

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER T-35946

LOUISIANA PUBLIC SERVICE COMMISSION VERSUS DAVID MILLER INVESTMENTS, LLC

Docket No. T-35946, In re: Cancellation of Common Carrier Certificate Numbers 8318 and 8316 for failure to maintain the required insurance coverage on file with the Commission pursuant to Commission's General Order dated January 12, 1976.

(Decided June 4, 2021)

ORDER

Background

The Louisiana Public Service Commission (“Commission”) issued a citation to David Miller Investments, LLC (“Carrier”) on April 15, 2021, directing the Carrier to show cause at a hearing to be held on June 3, 2021 why its Common Carrier Certificate Number 8318 and Common Carrier Certificate Number 8316 should not be canceled due to the Carrier’s failure to maintain proof of required insurance coverage on file with the Commission. When the hearing was convened on June 3, 2021, the Commission Staff appeared through counsel; the Carrier failed to appear and present a defense.

Applicable Law

Article IV, Section 21 of the Louisiana Constitution of 1974 mandates that the Commission:

regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

Louisiana statutes more specifically describe the interest of the State and the powers of the Commission over motor carriers operating for hire in the transportation of persons, household goods, and waste over public highways and bridges of the State. The business of operating motor vehicles for hire is a “business affected with a public interest”;¹ and “[t]he [C]ommission has the power and authority necessary to supervise, govern, regulate, and control motor carriers...which transport household goods, passengers, or waste intrastate and to fix reasonable and just rates, fares, tolls, or charges for the commodities furnished or services rendered by such motor carriers.”² Companies engaged in the intrastate business of transporting household goods, passengers, or certain kinds of waste intrastate – non-hazardous oilfield wastes, non-hazardous industrial solid

¹ La. R.S. 45:161.

² La. R.S. 45:163(A).

wastes, and hazardous wastes – are classified as “common carriers” subject to the Commission’s regulation.³

The Commission’s General Order dated January 12, 1976 provides that intrastate carriers must maintain proof of required insurance coverage on file at the Commission through the filing of a Form E, Uniform Certificate of Insurance (“Form E”).

Louisiana Revised Statute 45:166 permits the Commission to amend, suspend, or revoke a certificate, in whole or in part, if, after notice and hearing, it is determined that the carrier has failed to comply with statutory requirements or Commission orders, rules, or regulations

The Commission’s General Order dated June 7, 2006 authorizes the imposition of a \$25.00 Citation Fee when a citation is issued to a Commission-jurisdictional motor carrier and that carrier is determined to have violated a Commission Order.

The Commission Staff’s Case

The Commission Staff alleges that the Carrier failed to maintain proof of its bodily injury and property damage (“BI & PD”) and cargo insurance on file with the Commission. In support of this allegation, the Commission Staff presented the testimony of Tanza Clark, an Enforcement Agent with the Transportation Division of the Commission, whose job duties include overseeing insurance compliance for regulated motor carriers. According to Ms. Clark’s testimony, the Commission requires regulated carriers to submit a Form E as proof of insurance. The Commission is notified of cancellation or expiration of a regulated carrier’s insurance through the submission of a Form K.⁴

Ms. Clark testified that, on January 12, 2021 the Commission received a Form K from Clear Blue Specialty Insurance Company, advising that both the Carrier’s BI & PD auto liability policy and cargo policy would be canceled on February 11, 2021. Ms. Clark testified that the Commission’s Transportation Division issued a notice of cancellation letter to the Carrier on February 11, 2021, notifying the Carrier that its insurance would be canceled. According to Ms. Clark, the notice of cancellation letter was mailed to the Carrier at the address on file with the Commission via regular mail, and was not returned.

According to Ms. Clark, the Carrier did not submit proof of insurance coverage after the issuance of the February 11, 2021 notice of cancellation letter. Ms. Clark testified that, on March

³ See La. R.S. 45:162(5)(a).

⁴ Form K Uniform Notice of Cancellation of Motor Carrier Insurance Policies (“Form K”). See Staff Exh. 1.

11, 2021, the Commission mailed a tentative hearing letter to the Carrier at the address on file with the Commission via regular mail. This tentative hearing letter notified the Carrier that a tentative hearing date of June 3, 2021 was set, and gave a deadline of April 5, 2021 to submit proof of replacement insurance to the Transportation Division. A copy of the February 11, 2021 notice of cancellation letter was attached to the March 11, 2021 tentative hearing letter. According to Ms. Clark, the tentative hearing letter was not returned to the Commission for any reason.

Ms. Clark further testified that the Carrier did not submit proof of insurance by the deadline given in the tentative hearing letter. The Transportation Division then issued a citation against the Carrier on April 13, 2021, advising the Carrier that it was required to appear at a hearing on June 3, 2021 for possible cancelation of its Common Carrier Certificates, and that a citation fee in the amount of twenty-five dollars (\$25.00) had been assessed to the Carrier's account. The citation was sent via both regular mail and certified mail, return receipt requested to the Carrier. According to Ms. Clark, the mailing sent via regular mail was not returned, but the citation sent via certified mail was delivered back to the Commission after being unclaimed.

As of the date of the hearing, the Carrier had not filed any proof of unexpired insurance with the Commission, nor had a representative of the Carrier filed the appropriate documents to relinquish the authority granted by its Common Carrier Certificates.

In connection with the testimony of Ms. Clark, the Staff submitted the following documents into evidence:

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| Staff Exhibit 1 | A copy of a Form K, Uniform Notice of Cancellation of Motor Carrier Insurance Policies, reflecting an effective cancellation date of February 11, 2021, for an insurance policy or policies issued by Clear Blue Specialty Insurance Company to David Miller Investments, LLC; |
| Staff Exhibit 2 | A copy of correspondence on Louisiana Public Service Commission Transportation Division letterhead, dated February 11, 2021, bearing the signature of Tammy Burl, Transportation Administrator, Louisiana Public Service Commission, addressed to David Miller Investments, LLC, "Re: CANCELLATION OF INSURANCE FILING WITH THE COMMISSION"; |
| Staff Exhibit 3, <i>in globo</i> | A copy of correspondence on Louisiana Public Service Commission letterhead, dated March 11, 2021, bearing the signature of Shomona Voss, Enforcement Agent 1, addressed to David Miller Investments, LLC, "RE: Insurance," with an attached copy of the February 11, 2021 letter (Staff Exhibit 2); |
| Staff Exhibit 4, <i>in globo</i> | A copy of a citation issued to David Miller Investments, LLC, with attached copies of the February 11, 2021 letter (Staff Exhibit 2) and the March 11, 2021 letter (Staff Exhibit 3); |

- Staff Exhibit 5 Copies of the front and back sides of an envelope bearing the return address of the Louisiana Public Service Commission and addressed to David Miller Investments, LLC, with attached United States Postal Service Domestic Return Receipt, bearing tracking number 7002 2030 0002 6571 3624; and
- Staff Exhibit 6 A copy of a printout of USPS Tracking Results accessed via USPS.com, for tracking number 70022030000265713624.

The Commission Staff requests, in light of the Carrier's failure to maintain the required insurance coverage, that the Commission revoke and cancel the Carrier's Common Carrier Certificate Number 8318 and Common Carrier Certificate Number 8316 and order the Carrier to pay a citation fee in the amount of twenty-five dollars (\$25.00).

Findings of Fact and Conclusions of Law

From the testimony and evidence presented at hearing, we make the following findings of fact and conclusions of law:

Findings of Fact

1. The Carrier currently holds Common Carrier Certificate Number 8318 and Common Carrier Certificate Number 8316.
2. On January 12, 2021, the Commission received a Form K, Uniform Notice of Cancellation of Motor Carrier Insurance Policies, advising that the Carrier's "BI and PD" (bodily injury and property damage) insurance and cargo insurance were scheduled for cancellation on February 11, 2021.
3. On February 11, 2021, the Commission's Transportation Division sent a letter to the Carrier, advising the Carrier that the Commission had received a Form K notification that the Carrier's insurance would be canceled on February 11, 2021. The letter further advised the Carrier to contact its insurance company to have it file proof of replacement coverage, effective as of the cancellation date of the previous policy, and cease operations until proof of replacement coverage was filed. Finally, the letter advised that, if proof of continuing insurance was not filed on the Carrier's behalf, proceedings may be instituted at the Commission for the purpose of canceling the Carrier's intrastate operating authority.
4. On March 11, 2021, after receiving no response from the Carrier, the Transportation Division mailed a follow-up letter advising that the Carrier's Common Carrier Certificate Number 8318 and Common Carrier Certificate Number 8316 had been flagged for failure to maintain the required insurance coverage on file with the Commission, as the Commission had not received a new Form E demonstrating replacement coverage. The letter also advised that if the Carrier did not comply, the Transportation Division would proceed to issue a citation, and that a hearing on the matter had been tentatively scheduled for June 3, 2021.
5. The Carrier did not file proof of replacement coverage, and the Transportation Division issued a citation via regular and certified mail, directing the Carrier to appear at a hearing on June 3, 2021. The citation sent via certified mail was returned to the Commission Staff as unclaimed. The citation sent via regular mail was not returned.
6. The Carrier did not appear at the June 3, 2021 hearing, and as of the date of the hearing, the Commission had not received any documentation of replacement insurance coverage for the Carrier.

Conclusions of Law

1. At the hearing in this matter, the Commission Staff had the burden of proving its allegations against the Carrier. Because the Carrier did not appear at the hearing, the Commission Staff also had the burden of demonstrating that the Carrier was provided fair notice of the hearing and the opportunity to present a defense. La. R.S. 45:166 provides that a permit may be revoked “after notice and hearing for failure to comply with any provision of R.S. 45:161 through 45:172, or with any lawful order, rule or regulation of the [Commission.]” (Emphasis added.)
2. Pursuant to constitutional and legislative mandate, the Commission has the authority to regulate intrastate motor carriers and to ensure that such companies maintain levels of insurance mandated by statute and by Commission General Orders. The Commission’s General Order dated January 12, 1976 provides that intrastate motor carriers must maintain proof of required insurance coverage on file at the Commission through the filing of a Form E.
3. In this proceeding, the Staff established through testimony and evidence that David Miller Investments, LLC failed to file proof with the Commission that its insurance coverage had been extended beyond the February 11, 2021 cancellation date stated in the Form K received on January 12, 2021. Thus, we find that the Carrier failed to maintain proof of effective insurance coverage on file with the Commission as required by the Commission’s General Order dated January 12, 1976. We find it appropriate under these circumstances to cancel Common Carrier Certificate Number 8318 and Common Carrier Certificate Number 8316, issued to David Miller Investments, LLC, pursuant to Louisiana Revised Statute 45:166. We further find it appropriate to impose a citation fee in the amount of twenty-five dollars (\$25.00) on David Miller Investments, LLC, pursuant to the Commission’s General Order dated June 7, 2006.
4. Pursuant to its constitutional and statutory authority, the Commission has adopted Rules of Practice and Procedure. Commission Rules 7 and 19 provide for notice of non-criminal proceedings through publication in the Commission’s Official Bulletin, as well as through service by certified mail to “the last known place or address of the person entitled to receive such notice.” In accordance with those Commission rules, the Commission’s Transportation Division issued a citation to the Carrier by certified mail to the address of the Carrier that is on file with the Commission.

The copy of the citation mailed via certified mail was returned to the Commission after being unclaimed. According to the United States Postal Service online tracking system, that mailing was “Unclaimed/Being Returned to Sender” on May 3, 2021. However, the copy of the citation mailed via regular mail was not returned. The Commission has routinely found that a regulated carrier was provided with fair notice of a hearing date and of allegations against that carrier when said carrier fails to claim a citation transmitted via certified mail, and when a copy of the same citation transmitted via regular mail is not returned to the Commission.⁵ Further, Rule 7(B) of the Commission’s Rules of Practice and Procedure provide that “any party shown to have received actual notice which is timely through any of the above methods of service shall not be permitted to rely upon lack of service as a defense.”

We find that the record, taken as a whole, demonstrates that the Commission Staff provided fair notice to the Carrier of the hearing date, and that the Carrier was provided a fair opportunity to present a defense at the hearing.

⁵ See, e.g., ORDER NO. T-35220, Louisiana Public Service Commission vs. American Integrated Services, Inc. (Robert, LA), *In re: Cancellation of Common Carrier Certificate Numbers 8164 and 8171 for failure to file an Annual Report for 2018 and/or pay a late filing fee of \$500.00 and a citation fee of \$25.00 as required by General Order 2 dated July 1, 1921 and General Order dated April 23, 2001 amended June 19, 2012* (Aug. 28, 2019) (finding that Commission Staff provided fair notice to a carrier of a hearing date, and that the carrier was provided a fair opportunity to present a defense at the hearing, when: (1) a U.S. Postal Service tracking history indicated that a citation issued via certified mail was “Unclaimed/Returned to Sender”; and (2) a copy of the same citation issued via regular mail was not returned to the Commission).

Conclusion

In accordance with the findings of fact and conclusions of law stated above:

IT IS HEREBY ORDERED that Common Carrier Certificate Number 8318 and Common Carrier Certificate Number 8316, currently issued to David Miller Investments, LLC be, and hereby are, CANCELED due to the failure of David Miller Investments, LLC to maintain proof of insurance coverage on file with the Commission.

IT IS HEREBY FURTHER ORDERED that David Miller Investments, LLC shall be required to pay to the Commission a \$25 citation fee.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
June 7, 2021



DISTRICT II
CHAIRMAN CRAIG GREENE

DISTRICT I
VICE CHAIRMAN ERIC F. SKRMETTA

DISTRICT V
COMMISSIONER FOSTER E. CAMPBELL

DISTRICT III
COMMISSIONER LAMBERT C. BOISSIERE, III

DISTRICT IV
COMMISSIONER MIKE FRANCIS

Brandon M. Frey

BRANDON M. FREY
SECRETARY