**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

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| Public Meeting held August 26, 2021 | |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  David W. Sweet, Vice Chairman  John F. Coleman, Jr.  Ralph V. Yanora |  |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v.   |  |  |  | | --- | --- | --- | | Barry Mills Moving and Hauling, LLC |  |  | | C-2019-3012040  A-8911832 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reinstatement (Reinstatement Petition or Petition) filed by Barry Mills Moving and Hauling, LLC (Petitioner or Respondent or Mills), seeking reinstatement of its Certificate of Public Convenience (Certificate). The Petition was filed on July 8, 2021, in response to the Secretarial Letter issued on November 18, 2019 (*Cancellation Notice*), in the above-captioned Complaint docket, which canceled the Petitioner’s Certificate. No response to the Petition has been filed. For the reasons set forth herein, we will conditionally grant the Petition, consistent with this Opinion and Order.

**History of Proceeding**

The Commission issued Mills a Certificate on July 26, 2010, at Docket No. A‑8911832, for the right to begin to transport, as a common carrier by motor vehicle, household goods in use, from points in Montgomery County to points in Pennsylvania, and *vice versa*.

On August 7, 2019, the Commission’s Bureau of Investigation and Enforcement (I&E) filed the above-captioned Complaint for failure of Mills to maintain evidence of liability and cargo insurance on file with the Commission. The Complaint indicated that the Respondent’s Certificate was under suspension effective July 24, 2019, for failure to maintain evidence of such insurance. I&E requested the filing of an Answer and/or the filing of evidence of insurance by the Respondent’s insurer within twenty days. The Complaint was served by Secretarial Letter dated August 7, 2019.[[1]](#footnote-1)

On August 23, 2019, the Petitioner’s insurer filed evidence of liability insurance effective August 22, 2019; however, no evidence of cargo insurance was filed. No Answer to the Complaint was filed. *Cancellation Notice* at 1.

On November 18, 2019, the Commission issued the *Cancellation Notice* which explained the failure of Mills’ insurer to file evidence of cargo insurance*.* The *Cancellation Letter* further noted the failure of the Petitioner to file an Answer to the Complaint and that the allegations therein were deemed admitted. Accordingly, the Commission cancelled the Certificate and assessed a fine of $500 for failure to maintain evidence of insurance and a fine of $100 for failure to file an Answer to the Complaint, for a total fine of $600.[[2]](#footnote-2)

On May 17, 2021, the Petitioner filed its Reinstatement Petition. By Secretarial Letter dated June 8, 2021, the Secretary’s Bureau rejected the filing for failure of the Petitioner to pay the outstanding fine of $600 pursuant to the *Cancellation Notice*. On June 14, 2021, the Petitioner submitted payment for the outstanding fine of $600. Thereafter, on July 8, 2021, the Reinstatement Petition was accepted for filing. No Answer to the Reinstatement Petition has been filed.

**Discussion**

**Legal Standards**

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. Pa. PUC*, 486 A.2d 1030 (Pa. Cmwlth. 1985). In ruling upon a petition for reinstatement, it is incumbent upon the Commission to examine all relevant factors in order to reach an equitable result. *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 Public Utility Code (Code) or the Commission’s Regulations; (3) the reasonableness of the excuse given for the violation that caused the certificate of public convenience 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**

Upon review, we shall grant the Reinstatement Petition. Initially, we note that it is necessary to evaluate all five reinstatement factors in deciding whether to grant or deny the Petitioner’s request to reconsider the *Cancellation Notice* and reinstate its authority.

The first factor relevant to the determination of a petition for reinstatement is the amount of time a certificate has remained dormant. As noted above, Mills filed the instant Petition on July 8, 2021, significantly later than the November 18, 2019, date of the *Cancellation Notice* and clearly not within the period allotted under the Commission’s Regulations for petitions for reconsideration of staff actions at 52 Pa. Code § 5.44(a).

Our initial reaction is that this factor weighs unfavorably toward granting reinstatement, however the circumstances in this case lend toward leniency. Specifically, Mills contends that it has paid the outstanding amounts, that were ordered to be paid in the *Cancellation Notice*. Additionally, the Petitioner asserts that its insurance carrier filed the Form E for its liability coverage with the Commission on August 22, 2019, after the filing of I&E’s Complaint. Since this Form E was not rejected, Mills avers that it believed the requisite cargo insurance had also been filed and the Complaint had been rescinded. According to the Petitioner, it was not notified of the error pertaining to the cargo insurance until the receipt of the *Cancellation Notice*. Further, the Petitioner submits that immediately prior to the COVID-19 pandemic its insurance carrier tried to correct the insurance filing but that the filing could not be accepted because of the cancellation of Mills’ authority. After the start of the pandemic and the closure of the Commission’s offices in March 2020, the Petitioner asserts that it was difficult to coordinate anything between its insurance carrier and the Commission for non-routine matters. Reinstatement Petition at 2.

Although the filing of the Petition was not timely for purposes of the first factor, under the circumstances of this case and in light of the confluence of the logistical hurdles associated with the COVID-19 pandemic, we will not weigh the filing delay against reinstatement.

The second reinstatement factor is whether Mills has a record of habitually violating the Code or the Commission’s Regulations. Upon review, there have been two other Complaint proceedings filed against the Petitioner for failure to maintain evidence of insurance. On July 29, 2012, I&E filed a Complaint against Mills at Docket No. C‑2012-2297687 (2012 Complaint) for failure to maintain evidence of liability and cargo insurance. Commission records indicate that clerical errors pertaining to the name and address of the Petitioner on the Form E filing resulted in the filing of the 2012 Complaint. In response, the Petitioner paid a $500 fine, a corrected Form E was filed, and the temporary suspension of its operating authority was lifted. Additionally, on September 12, 2018, I&E filed a Complaint against the Petitioner at Docket No. C‑2018‑3004447 (2018 Complaint) for failure to maintain evidence of insurance with the Commission. In its Answer to the 2018 Complaint, Mills asserted that its insurance carrier made a typographical error of its name in the Form E filing which resulted in the rejection of the filing and requested waiver of the $500 civil penalty. By letter dated December 19, 2018, I&E deemed the 2018 Complaint closed.

We do not consider the prior two Complaint proceedings, which appear to have resulted from clerical errors by the Petitioner’s insurance carrier on the required Form E filings, as constituting a habitual problem. Notwithstanding these two prior proceedings, we find that the Petitioner has exhibited a solid record of compliance with the Code and the Commission’s Regulations. Accordingly, we weigh this factor in favor of reinstatement.

The third reinstatement factor addresses the reasonableness of the excuse offered for the violation. As discussed above, the Petitioner asserts that it believed the evidence of insurance problem was timely satisfied when its insurer filed the Form E regarding the liability coverage with the Commission and that this filing was not rejected by the Commission. According to Mills, it was unaware that the filing failed to show evidence of its cargo insurance coverage until it was served with the *Cancellation Notice*. In addition, the Petitioner avers that at all times it maintained cargo insurance at $25,000 per accident or five times the level required by the Commission. Reinstatement Petition 1-2; Exh. C.

Moreover, the Petitioner states that it attempted to correct the error after the receipt of the *Cancellation Notice* but that its insurer was prevented from filing the evidence of insurance due to the cancellation of its Certificate. Under the circumstances, we consider the Petitioner’s explanation to be reasonable and weigh this factor in favor of reinstatement.

We will next address the fourth factor of whether Mills has implemented procedures to prevent a recurrence of the circumstances giving rise to the Complaint. The Petitioner indicates that it has assigned to its president the responsibility of confirming all the filing requirements of its insurance broker and the respective insurance company. Reinstatement Petition at 3. We deem this to be a positive step toward helping to prevent similar compliance violations in the future. Thus, we find this factor weighs in favor of reinstatement.

Finally, we will address the fifth factor of whether all assessments and fines are current. There is no record of any outstanding fines or assessments and, therefore, this factor weighs in favor of reinstatement.

Upon consideration of all the factors, we shall grant the reinstatement of Mill’s Certificate on the condition that a new Form E and a Form H be filed with the Commission for the required proofs of insurance.

We will also address *sua sponte* one additional matter – specifically the $100 penalty assessed for the failure to file an Answer to the Complaint. Mills paid the $100 along with the penalty for failure to have insurance in order to have this Petition accepted by the Commission. While the Commission may have taken different approaches previously, we believe that on a going forward basis our approach in the penalty portion should be consistent in these matters. In reviewing similar type of cases, we noted that the Commission has not implemented a consistent approach concerning a penalty for the carrier’s failing to file an answer to a complaint. *See Pa. PUC* *v. David’s Transport*, *Inc.*, Docket No. C-2019-3007384 (Order entered March 17, 2021); *Pa. PUC v. Plastic* *World Recycling Inc*., Docket No. C-2019-3014435 (Order entered June 17, 2021); and *Pa. PUC v. Copart Catastrophe Response Fleet LLC*, Docket No. C‑2020-3023008 (Order entered August 6, 2021). Therefore, to ensure consistency in the Commission’s approach to cases involving a complaint that alleges the failure of a carrier to have proper insurance on file with the Commission and to file an answer to the complaint, we will cancel the assessed $100 penalty for failure to file an answer and will refund that amount to Mills.

**Conclusion**

Upon review, we shall conditionally grant the Reinstatement Petition consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reinstatement filed by Barry Mills Moving and Hauling, LLC, on July 8, 2021, will be granted, on the following conditions, if satisfied within thirty (30) days of the date of entry of this Opinion and Order:

a. Barry Mills Moving and Hauling, LLC, shall file an acceptable Form E, evidence of bodily injury and property damage liability insurance, through an insurance company, with an updated effective date and reference to Docket No. A‑8911832; and

b. Barry Mills Moving and Hauling, LLC, shall file an acceptable Form H, evidence of cargo liability insurance, through an insurance company, with an updated effective date and reference to Docket No. A-8911832.

2. That, if Barry Mills Moving and Hauling, LLC, complies with the requirements of Ordering Paragraph No. 1, the Secretary’s Bureau shall reinstate the Certificate of Public Convenience of Barry Mills Moving and Hauling, LLC, at Docket No. A-8911832.

3. That, if Barry Mills Moving and Hauling, LLC, does not comply with the requirements of Ordering Paragraph No. 1, the Certificate of Public Convenience of Barry Mills Moving and Hauling, LLC, will remain cancelled, without further Order of the Commission.

4. That the Commission’s Office of Administrative Services issue a refund of $100 to Barry Mills Moving and Hauling, LLC, consistent with this Opinion and Order.

5. That a copy of this Opinion and Order shall be served on the Office of Administrative Services, Financial and Assessment Section and the Commission’s Bureau of Technical Utility Services.

6. That, if Barry Mills Moving and Hauling, LLC, complies with the requirements of Ordering Paragraph No. 1, the Commission’s Bureau of Technical Utility Services shall notify the Commission’s Secretary’s Bureau to serve a copy of this Opinion and Order on the Pennsylvania Department of Transportation and the Pennsylvania Department of Revenue.

7. That, if Barry Mills Moving and Hauling, LLC, complies with the requirements of Ordering Paragraph No. 1, the Commission’s Secretarial Letter dated November 18, 2019, is rescinded.

8. That following the issuance of the refund by the Commission’s Office of Administrative Services, the Secretary’s Bureau shall mark the proceeding at Docket No. C-2019-3012040 as closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 26, 2021

ORDER ENTERED: August 26, 2021

1. The *Cancellation Notice* indicates that the Complaint was served on Mills by certified mail on August 9, 2019. [↑](#footnote-ref-1)
2. The *Cancellation Notice* explained that Mills could file a Petition for Reconsideration of Staff Action (Reconsideration Petition) pursuant to 52 Pa. Code § 5.44 if it disagreed with the determination. However, no Reconsideration Petition was filed. [↑](#footnote-ref-2)