8). We do not consider the Petitioner's explanation persuasive. The Petitioner not only failed to timely file proof of insurance with the Commission, it also failed to respond to the Complaint. Accordingly, this factor weighs against reinstatement.

The fourth reinstatement factor to be considered is whether the Petitioner has implemented procedures to prevent a recurrence of the circumstances giving rise to the subject Complaint. The Petitioner avers that it has made the necessary internal changes in procedure so that the situation which gave rise to the cancellation will not occur again. (Petition ¶ 8). On review of the foregoing, we conclude that the Petitioner has implemented appropriate procedures in order to prevent a recurrence of the circumstances giving rise to the subject Complaint. Accordingly, this factor weighs in favor of reinstatement.

The fifth factor requires assessments and fines to be current prior to reinstatement. The Petitioner avers that it has met all outstanding obligations to the Commission, including assessments, insurance filings and civil penalties. Additionally, the Petitioner was directed to pay a civil penalty in the amount of \$100 per the terms of

the Cancellation Order herein. The Petitioner forwarded a check in that amount attached to the instant Petition. (Petition ¶ 6). Thus, there are no fines currently outstanding and the Petitioner has current proof of insurance on file with the Commission. As such, this factor also militates in favor of reinstatement.

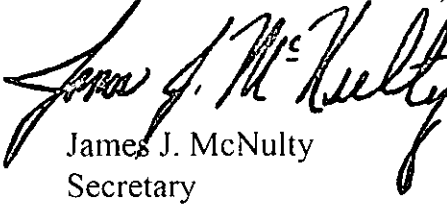
In evaluating the facts and circumstances of this proceeding, we conclude that reinstatement of the Petitioner's Certificate is appropriate. However, we wish to admonish the Petitioner that violation of the Commission's rules and Regulations can result in the imposition of severe sanctions including the cancellation of its Certificate; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reinstatement filed by Wayne Storage Company, on May 18, 2005, is granted.
2. That a copy of this Opinion and Order shall be served upon the Pennsylvania Department of Transportation and on the Pennsylvania Department of Revenue, and Wayne Storage Company's insurer: Transguard Insurance Company of America, 700 Oakmont Lane, Westmont, IL 60559.

3. That the Secretary mark this case closed.

BY THE COMMISSION,

  
James J. McNulty  
Secretary

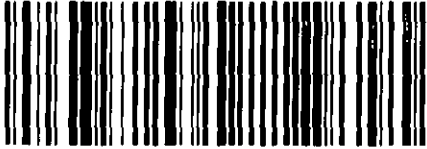
(SEAL)

ORDER ADOPTED: June 23, 2005

ORDER ENTERED: JUL 01 2005



2. Article Number



7160 3901 9843 0002 5363

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

A-00 102351  
James Melia o/p

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)

B. Date of Delivery

2-5-05

C. Signature

X

Agent  
 Addressee

D. Is delivery address different from item 1?  
If YES, enter delivery address below:

Yes  
 No

R.P.