**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held June 17, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

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| Pennsylvania Public Utility Commissionv.James & Debra Ament, t/a We-Haul Moving | A-2016-2534040A-705903 |

**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) and Rescission of Final Order[[1]](#footnote-2) filed on February 24, 2020, by James & Debra Ament, t/a We-Haul Moving (We-Haul Moving), in the above-captioned proceeding. No answers to the Petition have been filed. For the reasons outlined below, we will grant the Petition.

# History of Proceeding

On September 23, 2015, We-Haul Moving was issued a Certificate of Public Convenience (CPC or Certificate) at Docket No. A-2015-2478404, granting it authority to transport, as a common carrier, property, excluding household goods in use, between points in Pennsylvania. On October 3, 2016, We-Haul Moving was also issued a CPC at Docket No. A-2016-2534040, granting it authority to transport, as a common carrier, by motor vehicle, household goods in use between points in Pennsylvania. This authority is the subject of the Petition.

By way of background, the Public Utility Code (Code) requires that by March 31 of each year, every public utility must file a report detailing its gross intrastate operating revenue for the preceding calendar year. 66 Pa. C.S. § 510(b). This report is essential for the Commission to fund its operations and to properly allocate assessment costs among the regulated utility community. *Id*. In addition, common carriers are required to operate continuously and without unreasonable interruptions of service. 66 Pa. C.S. § 1501; 52 Pa. Code §§ 29.61‑62. A carrier with no intrastate operating revenues for several years indicates that it is no longer providing jurisdictional public utility service in Pennsylvania and, therefore, a CPC for that entity is no longer “necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a). In addition, Commission Regulations authorize the cancellation of a common carrier’s CPC for failure to comply with operating and reporting requirements, as well as other provisions of the Code. 52 Pa. Code §§ 29.12 (Motor Carriers of Passengers) and 31.12 (Motor Carriers of Property).

On August 23, 2018, the Commission entered a Tentative Order to initiate the process for cancelling the CPCs of common carriers that failed to file required annual assessment reports and/or failed to establish that they have operated continuously. *See Cancellation of Certificates of Public Convenience for Common Carriers; Failure to Operate or Report Any Operating Revenue*, Docket No. M-2018-3003742 (Tentative Order entered August 23, 2018) (*Tentative Order*). The *Tentative Order* was mailed to each carrier and was published in the *Pennsylvania Bulletin* on September 8, 2018. 48 *Pa.B.* 5683. Carriers were given 20 days from publication to challenge the cancellation of their CPCs, file a conforming Assessment Report, or, alternatively, request cancellation of their CPCs.

The carriers that were served with the August 23 *Tentative Order* were those carriers that failed to respond to the Commission’s earlier Secretarial Letter dated May 31, 2018, requesting that they either file an assessment report detailing their intrastate operating revenues, as required by Section 510 of the Code, 66 Pa. C.S. § 510, or notify the Commission of their desire to abandon their CPCs. Moreover, the Secretarial Letter warned the carriers that failure to comply would result in the Commission taking appropriate action to cancel their CPCs.

 We-Haul Moving was named in the *Tentative Order* as being in non-compliance with the reporting requirements of 66 Pa. C.S. § 510 (b) or with the operational requirements of 66 Pa. C.S. § 1501 and 52 Pa. Code §§ 29.61-62. As a result of failing to comply with the Commission’s *Tentative Order* within the time prescribed therein, We-Haul Moving was named in the Commission’s Final Order adopted and entered on November 8, 2018, cancelling its CPCs. *See Cancellation of Certificates of Public Convenience for Common Carriers; Failure to Operate or Report Any Operating Revenue*, Docket No. M-2018-3003742 (Final Order entered November 8, 2018) (*Final Order*).

 On February 24, 2020, We-Haul Moving filed the instant Petition requesting reinstatement of its CPC and rescission of our final order. As noted above, no answers to the Petition have been filed.

We-Haul Moving asserts that it had only recently come to its attention that it was non-compliant with respect to yearly assessments because it never received any assessment forms. According to We-Haul Moving’s representation, it contacted the assessment office on February 12, 2020 and was informed, based on a clerical error, that all correspondence had been sent to its previous location at 1024A First Ave., Hellertown, PA 18055. We-Haul Moving asserts that it has not been receiving mail at that location for approximately 10 years.

We-Haul Moving submits that the Commission has been aware of its current location at 1866 Auburn Street, Bethlehem, PA 18015 for many years, and was visited by an enforcement agent at that location. We-Haul Moving notes that its CPCs confirm its current address in Bethlehem, PA. Finally, We-Haul Moving contends that it has always sought to remain compliant with the PUC and would have continued to be compliant if it had received the forms from the assessment department. Based on the Commission’s clerical error, along with any oversight on its part, We-Haul Moving is requesting reinstatement of its CPC. We-Haul Moving ensures that going forward it will submit all forms in a timely manner and remain compliant with the PUC.

We-Haul Moving has two CPCs, Docket No. A-2015-2478404, to transport, as a motor common carrier, property, excluding household goods in use, between points in Pennsylvania (effective September 23, 2015) and Docket No. A‑2016‑2534040, to transport, as a common carrier, by motor vehicle, household goods in use, between points in Pennsylvania (effective October 3, 2016). The two CPCs have different utility codes at the top of the Certificates but were sent to the correct address at 1866 Auburn Street, Bethlehem, PA.  However, it appears that everything else was sent to an incorrect address because the new address from the Certificates was not updated in the Commission’s utility contact information. Apparently, the assessment reports were mailed to We-Haul Moving’s previous location at 1024A First Ave., Hellertown, PA 18055.  Both Certificates were canceled in the November 8, 2018 *Final Order* (Table 4, page 11) for We-Haul Moving’s failure to respond to the *Tentative Order*.

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# Discussion

We begin by considering the nature of the petition before us, because the analysis to be applied depends on the type of filing that is under consideration. Here, it is evident that We-Haul Moving is challenging the cancellation of its Certificates and is seeking reinstatement of the authority to operate and rescission of the *Final Order* that shall mark the proceeding at Docket No. M-2018-3003742 closed only as it relates to James & Debra Ament, t/a We-Haul Moving.

**Legal Standard**

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 to reach an equitable result. *Re* *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 Code or the Commission’s Regulations; (3) the reasonableness of the excuse given for the violation that caused the certificate to be canceled; (4) whether the petitioner has implemented procedures to prevent a recurrence of the circumstances giving rise to the subject complaint; and (5) whether the petitioner is in compliance with the requirement that all assessments must be current prior to reinstatement. *See, e.g.,* *Pa. PUC v. Limo Today, Inc.*,Docket No. A-00124027 (Order entered August 27, 2020); *Re: M.S. Carriers, Inc.*, Docket No. A-00110601 (Order entered May 4, 1999); *Pa.* *PUC v. Grimm Motors*, Docket No. A-00111048, *et al.* (Order entered May 1, 1998); *Re: Bishop*, 58 Pa. P.U.C. 519 (1984).

Finally, we are not required to consider expressly or at length each contention or argument raised in the Petition. Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also* University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984). Therefore, any issue that we do not specifically address or delineate in this decision shall be deemed to have been duly considered and denied without further discussion.

**Disposition**

Based upon our review of the record and the applicable law, we shall grant the Petition, and reinstate We-Haul Moving’s Certificates subject to the conditions enumerated herein. We note that although the sole reason for the cancellation of the Petitioner’s CPCs was failure to respond to the *Tentative Order* and, therefore, remain in non-compliance for failing to file the required annual assessment report and/or failing to establish that they have operated continuously, 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 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 (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.*

We-Haul Moving’s CPCs were cancelled by the *Final Order* issued on November 8, 2018, and We-Haul Moving’s filed the instant Petition on February 24, 2020. We-Haul Moving avers that the non-compliance with filing yearly assessments and filing the instant Petition was caused by the fact that We-Haul Moving was never served with assessment forms nor the Commission’s *Tentative Order* and *Final Order* because of a clerical error that caused mail to be sent to the wrong address. Furthermore, while We-Haul Moving maintains that since it was never served with the correspondence and mail at the correct address, it did not know of the non-compliance and *Orders.* Although the time lapse between the cancellation of We-Haul Moving’s CPCs and the filing of the instant Petition is not short, the reason for the delay weighs favorably toward granting reinstatement. We-Haul Moving submits that their mail was sent to a prior address that was not used for 10 years, and this was confirmed by the PUC. Moreover, We-Haul Moving spoke to the assessment office on February 12, 2020 and filed the Petition shortly thereafter on February 24, 2020. Thus, given the circumstances of this case, this weighs favorably for granting reinstatement.

The second reinstatement factor is whether We-Haul Moving has a record of habitually violating the Code or the Commission’s Regulations. As indicated above, We-Haul Moving has been certificated since 2015. A review of Commission records does not reveal a history of substantial violations on the part of We-Haul Moving over the past five years. We-Haul Moving asserts that upon learning of the cancellation of its CPCs, it contacted the Commission’s assessment office and filed a reinstatement petition. Accordingly, we conclude that this factor weighs in favor of reinstatement.

The third and fourth reinstatement factors query the reasonableness of the excuse offered for the violation and whether We-Haul Moving has implemented procedures to prevent a recurrence of such violation. We-Haul Moving contends that it never received any yearly assessment forms and that all correspondence including the Commission’s *Tentative Order* and *Final Order*, cancelling its CPCs, were sent to the wrong address because of a clerical error. Furthermore, in requesting that its authority be reinstated, We-Haul Moving does appear to acknowledge that in addition to the clerical error, We-Haul Moving’s lack of oversight also played a role in its non-compliance. We believe that is important because the carrier is ultimately responsible for compliance with Commission Orders, Regulations, and statutes. In fact, compliance with the Commission filing requirements with respect to the yearly assessment reports is an annual requirement and the responsibility of the carrier, regardless of the Commission sending out assessment forms.

For purposes of our disposition herein, while the August 23, 2018 *Tentative Order* was published in the *Pennsylvania Bulletin* on September 8, 2018 (48 *Pa.B*. 5683), pursuant to the alternative service rule in our Regulations at 52 Pa. Code §1.53(e), is normally sufficient notice, in this case a review of the Commission’s records revealed the existence of an incorrect address in the database that caused the Commission to send the notices and the Commission *Orders* to the incorrect address. Also, We-Haul Moving spoke with the Commission’s assessment office on February 12, 2020 and confirmed that all correspondence was sent to 1024A First Ave., Hellertown, PA 18055, when the documents should have been sent to 1866 Auburn Street, Bethlehem, PA 18015. We‑Haul Moving agrees that in the future all forms will be submitted in a timely manner.

On review, we conclude that We-Haul Moving’s oversight of the filing requirement for assessment reports and the Commission’s clerical error with respect to We-Haul Moving’s current address has offered a plausible and reasonable explanation for the violation. Thus, under the circumstances of this case, as discussed in this Opinion and Order, the Commission finds that We-Haul Moving did not have adequate notice of the August 23, 2018 *Tentative Order*. Accordingly, this factor weighs in favor of our determination to conditionally grant the reinstatement of We-Haul Moving’s Certificates.

We will next address the fourth factor of whether We-Haul Moving has implemented procedures to prevent a recurrence of the circumstances giving rise to the cancellation of its CPCs. We note that while We-Haul Moving has not expressly indicated that it has implemented such procedures, we stress that We-Haul Moving should develop and implement appropriate procedures to prevent such compliance violations from happening in the future. Therefore, we find that this factor would weigh against granting the request for reinstatement.

Finally, we will address the fifth factor of whether all assessments and fines are current. The reason for the cancellation was that We-Haul Moving had failed to report any intrastate operating revenues for several years. Since it was a carrier with no intrastate operating revenues for several years, it was presumed that We-Haul Moving is no longer providing jurisdictional public utility service in Pennsylvania. However, due to the incorrect address issue noted previously in this instance, that may not be the case. Consequently, we will condition reinstatement upon complying and fulfilling the following conditions for paying all of its outstanding balances. In order to allow for We‑Haul Moving to come into compliance with the outstanding balances, we direct We‑Haul Moving to contact the Commission’s Bureau of Administration - Fiscal Division within ten (10) days from the entry date of this Opinion and Order to determine the amount that is outstanding. We-Haul Moving will then have an additional twenty (20) days to file a conforming assessment report and to pay in full the overdue and delinquent assessments for, including but not limited to, the Fiscal Years 2016-2017, 2017-2018, 2018-2019, and 2019‑2020. Without a swift remit of the outstanding balances, failure to pay multiple assessments weighs against granting the Petition for Reinstatement.

**Conclusion**

Based upon our review of the record and the applicable law, we shall conditionally grant the Petition, consistent with the discussion herein, and reinstate the We-Haul Moving’s Certificates consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Rescission and Reinstatement and Reconsideration of Staff Action filed on February 24, 2020, by James & Debra Ament, t/a We-Haul Moving is conditionally granted consistent with this Opinion and Order.

2. That reinstatement is conditioned upon We-Haul Moving contacting the Commission’s Office of Administrative Services – Financial and Assessment Section to determine the amount that is outstanding within ten (10) days from the date of service of this Opinion and Order and that We-Haul Moving will then have an additional twenty (20) days to file conforming assessment reports and pay in full the overdue and delinquent assessments for, including but not limited to, the Fiscal Years 2016-2017, 2017-2018, 2018-2019, and 2019‑2020 consistent with this Opinion and Order.

3. That within thirty (30) days from the date of entry of this Opinion and Order, James & Debra Ament, t/a We-Haul Moving shall remit all outstanding reports, amounts and fines, as determined by the approach identified in Ordering Paragraph No. 2, payable by certified check or money order, to “Commonwealth of Pennsylvania” with the docket number of this proceeding listed, and sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

4. That upon completing the conditions identified in Ordering Paragraph Nos. 2 and 3 above, the Secretary’s Bureau shall reinstate the Certificates of Public Convenience of James & Debra Ament, t/a We-Haul Moving at Docket No. A‑2016-2534040 and Docket No. A-2015-2478404.

 5. That a copy of this Opinion and Order shall be placed in the Commission files at Docket No. A-2015-2478404.

6. That a copy of this Opinion and Order shall be served on the Office of Administrative Services, Financial and Assessment Section.

7. That a copy of this Opinion and Order shall be served on the Pennsylvania Department of Transportation.

8. That a copy of this Opinion and Order shall be served on the Pennsylvania Department of Revenue.

9. That if James & Debra Ament, t/a We-Haul Moving fails to comply with Ordering Paragraphs No. 2 and 3 above within forty (40) days of the entry date of this Opinion and Order, it is further ordered:

a. That the Certificates of Public Convenience held by James & Debra Ament, t/a We-Haul Moving, at Docket No. A‑201‑2534040 and Docket No. A-2015-2478404, will remain cancelled without further action by this Commission;

b. That the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for appropriate action; and

c. That the Secretary’s Bureau will notify by Secretarial Letter, the Pennsylvania Department of Transportation and the Pennsylvania Department of Revenue of James & Debra Ament, t/a We-Haul Moving’s failure to meet the conditions imposed by this Opinion and Order and that the Certificates of Public Convenience held by James & Debra Ament, t/a We-Haul Moving at Docket No. A-2016-2534040 and Docket No. A-2015-2478404, remain cancelled.

10. That upon receipt of the delinquent reports and payments by We‑Haul Moving as directed by Ordering Paragraph Nos. 2 and 3 above, the Secretary’s Bureau will notify by Secretarial Letter all parties identified in Ordering Paragraph Nos. 4-6 of the completion of the above-identified conditions and shall mark the proceeding at Docket No. M-2018-3003742 closed only as it relates to James & Debra Ament, t/a We‑Haul Moving.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 17, 2021

ORDER ENTERED: June 23, 2021

1. We note that the Petition requests reinstatement of only the CPC issued at Docket No. A-2016-2534040. However, because the Commission’s *Final Order* cancelled both the CPC issued at Docket No. A-2016-2534040 and the one issued at Docket No. A-2015-2478404, we shall address both CPCs in this Opinion and Order. [↑](#footnote-ref-2)