

Decision No. C03-1036

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03M-379BP (incorrectly referred to as 03A-379BP)

[corrected caption]

RE: MOTOR VEHICLE OPERATIONS UNDER CONTRACT CARRIER PERMIT NO.
B-9819 ISSUED TO MIDTOWN EXPRESS, INC.

**ORDER CONSTRUING LETTER AS APPLICATION
FOR REHEARING, REARGUMENT, OR
RECONSIDERATION OF DECISION
NO. R03-0836 PURSUANT TO § 40-6-114,
C.R.S., AND GRANTING APPLICATION**

Mailed Date: September 11, 2003

Adopted Date: September 10, 2003

I. BY THE COMMISSION:

Statement

1. This matter comes before the Commission for consideration of the letter requesting reinstatement of Contract Carrier Permit No. B-9819 filed by Midtown Express, Inc., on September 3, 2003. In Decision No. R03-0836 (Recommended Decision) an Administrative Law Judge (ALJ), after a hearing on the matter, ordered that Midtown Express, Inc.'s, operating authority be revoked for failure to keep a currently effective Certificate of Insurance on file with the Commission. This request to reinstate Permit No. B-9819 only pertains to that portion of the Recommended Decision that deals with Midtown Express, Inc.'s, operating authority (Case No. 5265-INS).

2. On June 12, 2003, the Commission received a Form K cancellation notice from Midtown Express, Inc.'s, insurance provider, National Indemnity Company. That cancellation was to become effective July 23, 2003. The Commission issued a Notice of Hearing and Order

to Show Cause for failure to keep a currently effective Certificate of Insurance on file with the Commission on July 15, 2002. After a hearing on August 1, 2003, the ALJ issued the Recommended Decision revoking Midtown Express, Inc.'s, contract carrier authority, Permit No. B-9819.

3. On September 2, 2003, the Commission received notice via a Form E that Midtown Express, Inc., had procured insurance coverage from CNA Insurance Company effective July 23, 2003. In compliance with Commission rules, Midtown Express, Inc., now has a currently effective Certificate of Insurance on file with the Commission.

4. Section 40-6-109(2), C.R.S., mandates that if no exceptions are filed to a recommended decision within 20 days, such decision shall become effective as the decision of the Commission by order of law. In this instance, the Recommended Decision was issued on August 1, 2002. Because no exceptions were filed, the Recommended Decision became effective as the Commission's decision on August 21, 2003. According to § 40-6-114(1), C.R.S., Midtown Express, Inc., then had an additional 20 days--until September 10, 2003--in which to make an application for rehearing, reargument, or reconsideration of the decision. The Commission received Midtown Express, Inc.'s, request on September 3, 2003--within that 20-day period. We therefore construe Midtown Express, Inc.'s, letter as an application for rehearing, reargument, or reconsideration of the Recommended Decision under § 40-6-114, C.R.S.

5. In the request filed on September 3, 2003, Alec Gabbano, the owner of Midtown Express, Inc., states "I asked my insurance broker several times throughout August to make sure the Form E is filed. She confirmed to me several times that there was nothing to worry about

and that the Form will be filed in a timely manner. From August 21 to August 26, I was out of the country and upon my return I did receive a letter from the PUC stating my permit was revoked, and that is when I took personal effort to call a CNA underwriter to find out what was going on. The underwriter sounded confused and surprised that this Form E needed to be filed with the PUC. The Form E was faxed to the PUC the same evening. Midtown Express, Inc., had no lapse in coverage.”

6. The Commission finds that Midtown Express, Inc., has shown good cause to reinstate Contract Carrier Permit No. B-9819 and that there has been no lapse in insurance coverage. We therefore grant Midtown Express, Inc.’s, application for rehearing, reargument, or reconsideration of the Recommended Decision, and reinstate Midtown Express, Inc.’s, contract carrier authority. However, Midtown Express, Inc., is reminded that it is responsible for knowing and following all applicable rules, Colorado statutes, and Commission orders in a timely fashion.

II. ORDER

A. The Commission Orders That:

1. The letter requesting reinstatement of Contract Carrier Permit No. B-9819 filed by Midtown Express, Inc., on September 3, 2003, is construed as an application for rehearing, reargument, or reconsideration of Decision No. R03-0836 pursuant to § 40-6-114, C.R.S., and is granted. That portion of Decision No. R03-0836 pertaining to Midtown Express, Inc., (Case No. 5265-INS) is rescinded, and Contract Carrier Permit PUC No. B-9819 is reinstated.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 10, 2003.**

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

JIM DYER

Commissioners

CHAIRMAN GREGORY E. SOPKIN
ABSENT