

STATEMENTS OF POLICY

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 41]

[L-980135]

Evidentiary Criteria for Motor Common Carriers

The Pennsylvania Public Utility Commission (Commission) on July 9, 1998, adopted a proposed policy statement to revise § 41.14 (relating to evidentiary criteria used to decide motor common carrier applications—statement of policy) to remove the burden that applicants demonstrate that the operating authority serves a purpose and will not endanger or impair the operations of existing providers of limousine service. The contact person is Stephen E. Gorka, Assistant Counsel, Law Bureau, (717) 772-8840.

Public Meeting
held July 9, 1998

Commissioners Present: John M. Quain, Chairperson;
Robert K. Bloom, Vice Chairperson; David W. Rolka;
Nora Mead Brownell; and Aaron Wilson, Jr.

Order

By the Commission:

Under 66 Pa.C.S. § 1102 (relating to enumeration of acts requiring certificate), a public utility must obtain a certificate of public convenience from the Commission before offering service within this Commonwealth. As defined by 66 Pa.C.S. § 102 (relating to definitions), "public utility" includes common carriers who transport passengers by motor vehicle between points within the Commonwealth for compensation. The evidentiary criteria governing applications for this type of authority are in a Commission statement of policy in § 41.14.

As part of a continuing effort to ensure that our regulatory requirements are necessary and appropriate, we have considered whether the evidentiary criteria of § 41.14 should be applied to applicants for limousine service. In view of the increasing competition developing in traditional utility markets, we have reexamined the scope of our regulation of limousine service providers.

Currently, an applicant seeking authority for limousine service must meet the evidentiary criteria required of all applicants seeking motor carrier authority. Under § 41.14(a), an applicant must demonstrate that the application will serve a public purpose responsive to a public demand or need. An applicant must also establish that it possesses the technical and financial ability to provide the proposed service. The Commission may deny this authority if the applicant "lacks a propensity to operate safely and legally." See § 41.14(b). Finally, existing providers of the applicant's proposed service may show that the proposed service would endanger or impair the existing providers to an extent that authorizing the proposed service would be contrary to the public interest. See § 41.14(c).

After a thorough review of this Commission policy, we believe that it should be changed to eliminate many of the restrictions faced by an entity who seeks a certificate of public convenience to provide limousine service. In this era of increasing utility competition, it is difficult to

justify the continuation of onerous entry restrictions which potential limousine service providers must overcome. Thus, the Commission proposes to alter § 41.14 to eliminate certain standards that govern our review of applications to provide limousine service. Specifically, the applicants would no longer be required to produce evidence of public need for the service. Further, the Commission would not consider the effect that a new carrier in the limousine market might have on existing providers of limousine service.

The Commission has the authority to change § 41.14 and has done so before. In 1983, the Commission amended § 41.14 to eliminate the requirement that an applicant for motor common carrier authority show the inadequacy of the existing service. In subsequent litigation, the Commonwealth Court found that the Commission had authority to make this change. *Seaboard Tank Lines v. Pennsylvania Public Utility Commission*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985). The Court stated that the Commission's mandate to grant certificates of public convenience was broad, and that the Commission could formulate the criteria for the granting of certificates. *Id.*

In conjunction with this proposed revision to the evidentiary statement of policy, we are also considering other ancillary changes. One possibility would be to eliminate territorial restrictions, as currently required by § 29.332(a) (relating to method of operation). Similarly, we are reviewing other regulatory restrictions affecting the provision of limousine service.

These proposed changes correspond with recent Federal intervention in the area of intrastate transportation. The Federal government has preempted the state regulation of property carriers (49 U.S.C.A. §§ 11501(h) and 41714(b)) and bus service (49 U.S.C.A. § 14501(a)), except for matters of safety and insurance. We emphasize that we will not relax any Commission safety and insurance requirements for present or future limousine service providers.

The Commission welcomes comments on the proposed changes to § 41.14. We are also interested in receiving comments on potential revisions to the regulations which specifically relate to the provision of limousine service in §§ 29.331—29.335. *Therefore,*

It Is Ordered that:

1. A copy of the order and Annex A shall be forwarded to the *Pennsylvania Bulletin* for publication.
2. There shall be a 30-day comment period on the order and the proposed changes to § 41.14.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-197. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

CHAPTER 41. GENERAL ORDERS, POLICY STATEMENT AND GUIDELINES ON TRANSPORTATION UTILITIES

§ 41.14. Evidentiary criteria used to decide motor common carrier applications—statement of policy.

* * * * *

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. [, and in,] In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

* * * * *

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331—29.335 (relating to limousine service).

[Pa.B. Doc. No. 98-1315. Filed for public inspection August 14, 1998, 9:00 a.m.]
