BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2012-314-T - ORDER NO. 2013-801
DECEMBER 5, 2013

IN RE: Application of CYBH, LLC (f/k/a CYBH, LLC d/b/a Coastal Storage & Moving) for a Class E (Household Goods) Certificate of Public Convenience and Necessity for Operation of a Motor Vehicle Carrier ) ORDER GRANTING ) WAIVER OF ) REGULATION 103-177

This matter comes before the Public Service Commission of South Carolina ("Commission") on the motion of CYBH, LLC ("CYBH", "Company" or "Applicant"), who requests that the Commission waive S.C. Code Ann. Regs. 103-177. For the reasons explained below, and for want of objection by any party to the Applicant's request, relief from the regulation is granted and the regulation is waived.

On May 30, 2013, the Commission issued an Order granting the Application of CYBH for a Class E (Household Goods) Certificate of Public Convenience and Necessity to transport goods throughout the State of South Carolina. As the Commission’s Order explains, in order to satisfy an intervenor in the Docket, the Company agreed to amend its name from “CYBH, LLC d/b/a Coastal Storage & Moving” to “CYBH, LLC” for its South Carolina intrastate operations. The Company was certificated by the United States Department of Transportation (“U.S. DOT”) for its intrastate operations under the name “CYBH, LLC d/b/a Coastal Storage & Moving,” and the Company has been doing business under that name for approximately 11 months. Given the Company’s commitment to amend its name for its South Carolina operations, the Commission’s
Order instructed that the Company’s Certificate of Public Convenience and Necessity ("Certificate") be issued in the name of CYBH, LLC.

On June 13, 2013, the South Carolina Office of Regulatory Staff ("ORS") informed the Company that certain informational filings must be updated by CYBH, LLC before a certificate could be issued. ORS’s determination in this regard was based upon the fact that filed Form E, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance," and Form H, "Uniform Motor Carrier Cargo Certificate of Insurance," were in the name of “CYBH, LLC DBA Coastal Storage & Moving.”

From June 13, 2013, until present, CYBH has worked to have its Form E and Form H amended by its insurance carriers, Zurich American Insurance Company ("Zurich") (for Form E) and Century Surety Company (for Form H). Counsel for the Company has also attempted to work with CYBH’s insurance carriers. Market Finders Insurance Company ("Market Finders") serves as the underwriter for Zurich and is the entity with authority to change the name to whom the policy is issued. Ms. Randi Lynch of Market Finders refused to communicate with CYBH or its counsel, and thus all communication has been conducted via CYBH’s insurance agent, Mr. Larry Short. According to communication from Mr. Short, Market Finders will not amend the insurance policy to remove the reference to the “DBA” because the “DBA” is included in the Company name as registered with the U.S. DOT. Efforts to amend Form H have been unsuccessful, as well.
The Company cannot remove the “DBA” from its registered name at the U.S. DOT because the Company operates under its trade name for its established interstate moving business. Additionally, the Company attempted to change its name at the U.S. DOT to “CYBH, LLC DBA Coastal Storage & Moving and CYBH, LLC” by submitting a name change request on June 18, 2013. On September 6, 2013, a representative from the Federal Motor Carrier Safety Administration (“FMCSA”) informed the Company via a telephone call that its name change request was denied as an improper addition of a trade name. As such, the Company has exhausted all options in order to amend its Form E and Form H.

S.C. Code Ann. Regs. 103-101(2) provides that waiver of regulations is appropriate in “individual cases when strict compliance with any rule or rules produces unusual difficulty and is not in the public interest.” The facts here demonstrate that strict compliance with S.C. Code Ann. Regs. 103-177 is unusually difficult and is not in the public interest. Given the Company’s commitment to operate its intrastate business under the name of CYBH, LLC, which is different than the name of its business for interstate moving services, the Company cannot have its certificates of insurance issued in the “full and correct name as that name appears on the application or certificate of the motor carrier,” as required in S.C. Code Ann. Regs. 103-177. CYBH requests waiver of this regulation to permit it to provide Form E and H issued in the name “CYBH, LLC DBA Coastal Storage & Moving” and have its Certificate issued.

The unique facts in this case warrant waiver of this regulation. It is the Company’s commitment to changing its name, which was made voluntarily to satisfy an
Intervenor's concerns regarding competition, which prohibits the Company from complying with the specific requirements of S.C. Code Ann. Regs. 103-177. As described above, CYBH has made extensive efforts to remedy this problem on its own, but has had no success. Additionally, CYBH has worked with ORS to reach a solution, which eventually led to this motion. Finally, waiving this regulation will not compromise the intent of the regulation, which is to require motor carriers seeking certification to provide evidence they are properly insured. It is clear that CYBH carries the insurance required for its Certificate of Public Convenience and Necessity.

More than four months have passed since the Commission issued its Order granting CYBH's Application, and CYBH has met all of the Commission's rules and regulations to be certificated, but for the minor technicality involving the inclusion of its trade name in its insurance policies. ORS has confirmed that it has no objection to the Commission granting the requested waiver.

Accordingly, for good cause shown and for lack of objection by any party to the requested relief, the Commission grants the waiver of Regulation 103-177 as to this Applicant.
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

G. O’Neal Hamilton, Chairman

ATTEST:

Nikiya Hall, Vice Chairman

(SEAL)