



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

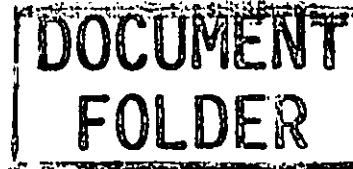
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IN REPLY PLEASE
REFER TO FILE

DECEMBER 10, 1996

A-00111786

HENRY E VAN BLUNK ESQUIRE
892 SECOND STREET PIKE STE C
RICHBORO PA 18954-1005



PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

LAWRENCE ESTENICH ENTERPRISES, INC.,
t/d/b/a ESTENICH TRUCKING COMPANY

DOCKETED
DEC 19 1996

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 December 5, 1996, in the above entitled proceeding.

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

Very truly yours,

John G. Alford, Secretary

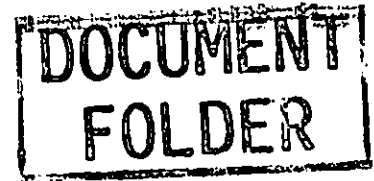
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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 5, 1996

Commissioners Present:

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



Pennsylvania Public Utility Commission

v.

A-00111786

Lawrence Estenich Enterprises, Inc.,
t/d/b/a Estenich Trucking Company



OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition is the Letter-Petition for Reinstatement of Lawrence Estenich Enterprises, Inc., t/d/b/a Estenich Trucking Company ("Respondent") filed on September 6, 1996, relative to the above-captioned proceeding.

History of the Proceeding

On May 31, 1996, the Commission's Bureau of Transportation and Safety ("BTS") instituted a Complaint against the Respondent alleging that it failed to obey and comply with a Commission Secretarial Letter dated March 20, 1995. Specifically,

the Respondent was directed to submit its company to a safety fitness review, and to maintain adequate, efficient and safe service and facilities. The Respondent filed an Answer on June 27, 1996, admitting the allegations of the Complaint.

By Order entered on August 23, 1996, the Commission ordered the revocation without prejudice of the Respondent's certificate of public convenience. On September 6, 1996, the Respondent filed the instant Letter-Petition for Reinstatement, asserting compliance with all insurance requirements and requesting a safety fitness review.

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. Pennsylvania Public Utility Commission, 87 Pa. Commonwealth Ct. 30, 486 A.2d 1030 (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).

This 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 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; and (3) the reasonableness of the excuse given for the violation which caused the certificate to be cancelled. Re: Bishop, 58 Pa. P.U.C. 519 (1984).

The first factor to be considered is the amount of time which has elapsed between the cancellation of the certificate and the filing of the petition to reinstate. When this period of dormancy is short, then reinstatement can be treated solely as a matter between the petitioner and the Commission. The longer this period becomes, the more likely it is that an existing carrier would rely on the cancellation as being permanent and formulate plans to fulfill the dormant service.

In the instant proceeding, the Respondent filed its Petition on September 6, 1996, two weeks after the cancellation of its certificate of public convenience. Based on this short period of time, the Petition will be treated solely as a matter between the Commission and the Respondent. This factor militates in favor of reinstatement. (See Re Medical Transportation, supra.; Commission determined that period of dormancy of one month weighed in favor of carrier's reinstatement).

The second factor to be considered is whether the Respondent has a record of habitually violating the Public Utility Code. There is no record evidence that the Respondent has habitually violated our Rules and Regulations which, in our view, weighs in favor of reinstatement.

The third factor is the reasonableness of the reason given for violation that caused the cancellation. We note that the Respondent, in a letter dated June 21, 1996, indicated its willingness to submit to a safety fitness review. The Respondent also revealed in that letter that it secured new insurance because its previous insurance carrier was requesting \$2500 to supply a Form E certificate of insurance. Upon receipt of service of the August 23, 1996 Order cancelling its certificate, the Respondent filed a timely request for reinstatement.

We note that the Respondent has expressed a willingness to submit to a safety fitness review since June 21, 1996. (See Respondent's letter to Commission's Secretary dated June 21, 1996) However, for some reason the actual safety fitness review was not completed before the entry of our August 23, 1996 Cancellation Order. Although the Respondent does not specifically indicate, in its Petition, the reason why the review was not completed, we find that the Respondent's delay in submitting to a safety fitness review was not unreasonable under the circumstances of this proceeding.

When considering whether reinstatement is warranted, our position has been to balance the above factors to reach an equitable result. Re Medical Transportation, supra. Given the circumstances of this proceeding, we believe that it is in the public interest to grant the Respondent's Petition for Reinstatement; **THEREFORE,**

IT IS ORDERED:

1. That the Letter-Petition for Reinstatement of Lawrence Estenich Enterprises, Inc., t/d/b/a Estenich Trucking Company filed on September 6, 1996, be and hereby is, granted, consistent with this Opinion and Order.


2. That the Commission's Order of August 23, 1996, cancelling Lawrence Estenich, Inc., t/d/b/a Estenich Trucking Company's authority at A-00111786, be and hereby is, rescinded upon the carrier's successful submission and completion of a safety fitness review.

3. That Lawrence Estenich Enterprises, Inc., t/d/b/a Estenich Trucking be and hereby is, directed to successfully complete a safety fitness review with the Commission's Bureau of

Transportation and Safety within 90 days of the date of entry of this order.

4. That this proceeding be transferred to the Commission's Bureau of Transportation and Safety for the prompt scheduling of a safety fitness review and for any other action as may be deemed necessary and proper.

BY THE COMMISSION,


John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: December 5, 1996

ORDER ENTERED: DEC 10 1996