





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

February 10, 1997

REFER TO OUR FILE

A-00112095

DONALD R KINSLEY T/A  
KINSLEY TRUCKING  
BOX 178  
POCONO SUMMIT PA 18346

Application of Donald R. Kinsley, t/d/b/a Kinsley Trucking

DOCUMENT  
FOLDER

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on February 6, 1997 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

John G. Alford  
Secretary

Enclosure  
Certified Mail  
JEP

**DOCKETED**  
APR 3 1997

BTL

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held February 6, 1997

Commissioners Present:

John M. Quain, Chairman  
Lisa Crutchfield, Vice Chairman  
John Hanger  
David W. Rolka  
Robert K. Bloom

DOCUMENT  
FOLDER

Application of Donald R. Kinsley,  
t/d/b/a Kinsley Trucking

A-00112095

**DOCKETED**  
APR 3 1997

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before us for consideration is a letter filed on September 30, 1996, by Donald R. Kinsley, t/d/b/a Kinsley Trucking (hereinafter, "Petitioner" or "Kinsley"), which purports to be a Petition for Reinstatement of the Application for a certificate of public convenience filed at Docket Number A-00112095. The Application was canceled by letter dated March 11, 1996, for failure to file evidence of insurance. No answer to the Petition has been filed.

### History of the Proceeding

On April 11, 1995, the Petitioner filed an Application for authority from this Commission to operate as a common carrier of property within the Commonwealth of Pennsylvania. By letter dated June 2, 1995, we granted the Application upon compliance with certain requirements regarding the filing of evidence of insurance and the carrier's satisfactory safety rating from the U.S. Department of Transportation or other State having comparable safety regulations to Pennsylvania.

By letter dated October 18, 1995, we informed Kinsley that it had failed to file evidence of insurance within 60 days of the letter dated June 2, 1995, as required by the letter. Kinsley was informed that it had 20 days to file the required evidence of insurance, or the Application would be denied for noncompliance.

By letter dated March 11, 1996, we informed Kinsley that it had failed to comply with the 60-day compliance period specific in the letter dated June 2, 1995. The letter stated that the Application was therefore dismissed. On September 30, 1996, Kinsley filed the Letter-Petition now before us.

### Discussion

Before considering the merits of the Petition now before us, we must point out the following. Kinsley states in the Petition that it is seeking the reinstatement of its certificate of public convenience. (Petition, p. 1). However, our records show that Kinsley never complied with the conditions set forth in our letter dated June 2, 1995, conditionally granting the certificate. Accordingly, the certificate of public convenience was never issued. Therefore, we are treating this Petition as a Petition for reinstatement of the Application for a certificate, rather than for the

reinstatement of the certificate itself. In deciding whether the Petition should be granted, we will use as a guide the legal standards which apply to a petition for reinstatement of a certificate of public convenience.

Decisions whether to grant petitions for reinstatement are left to the Commission's discretion and will be reversed on appeal only if that discretion is abused. Edan Transportation Corp. v. Pennsylvania Public Utility Commission, 154 Pa. Commonwealth Ct. 21, 623 A.2d 6 (1993). In ruling upon a petition to reinstate, the Commission will examine all relevant factors to reach an equitable result. Re Medical Transportation, Inc., 57 Pa. P.U.C. 79 (1983).

On September 30, 1996, we received the Petition now before us. In the Petition, Kinsley states that it just recently became aware that there is an insurance problem concerning its Application at Docket No. A-00112095. Kinsley contends that its insurance has been in effect continuously but, apparently, its agent failed to file the required Form H or E with this Commission. Accordingly, Kinsley requests that, if possible, its Application be reinstated, since the problem with the insurance filing was not its fault. (Petition, p. 1).

In reviewing a reinstatement petition, we consider, as matters of particular importance, the following: (1) the amount of time which elapsed between the cancellation of the certificate and the filing of the petition to reinstate; (2) the petitioner's record of compliance with the Public Utility Code and the orders and regulations of the Commission; and (3) the reasonableness of the excuse given for the violation which caused the cancellation of the certificate. Re Bishop, 58 Pa. P.U.C. 519 (1984).

Regarding the first issue, the timeliness of the filing of the Petition, we note that the Petition now before us was filed on September 30, 1996, a period of approximately three months after the cancellation of the Application. The timeliness of the filing of the Petition supports a granting of said Petition.

Regarding the second issue, the Petitioner's compliance record, our records contain no evidence of any complaints against the Petitioner. This also supports reinstatement.

Regarding the third issue, the reasonableness of the Petitioner's excuse, we note that the Petitioner contends that it was unaware of the problem with its insurance. This contention is contradicted by two letters of record in this proceeding dated October 18, 1995, and March 11, 1996, informing Kinsley that it had not yet complied with the requirements of our letter dated June 2, 1995. This does not support the granting of the Application.

Also regarding the reasonableness of the Petitioner's excuse, we note that Kinsley asserts that the required insurance was in effect during the time in question, but, unbeknownst to Kinsley, its agent failed to file the evidence of insurance. We note that the Applicant is ultimately responsible for compliance on the part of those acting on its behalf. Nevertheless, we find this to be a mitigating circumstance concerning Kinsley's failure to comply.

In reviewing these matters, we note, as stated above, that the timeliness of the Petition now before us supports a granting of the Petition. Regarding the Petitioner's record of compliance, we note that Kinsley has demonstrated no record of compliance failures. This supports a granting of the Petition to Reinstate.

In weighing these factors, we find that, on balance, it is in the public interest to grant the Petition for Reinstatement of its Application. We find the timeliness of the Petition, the fact that the Petitioner has had insurance in effect during the entire time of the pending Application to be persuasive. Accordingly, we will grant the Petition. We reemphasize that in granting this Petition, we are permitting the reinstatement of the Application at Docket No. A-00112095, since no certificate of public convenience was ever issued at that Docket Number.

Kinsley raised another issue in the Petition which we will address. Kinsley requested that it be permitted to change its legal name with this Commission from "Donald R. Kinsley, t/d/b/a Kinsley" to "Donald R. Kinsley, t/d/b/a D. Kinsley." Kinsley seeks the name change so that the name it uses in Pennsylvania will be the identical to that it uses before the Surface Transportation Board (formerly the Interstate Commerce Commission). We find this to be a reasonable request and will grant it. This kind of name change is permitted by Section 3.381(a)(7)(ii)(A) of our regulations at 52 Pa. Code §3.381(a)(7)(ii)(A). Our granting of the name change is conditioned upon the Petitioner's compliance with the requirements of that Section; **THEREFORE,**

**IT IS ORDERED:**

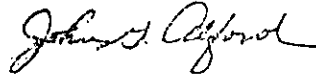
1. That the Letter-Petition for Reinstatement of its Application at Docket No. A-00112095 filed on April 11, 1995, by Donald R. Kinsley, t/d/b/a Kinsley Trucking, is granted, subject to timely compliance with the conditions set forth herein.

2. That reinstatement of the Application is conditioned upon the Petitioner filing with this Commission, within sixty (60) days, and maintaining appropriate evidence of valid insurance.

3. That the Petitioner's request that it be permitted to change its legal name contained in the Application at Docket No. A-00112095 from "Donald R. Kinsley, t/d/b/a Kinsley Trucking" to "Donald R. Kinsley, t/d/b/a D. Kinsley Trucking" is granted, contingent upon the Petitioner's compliance with the requirements of our regulations at 52 Pa. Code §3.381(a)(7)(ii)(A).

4. That failure to comply with the conditions required herein may result in the denial of the Application without further Commission action.

**BY THE COMMISSION,**



John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: February 6, 1997

ORDER ENTERED: FEB 10 1997