

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking amending 52 Pa. :
Code Chapters 1, 3, 5, 23 and 29 to Reduce :
Barriers to Entry for Passenger Motor Carriers : Docket No. L-2015-2507592
and Eliminate Unnecessary Regulations :
Governing Temporary and Emergency :
Temporary Authority :

**COMMENTS OF
CRAIG A. DOLL, ESQUIRE**

Background

By Order entered November 5, 2015, the Commission adopted the above captioned Proposed Rulemaking with the stated purpose:

. . . to reduce the current barriers to entry for qualified passenger motor carrier applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need.

The Proposed Rulemaking was published in the Pennsylvania Bulletin, 46 Pa.B. 1016 on February 27, 2016. Comments to the proposal are due on or before March 28, 2016. These comments are submitted in accordance with that requirement.

Discussion

Section 3.381(a)(3) should be amended to further streamline the application process.

Over the past 40 years, the undersigned has been involved in the practice of law in the area of Public Utility Law, lately concentrating on the motor carrier industry, representing both applicants and protestants in proceedings before the Commission and the Courts. Having been involved in both sides of the process, I agree that the “complex, costly and time consuming administrative process” must be streamlined. To that end, I applaud the Commission’s efforts.

However, that process may be further streamlined with a minor change to 52 Pa. Code §3.381(a)(3).

Under the Commission's proposal, 52 Pa. Code §3.381(c)(A)(IV) appropriately continues to permit the filing of protests, albeit limiting those protests to the issues of fitness and safety. Fitness is comprised of three separate sub-issues, whether the applicant: (1) possesses the technical expertise to provide the proposed service; (2) possesses the financial ability to provide the proposed service; and (3) whether the applicant lacks a propensity to operate safely and legally. In an unprotected application, evidence of technical fitness is shown through the filing of the Applicant's Verified Statement which is essentially a business plan wherein the Applicant sets forth his or her business experience, experience in the motor carrier industry, what vehicles Applicant intends to use or purchase, general safety guidelines, and a general plan as to how he or she intends to operate the business. Within that Verified Statement, an applicant must also provide evidence of financial fitness in the form of a rudimentary balance sheet.¹

At present, Commission regulations only require that the application itself be filed with the Commission. Upon publication of the application in the Pennsylvania Bulletin, other carriers and/or their counsel can access the Commission's web site to obtain a copy of the application documents. In most cases, all that is present is the application itself with no further information. Since the Applicant's verified statement and financial information is not generally included with the application, counsel is unable to determine whether an applicant possesses any technical or financial fitness. As these documents are not required unless there exist no protests, in order to obtain this information and properly advise his client, counsel is forced to file a protest and ultimately serve interrogatories upon the applicant. Inevitably, this course of action results in the Applicant being forced to obtain counsel who may object to certain

¹ In the case of an unprotected application, the Commission may check its records for any complaints against a carrier, particularly one that already possesses some authority.

interrogatories, costing both the applicant and protestant additional money and further delaying the process.²

By making the inclusion of the Verified Statement and Balance Sheet part of the application filing requirements, a preliminary determination can be made by responsible counsel whether to advise his or her client whether a protest has any chance of success. Similarly, the Verified Statement and Balance sheet provides an excellent roadmap and outline of the necessary trial evidence to applicant's counsel. By preparing these items with the client prior to any potential hearing in the matter, not only may counsel see the need for additional trial preparation materials, but will be prepared to present applicant's case in a clear and concise manner to any Administrative Law Judge, thereby reducing trial time.

It is not that the preparation of these materials is onerous or filed only to provide information to any potential Protestant. At present, if no protests are filed, this information is requested of the applicant by Commission Staff. By requiring that this information be available at the time of filing, that information is already in the Commission's possession. Of course, Staff may request such additional information or updates as it sees fit. By already possessing this information, "turn around" time may be shortened, even in the case of necessary updates.

One additional change can be made to 3.381(a)(3). Presently, that section requires that verified statements of supporting parties or firms may also be filed with the application. Since the purpose of these statements is to support the "need" for the service and that requirement has been eliminated by these proposed changes, the language permitting the filing of verified statement of support should be eliminated.

Suggested Language Changes

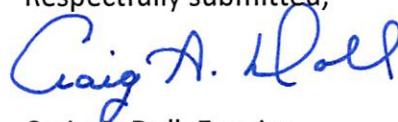
The undersigned proposes that in addition to the changes propose by the Commission 52 Pa. Code § 3.381(a)(3) be amended as follows:

(3) *Filing and verification.* An original application shall be filed by the applicant, or an authorized officer or representative, with the Secretary of the Pennsylvania Public Utility

² Because of the timing requirements in the Commission's regulations, Objections, a Motion to Compel, and a response to that motion must be filed even before an Administrative Law Judge is assigned to the case. Ultimately, an ALJ may be forced to rule upon any Motion to Compel.

Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265. The application shall be verified under § 1.36 (relating to verification). An application by a common carrier for a certificate of public convenience authorizing the transportation of passengers or household goods in use [may] shall be accompanied by verified statements of the applicant [and supporting party or firm], as set forth in subsection (c)(1)(iii)(A)(II) [and (III)]. An application by a contract carrier for a permit authorizing the transportation of passengers or household goods in use may be accompanied by a verified statement of the applicant, as set forth in subsection (c)(1)(iii)(A)(II) and a copy of the bilateral contract or statement of the shipper that it will enter into a bilateral contract with the carrier.

Respectfully submitted,



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DATED: March 18, 2016