

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Uniform Cover and Calendar Sheet**

KJR

1. <b>REPORT DATE:</b>	:	2. <b>BUREAU AGENDA NO.</b>
October 5, 1992	:	
3. <b>BUREAU:</b> Law	:	OCT-92-L-562*
4. <b>SECTION(S):</b> Motor Carrier	:	5. <b>PUBLIC MEETING DATE:</b>
6. <b>APPROVED BY:</b>	:	October 15, 1992
Director: Povilaitis 7-5000	:	
Supervisor: House 3-3713	:	
7. <b>PERSON IN CHARGE:</b> 3-3713	:	
Angela T. Jones	:	
8. <b>DOCKET NO.:</b>	:	
A-00109368	:	

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

(a) John K. Kane; Letter/Petition for Reinstatement.

(b) By Order entered May 13, 1992, the Commission cancelled the certificate of public convenience of John K. Kane (Kane) for failure to maintain evidence of bodily injury and property damage liability insurance. Kane filed a Letter/Petition to Reinstatement its certificate of public convenience on August 24, 1992. Commission records indicate that Kane filed on August 21, 1992 evidence of adequate liability and cargo insurance.

(c) The Law Bureau recommends that the Letter/Petition for Reinstatement filed by John K. Kane on August 24, 1992 be granted subject to the conditions contained herein.

**DOCUMENT  
FOLDER**

**DOCKETED**  
DEC 09 1992

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

KJR

October 21, 1992

IN REPLY PLEASE  
REFER TO OUR FILE  
A-00109368

MICHAEL S HENRY ESQUIRE  
MCALLISTER & GALLAGHER  
SUITE 1100  
1760 MARKET STREET  
PHILADELPHIA PA 19103



John K. Kane;  
Letter/Petition for Reinstatement

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To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission in Public Meeting on October 15, 1992 in the above entitled proceeding.

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

Very truly yours,

John G. Alford, Secretary

**DOCKETED**  
OCT 28 1992

smk  
Encls.  
Cert.Mail

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120



Public Meeting held October 15, 1992

Commissioners Present:

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

John K. Kane;  
Letter/Petition for Reinstatement

Docket No.  
A-00109368

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on a Letter/Petition for Reinstatement filed by Michael S. Henry, Esquire, as counsel for John K. Kane (hereinafter "Kane") on August 24, 1992. Kane requests reinstatement of its certificate of public convenience, which was cancelled by Order entered on May 13, 1992 for failure to maintain evidence of adequate bodily injury and property liability insurance. Commission records indicate that Kane has since filed evidence of adequate liability and cargo insurance on August 21, 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).

**DOCKETED**  
OCT 28 1992

Addressing the first factor, Kane filed its Petition to Reinstatement approximately three (3) months after cancellation of its certificate. Such a prompt response weighs in favor of reinstatement.

Next, we will review Kane's record of compliance with the Public Utility Code and the rules and regulations of the Commission. At Docket No. A-00109368C9101, the present proceeding, a Show Cause Order was entered on January 8, 1992 for Kane's failure to maintain evidence of adequate bodily injury and property damage liability insurance. However, service was not accomplished by the U.S. Postal Service at the principal address the Commission had on file for Kane. Receipt of the mailing noted that the forwarding order had expired. Subsequently, an Enforcement Officer was assigned to serve the order but was unable to locate Kane. Thus, the Show Cause Order was made absolute by an Order revoking Kane's certificate of public convenience which was entered on May 13, 1992. However, the Commission has received the requisite Form E filing for evidence of liability insurance on August 21, 1992 showing insurance effective as of September 21, 1991. Our records also indicate receipt of a Form H filing on August 21, 1992 evidencing cargo insurance also effective September 21, 1991.

In addition, although our records indicate Kane filed a 1991 Assessment Report, the 1991 assessment payment was not satisfied. The Commission has authority to assess a public utility for expenditures attributable to its regulation. 66 Pa. C.S. § 510(b). The 1991 assessment was seven hundred two dollars (\$702.00) determined as of June 4, 1992. Kane is currently showing the seven hundred two dollars as its outstanding balance. Any reinstatement of Kane's certificate must be conditioned upon satisfaction of the 1991 assessment balance.

Timely payment of allocated assessments upon a public utility is required by the Public Utility Code at 66 Pa. C.S. § 510(c). Evidence of adequate insurance is a requirement of motor carriers by the Commission's Regulations at 52 Pa. Code §§ 32.1-32.16 which implements section 512 of the Public Utility Code, 66 Pa. C.S. § 512. While Kane's compliance record does not compel a denial of reinstatement at this time, we caution Kane to adhere to timely administrative filings and payment of assessments in the future.

To explain its failure to respond to the Commission's Show Cause Order at A-00109368C9101 concerning failure to maintain adequate liability insurance, Kane asserts that it had changed insurance carriers with its new carrier representing to Kane it could handle filings with utilities. Kane assumed from this representation that the insurance carrier would provide the administrative forms for evidence of insurance with the Commission. However, the duty of maintaining evidence of

insurance is affirmatively with Kane. 52 Pa. Code § 32.12. While we recognize that confirmation of the appropriate insurance to maintain authority must be communicated from the insurer, it is the carrier's obligation to ensure this communication does occur in compliance with the Public Utility Code. Kane also asserts that he changed his principal address and orally informed the Commission of this change to acquire the necessary forms for filing the 1991 Annual and Assessment Reports. Kane submitted these reports with the address corrections. Thus, the Commission, Kane asserts, had the information available to adequately serve Kane with its Orders. However, Kane admits he did not reside at the principal address on file with the Commission nor did he file a change of address form at the time service of the Show Cause Order was attempted. Moreover, the Public Utility Code places an affirmative duty upon the utility to apprise the Commission of changes to his current address. 52 Pa. Code § 1.53(b).

Although Kane has had administrative violations, our records indicate he has had no tariff or safety violations or penalties raised against him. Considering the circumstances, we will grant reinstatement of Kane's certificate of public convenience subject to Kane paying \$702.00 to satisfy his 1991 assessment meeting the requirement of section 510 of the Public Utility Code, 66 Pa. C.S. § 510. However, administrative requirements should be strictly adhered to in the future.  
THEREFORE,

IT IS ORDERED:

1. That the Petition to Reinstate filed by Michael S. Henry, Esq. for John K. Kane on August 24, 1992 is hereby granted.

2. That the certificate of public convenience issued to John K. Kane at Docket No. A-00109368 is hereby reinstated.

3. That the foregoing is expressly conditioned upon payment of \$702.00 for assessments due for 1991 within sixty (60) days of the date of entry of this Order.

4. That if Kane fails to provide payment for its 1991 assessment within the time period prescribed by this Order, then this Order shall be rescinded and the Petition to Reinstate will be deemed denied without further Commission action.

BY THE COMMISSION,



John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: October 15, 1992

ORDER ENTERED: OCT 21 1992