**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held October 22, 2015 |
| Commissioners Present:  Gladys M. Brown, Chairman  John F. Coleman, Jr., Vice Chairman  Pamela A. Witmer  Robert F. Powelson  Andrew G. Place |  |
| Pennsylvania Public Utility Commission  v.  Wayne Storage Company | A-00108351  C-2011-2228163 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reinstatement of Certificate of Public Convenience (Petition) filed on June 29, 2015, by Wayne Storage Company (Petitioner). No answers to the Petition have been filed. For the reasons outlined below, we will grant the Petition.

**History of the Proceedings**

The Petitioner was issued a Certificate of Public Convenience (Certificate) for household goods carrier authority on February 15, 1989, at Docket No. A‑00108351.

On March 14, 2011, the Commission’s former Bureau of Transportation and Safety (BTS) Prosecutory Staff[[1]](#footnote-1) issued a Complaint at Docket No. C‑2011‑2228163, alleging that the Petitioner failed to pay an assessment of $768which the Respondent received on August 25, 2010. The Complaint stated that this failure to pay the assessment was a violation of the Public Utility Code (Code) at 66 Pa. C.S. § 510(c). The Complaint was sent by Certified Mail on March 14, 2011, and delivered on March 17, 2011. The Petitioner did not file an Answer to the Complaint.

By Order entered July 14, 2011 (*July 2011 Order*), the Commission sustained the BTS Complaint, cancelled the Petitioner’s Certificate, and imposed a fine in the amount of $100 on the Petitioner. *July 2011 Order* at 2. In addition, the Commission indicated that it would request that the Pennsylvania Department of Transportation (PennDOT) put an administrative hold on the Petitioner’s vehicle registrations, according to which the Petitioner would not be permitted to register any new vehicles or renew any existing vehicle registrations until all past due assessments and fines were paid, all insurance filings were up to date, and the Petitioner held active Certificates issued by the Commission. The Petitioner was also prohibited from rendering service as a common carrier by motor vehicle in intrastate commerce in the Commonwealth of Pennsylvania.  *Id*.

In the *July 2011 Order*, the Commission stated that should the Petitioner wish to resume household goods transportation operations in the Commonwealth of Pennsylvania, it must file a Petition for Reinstatement of its Certificates for good cause, in accordance with the provisions of 52 Pa. Code § 5.41(a) and 1 Pa. Code § 35.17. The Commission further stated that if such a Petition was denied or was not timely filed, the Petitioner would be required to file a new application for authority in order to obtain Certificates. *July 2011 Order* at 3.

Commission records indicate that the Petitioner paid the outstanding $100 fine on May 30, 2015, and the outstanding $768 assessment amount on June 5, 2015. Commission records further indicate that the Petitioner made subsequent assessment payments on July 17, 2015.

As noted above, the Petitioner filed its Petition on June 29, 2015. No answers to the Petition have been filed.

**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, Inc. 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. *Re* *Medical Transportation, Inc.*, 57 Pa. P.U.C. 79 (1983).

The Commission has identified five factors that are particularly relevant to the determination of a petition to reinstate: (1) the amount of time that 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 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, *Pa. PUC v. Grimm Motors*, Docket No. A‑00111048, *et al*. (Order entered May 1, 1998); and (5) whether the petitioner is in compliance with the requirement that all outstanding civil penalties and/or assessments must be current prior to reinstatement, *Re: M.S. Carriers, Inc.*, Docket No. A-00110601 (Order entered May 4, 1999).

The first factor relevant to the determination of whether a petition for reinstatement should be granted 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, at \*5. 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.*

As noted above,thePetitioner’s Certificate was cancelled by the *July 2011 Order*, and the Petitioner did not file the instant Petition until June 29, 2015. Thus, approximately four years elapsed between the date of cancellation and the filing of the Petition. The Petitioner avers that it did not become aware that its Certificate had been cancelled until March, 2015, when it attempted to transfer the title of certain vehicles with PennDOT. Petition at 2. Upon discovery that its Certificate was no longer active, the Petitioner filed its Petition to reinstate the Certificate within approximately four months.

The Petitioner asserts that its failure to timely pay its assessments and its lack of awareness regarding the subsequent cancellation of its Certificate were due to the absence of any documentation in its records that it had received communications from the Commission regarding these matters. Thus, the Petitioner opines that under the circumstances, the time period between the date of cancellation and the filing of the Petition was reasonable. *Id*. at 2-3. However, as discussed below, we find the Petitioner’s excuse for the violation at issue in this proceeding to be questionable, and therefore, we do not agree that the four-year time period that elapsed between the cancellation of the Certificate and the filing of the Petition to reinstate was reasonable. Accordingly, we conclude that this factor does not weigh in favor of reinstatement.

The second reinstatement factor is whether the Petitioner has a record of habitually violating the Code or the Commission’s Regulations. The Petitioner has been certificated since 1989. A review of Commission records does not reveal a history of substantial violations on the part of the Petitioner over the past ten years. The Petitioner asserts that upon learning of the cancellation of its Certificate, it ceased operations and contacted the Commission’s Assessment Office to determine what reports it was required to furnish and the amount of unissued assessment invoices. *Id*. at 4. As noted above, the Petitioner paid the outstanding fine and assessment amounts after it became aware that its Certificate had been cancelled. Accordingly, we conclude that this factor weighs in favor of reinstatement.

The third factor is the reasonableness of the excuse offered for the violation. The Petitioner avers that it timely filed its 2010 and 2011 annual assessment reports on which the assessments for fiscal years 2011-2012 and 2012-2013 were based.[[2]](#footnote-2) However, the Petitioner states that it found no indication in its records that it received invoices for those assessments. *Id*. at 2. In addition, the Petitioner asserts that after a diligent search of its records, it found no indication that it received a copy of the *July 2011 Order* cancelling its Certificate. *Id*. at 3. As noted, the Petitioner averred that it did not become aware that its Certificate had been cancelled until March, 2015, when it attempted to transfer the title of certain vehicles with PennDOT. *Id*. at 2.

It is not known why the Petitioner found no record of receiving the Commissioner’s assessment invoices or the *July 2011 Order*. A review of Commission records indicates that the address used by the Commission for sending correspondence to the Petitioner is the same as the current address set forth in the Petition and on record with the Commission. Moreover, we note that the BTS Complaint was sent to the Petitioner by Certified Mail to that address on March 14, 2011, and was delivered on March 17, 2011. *July 2011 Order* at 1. Based on this information and the amount of time that has passed since the Petitioner’s Certificate was revoked, it is reasonable to conclude that the Petitioner was provided proper notice of its outstanding assessment and the revocation of its Certificate prior to March, 2015.[[3]](#footnote-3) For this reason, we do not find the Petitioner’s excuse for its failure to timely pay its outstanding assessment amount to be reasonable. Accordingly, we conclude that this factor does not weigh in favor of 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 asserts that since the discovery of the cancellation of its Certificate, it has designated one individual to track communications from the Commission to avoid failing to act upon such communications in a timely manner. According to the Petitioner, it has instructed its personnel to immediately forward any communication from the Commission to that individual. *Id*. at 4. In addition, the Petitioner states that it has instructed its fiscal office to establish a system to track the due dates of the various Pennsylvania and federal reports that it is required to file. The Petitioner avers that it will mark any assessment invoices for priority payment in its accounting system. *Id*.

On review of this issue, we find that the new procedures established by the Petitioner should allow it to better track communications from the Commission, resulting in more timely responses to those communications. In addition, the Petitioner’s proposed system to track due dates for the filing of reports and payment of assessments should lead to the payment of assessment amounts to the Commission in a timely manner. These corrective actions weigh in favor of reinstatement.

The fifth factor requires assessments and fines to be current prior to reinstatement. As noted above, Commission records indicate that the Petitioner had paid all outstanding assessments and civil penalties as of July, 2015. In addition, the Petitioner asserts that it stands willing and able to furnish all reports and pay any assessment invoices forwarded to it by the Commission. The Petitioner further asserts that it has completed annual assessment reports for 2011 through 2014, and is forwarding those reports to the Commission. *Id*. The fact that the Petitioner is current on its fines and assessments weighs in favor of reinstatement.

Based on the totality of the facts presented in this case, we are of the opinion that reinstatement of the Petitioner’s Certificate is appropriate. While the Petitioner’s Certificate was cancelled and has been dormant for over four years due to an apparent failure to properly track and respond to communications from the Commission, the Petitioner has implemented procedures to prevent a recurrence of these issues, and has satisfied all outstanding assessments and civil penalties. Nevertheless, we take this opportunity to remind the Petitioner of the importance of receiving, responding to, and complying with any and all Commission correspondence. Further disregard of the Code and the Commission’s Rules and Regulations will not be tolerated and may lead to a permanent cancellation of its Certificate.

**Conclusion**

Consistent with the foregoing discussion, we will grant the Petitioner’s request for reinstatement of its Certificate; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reinstatement of Certificate of Public Convenience filed by Wayne Storage Company on June 29, 2015, is granted, and the Certificate of Public Convenience at Docket No. A-00108351 is hereby reinstated.

2. That the Secretary’s Bureau shall re-instate the Certificate of Public Convenience of Wayne Storage Company at Docket No. A-00108351.

3. That a copy of this Opinion and Order shall be served on the Pennsylvania Department of Transportation. In addition, this Opinion and Order shall be served on:

The Department of Revenue

Bureau of Audit Programs

Sales and Use Taxes

Tenth Floor, Strawberry Square

Harrisburg, PA 17128-1061

and on Wayne Storage Company’s insurance carrier.

4. That a copy of this Opinion and Order shall be served on the Bureau of Investigation and Enforcement (for transportation cases), the Bureau of Technical Utility Services, and the Office of Administrative Services – Financial and Assessment Section,

5. That the Secretary’s Bureau shall mark the proceeding at Docket No. C‑2011‑2228163 closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 22, 2015

ORDER ENTERED: October 22, 2015

1. BTS Prosecutory Staff has since been abolished and its duties have been assumed by the Commission’s Bureau of Investigation and Enforcement. [↑](#footnote-ref-1)
2. The Petitioner states that it filed its annual assessment reports simultaneously with those of its sister company, Wayne Moving & Storage of New Jersey. According to the Petitioner, a review of Commission records indicated that its sister company has no outstanding assessment amount or civil penalties due. Petition at 2. [↑](#footnote-ref-2)
3. The Petitioner asserts that a search of the Commission’s data base revealed that the Commission forwarded a letter to the Petitioner on another matter at its current, correct address, but that there was no record in its mail logs that the Petitioner received the letter. Petition at 1. Again, it is not known why the Petitioner would have no record of having received correspondence from the Commission that the Petitioner admits was sent to the correct address. [↑](#footnote-ref-3)