**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held November 5, 2015

Commissioners Present:

 Gladys M. Brown, Chairman

 John F. Coleman, Jr., Vice Chairman

 Pamela A. Witmer

 Robert F. Powelson

 Andrew G. Place

Application of 610 Hauling, LLC, t/a College

Hunks Hauling Junk, for the right to begin to

transport, as a common carrier, by motor vehicle, A-2012-2334103

household goods in use, from points in the A-8915269

counties of Chester, Delaware, Montgomery,

Philadelphia, and Bucks, to points in Pennsylvania

**OPINION AND ORDER**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a document titled “Petition to Reopen and for Reconsideration and to Amend the Application to Reflect Recent Rule Change” (Second Petition) filed by 610 Hauling, LLC, t/a College Hunks Hauling Junk (Applicant or 610 Hauling) on June 2, 2015, in the above-captioned proceeding.[[1]](#footnote-1) The Second Petition was filed in response to a Secretarial Letter dated May 8, 2015 (*May 2015 Secretarial Letter*).[[2]](#footnote-2) For the reasons that follow, we will grant the Second Petition, rescind the *May 2015 Secretarial Letter*, and grant the Application as amended by the Second Petition.

**History of Proceeding**

 The Application of 610 Hauling was filed on November 5, 2012. In the Application, 610 Hauling sought the right to begin to transport, as a common carrier by motor vehicle, household goods in use between points in the counties of Chester, Delaware, Montgomery, Philadelphia, and Bucks, to points in Pennsylvania. On May 24, 2013, a Joint Protest to the Application was filed by ten parties (Joint Protestants).[[3]](#footnote-3) Following an initial hearing on February 11, 2014, the Applicant and the Joint Protestants agreed to a restrictive amendment that resolved all contested issues raised by the Joint Protestants. A properly executed restrictive amendment was filed on March 26, 2014. On April 3, 2014, Administrative Law Judge Eranda Vero issued an Order reassigning the Application from the Office of Administrative Law Judge to Commission Staff for review pursuant to 52 Pa. Code § 3.381(c)(1)(iii)[[4]](#footnote-4), which allows for review of applications on the merits on the basis of verified statements filed by the Applicant if no protests are filed or if filed protests are withdrawn.

 By letter dated May 20, 2014, to the Applicant, COMMISSION STAFF requested that the Applicant provide additional information to accommodate review of the Application, including verified statements and statements in support of the Application. Second Petition, Exhibit B. Upon request of Applicant’s counsel, because the Commission Staff letter had not been served on him, an extension for the provision of the requested information was provided. By Order entered August 21, 2014 (*August 2014 Order*), the Application was denied on the basis that more than thirty days had passed without the information being provided.

On September 5, 2014, the Applicant filed its first Petition to Reopen and for Reconsideration (First Petition). In the First Petition, the Applicant alleged it undertook multiple efforts to timely respond to the Commission Staff’s May 20, 2014 letter and included as attachments to the First Petition copies of letters and other information in support of those allegations. One attachment purported to be a June 12, 2014 submission of information including expanded responses to the Commission Staff inquiries, a balance sheet as of May 31, 2014, additional statements of support, and a log of untitled transactions (untitled log) recorded between January 2012 and February 2014.

Based upon our review of the First Petition, we determined that the Applicant presented credible averments of attempts made to provide the requested information, attempts that were inexplicably unsuccessful in reaching the Commission Staff. Accordingly, without review of or action on the merits of 610 Hauling’s Application, we concluded in our *November 2014 Order* that the Application should not be dismissed on the basis that the information was not provided. We therefore vacated the *August 2014 Order* that had denied the Application for failure to respond to the Commission Staff’s letter and referred the matter back to the Commission Staff for such further action as may be necessary.

In the pending Second Petition, the Applicant avers that on November 20, 2014, in response to our *November 2014 Order*, it submitted additional information in response to the Commission Staff’s May 20, 2014 letter. Second Petition at ¶ 15. Included in that submission were verified statements of support different from and in addition to those provided in the Applicant’s June 12, 2014 submission, a statement of financial position consisting of a one-year projected income statement for 2014, and expanded responses to inquiries on the Applicant’s verified statement attached to the Application. Second Petition, Exhibit H.

Following review of that information as well as the information the Applicant had provided in its June 12, 2014 submission, a Commission Staff determination in the *May 2015 Secretarial Letter* was issued. In that letter the Applicant was advised that a Certificate of Public Convenience would not be granted for two reasons: (1) the failure to establish need for the requested service; and (2) the propensity to operate illegally. Specifically the *May 2015 Secretarial Letter* stated as follows:

On August 21, 2014, the applicant was denied due to failure to timely respond to a Commission data request for clarification of its verified statements and for verified statements in support of the application. On September 5, 2014, the applicant petitioned the Office of Special Assistants for reconsideration and submitted multiple unacceptable statements in support of the application, and worse, a log demonstrating 399 moves which occurred without authority. Notwithstanding the evidence of unauthorized transportation of Household Goods in Use, the petition was granted on November 13, 2014. Subsequently, on November 20, 2014, the applicant submitted the previously requested information. Upon review by the Bureau of Technical Utility Services, it was determined that the majority of the applicant’s verified statements of support failed to comply with the requirements set forth in 52 Pa. Code § 3.382, and or the Commission’s decision in the Application of Blue Bird Coach Lines, Inc., (A-00088807, F.2, Am-K) 72 Pa. P.U.C. 262 (1990). On April 20, 2015, Manager William Kilrain, of the Commission’s Philadelphia District Office attempted to contact the 11 persons that allegedly signed statements supporting the application, but was unable to make contact with any of them.

 In response to the *May 2015 Secretarial Letter*, the Applicant filed its Second Petition on June 2, 2015. In this second request for reconsideration, the Applicant requests not only that we reconsider what the Applicant characterizes as the “wrongfully reached conclusions” set forth in the *May 2015 Secretarial Letter* but also that the Application be reconsidered as amended “to reflect the recent rule changes eliminating the requirement that applicants will service a useful public service and establishing state wide authority to operate.” Second Petition at ¶ 19.

**Discussion**

**Legal Standards**

In this Order we shall consider both the Applicant’s Second Petition and the Application on its merits. In considering the Second Petition, we note that any issue that we do not specifically address has been duly considered and will be denied without further discussion. It is well-settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984)](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef).

Petitions seeking reconsideration of staff actions are governed by Section 5.44(a) of our Regulations, 52 Pa. Code § 5.44(a), which provides as follows:

Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless reconsideration is sought from the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

In considering the Application, Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding the Applicant is the party seeking affirmative relief from the Commission, and therefore is the party with the burden of proof. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950) (*Se-Ling Hosiery*).

In *Se-Ling Hosiery* the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Additionally, the Commission must ensure that the decision is supported by substantial evidence in the record. The Pennsylvania appellate courts have defined substantial evidence to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Railway Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Additionally, pursuant to Section 1103(a) of the Code, 66 Pa. C.S. § 1103(a), this Application should be granted only if the Commission finds that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” In order to make these determinations, we set forth the criteria to be taken into consideration in a Policy Statement. These factors, found at 52 Pa. Code § 41.14, are as follows:

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

(a)An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(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. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

(4) Whether the applicant has an appropriate plan to comply with the Commission’s driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant’s record, if any, of compliance with 66 Pa. C.S. (relating to the Public Utility Code), this title and the Commission’s orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(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.)

Our intent behind this transportation Policy Statement, promulgated in the early 1980s, was “to eliminate monopolistic protection of existing motor carriers and to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” *In Re: Blue Bird Coach Lines, Inc.,* 72 Pa. P.U.C. 262, 274 (1990) (*Blue Bird*). We note, however, that in the time period during which this Application has been pending, we have undertaken review and revision of our Regulations that address certain transportation applications, including applications for authority to transport household goods in use. In September 2013 we initiated a proposed rulemaking to amend the aforementioned Regulation and Policy Statement as they affected rights governing household goods carriers and property carriers.

As discussed in more detail, *infra*, with respect to an application seeking the right to transport household goods our Order in *Final Rulemaking Amending 52 Pa. Code Chapters 3, 5, 23, 31, 32, and 41; Household Goods in Use Carriers and Property Carriers*, Docket No. L-2013-2376902 (Order entered June 19, 2014), 2014 WL 2876694 (Pa.P.U.C.) (*Final Rulemaking*) removed the requirement to establish that approval of the application will serve a useful public purpose responsive to public demand or need but retained requirements addressing fitness. Thus, in order to approve an application for the right to transport as a common carrier by motor vehicle household goods in use, we must find that an applicant has sustained its burden of proving, by a preponderance of the evidence, that it possesses the requisite technical and financial fitness and propensity to operate safely and legally.

**Second Petition and Disposition**

In its Second Petition the Applicant avers, in response to the *May 2015 Secretarial Letter*, that the Commission Staff wrongfully determined it had engaged in the unauthorized transport of household goods in use based upon the Commission Staff’s review of the untitled log. The Applicant explains that the transactions recorded in the untitled log contained in the June 12, 2014 submission involved junk removal services. Second Petition at ¶¶ 16, 17. As to the second reason for denial, the Applicant further avers that upon investigation, none of the persons who signed statements supporting the Application acknowledged receiving a telephone call from the Commission’s Philadelphia office. *Id.* at ¶ 18. On these bases, and in light of our Order in *Final Rulemaking*, which obviated the requirement for supporting verifications, the Applicant requests that we reconsider the wrongfully reached conclusions and grant the Applicant’s request, as now amended to include statewide authority.

In light of the changes to our regulatory requirements under consideration at the time this Application has been pending before us, which changes became effective May 23, 2015,[[5]](#footnote-5) we grant the Applicant’s requested reconsideration, rescind the *May 2015 Secretarial Letter*, and consider the merits of the Application.

**Application and Disposition**

 The Applicant originally requested authority to transport household goods in use from points in the counties of Chester, Delaware, Montgomery, Philadelphia, and Bucks to points in Pennsylvania. After the Applicant resolved the protests challenging need and agreed to and filed a restrictive covenant, the Application was reassigned to the Commission Staff. *November 2014 Order* at 2. Further review of the Application on its merits was delayed pending resolution of the Commission Staff’s May 20, 2014 letter requesting additional information, including the provision of additional statements in support. This outstanding request for additional information ultimately formed the basis for the first denial of the Application because, as addressed in our *November 2014 Order*, there was a disconnect between the Applicant’s provision, and our receipt, of the information. *Id.* at 6. Upon our grant of the First Petition and referral of the Application back to the Commission Staff for further action on the merits, the *May 2015 Secretarial Letter* was issued, which denied the Application on its merits for, *inter alia*, failure to establish need for the requested service. As to need we find that issue is now moot and no longer presents an impediment to grant of the Application.

 As indicated above, in our *Final Rulemaking* Order we amended our Regulation applicable to the transport of household goods such that an applicant no longer must demonstrate need. As we stated in that Order:

In light of the increased competition in the industry, we proposed eliminating the requirement that an applicant for household goods in use authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. We opined that rather than determining public need by means of an administrative process, competition among carriers with regard to price, quality, and reliability as well as the experienced demand for their services by consumers who may freely choose among those competing carriers, will determine whether a given carrier’s service is needed by the public.

 \* \* \*

We further note that our proposal to eliminate geographic operating restrictions dove-tails with the elimination of need. Geographic operating restrictions make no sense in a competitive environment, where carriers can readily augment their operating authority. While we recognize this territorial expansion will create increased competition, this is consistent with the purpose of eliminating entry barriers.

*Final Rulemaking*, 2014 WL 2876694 at \*2, \*6.

Thus, under our currently effective Regulation, protests to applications for household goods in use authority are limited to challenges to an applicant’s fitness. 52 Pa. Code § 3.381(c)(1)(i)(A)(VII). Verified statements of supporting parties are no longer required. 52 Pa. Code § 3.381(c)(1)(iii)(A)(V). Also, authority granted will be statewide unless requested otherwise. *Final Rulemaking*, 2014 WL 2876694at \*\*3-4. In accord with that Order, the Applicant, in its Second Petition, amended its request for authority to be on a statewide basis. Given that request, and our elimination of the previous requirement for verified statement of supporting parties, we find that the first reason set forth in the *May 2015 Secretarial Letter* for denial of the Application, the failure to establish need, has been rendered moot.

Our Regulation as revised now also requires a statement that the applicant has a minimum of two years’ experience with a licensed household goods carrier or the equivalent. 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(l). The Application, as amended by the Second Petition, does not expressly provide that statement. We find, however, as addressed more fully in our discussion below of the untitled log provided in the Applicant’s June 12, 2014 submission, that the Applicant has a minimum two years’ experience in moving items. In consideration of the circumstances unique to this Application, including its long history before us, we will accept as satisfaction of this requirement in this case the Applicant’s demonstration of its experience as contained in its Application, as supplemented by the provision of additional information pending review before the Commission Staff.

We caution that, on our review of the totality of the circumstances presented here, our acceptance of review of the material provided by the Applicant as satisfaction of the requirement at Section 3.381(c)(1)(iii)(A)(II)(l) in lieu of an unequivocal statement of a minimum two years’ experience in the application itself is limited to this case and the facts presented herein. This Order shall not be cited, nor shall it serve, as precedent for other applicants who choose to exclude an express statement of their minimum two years’ experience with moving household goods or the equivalent, for whom failure to comply with Section 3.381(c)(1)(iii)(A)(II)(l) shall be at their peril.

We next turn to review of the Applicant’s fitness, specifically the Applicant’s propensity to operate illegally, the second reason cited in the *May 2015 Secretarial Letter* for denial of the Application. Proof of fitness has been and remains a regulatory requirement. That is, the applicant must prove by a preponderance of the evidence that it possesses the technical and financial ability to provide the requested service and that it does not have a propensity to operate unsafely and illegally. 52 Pa. Code § 3.381(c)(1)(i)(A)(VII). As stated above in our discussion of our Policy Statement at 52 Pa. Code § 41.14, factors to be considered in evaluating an applicant’s fitness include (1) the applicant’s capital, equipment, facilities, and other resources; (2) information about the applicant’s employees; (3) the procurement of insurance; (4) plans to comply with safety regulations; (5) any record of compliance; and (6) prior convictions of felonies or crimes of moral turpitude.[[6]](#footnote-6)

All protests to 610 Hauling’s Application claimed that grant of the requested service was unnecessary and would be destructive competitively, the “need” requirement we have since eliminated. None challenged 610 Hauling’s fitness. In its review of the June 12, 2014 submission, however, in particular in review of the untitled log provided in the Applicant’s expanded response to the Commission Staff inquiry numbers 4 and 6,[[7]](#footnote-7) the Commission Staff concluded that the Applicant had a propensity to operate illegally. As characterized in the *May 2015 Secretarial Letter*, the transactions reflected there were “evidence of unauthorized transportation” of household goods in use.

 In its Second Petition, the Applicant avers that the transactions evidenced in the untitled log were not moves of household goods, rather they were evidence of the Applicant’s operation of its junk removal services for “College Hunks Hauling Junk,” the Applicant’s trade name.[[8]](#footnote-8) We find this allegation to be confirmed by the information provided in the original 2012 Application itself as well as in the supplemental information provided by the Applicant.

Question number 3 on the Applicant’s verified statement attached to its Application requests a description of the applicant’s business experience, particularly any relating to the operation of a transportation service. In response to that inquiry, the Applicant stated as follows: “Graduate of Penn State with a bachelor’s degree in business. Over five years of experience in managing a staff of 40+ employees. Recently a [sic] owner of a full service junk removal company.” This representation, made at the time the Application was submitted, confirms the Applicant’s explanation in the Second Petition that its experience, and record of transactions in the untitled log, is in junk removal services.

Further, while not explicitly explained because the log was untitled, we believe that the Applicant’s explanation in its Second Petition that this log is a list of clients for whom the Applicant has provided junk removal services is reasonable and credible. The Applicant originally provided this attachment in response to the Commission Staff’s request for an expanded response to inquiry number 4 on the Applicant’s original verified statement. *See* First Petition, Exhibit C. That question requests, *inter alia*, plans for maintenance of records as well as normal business records. It is reasonable to conclude, as the Applicant avers, that the log was used by the Applicant in its existing junk hauling service and was included to provide further information about the Applicant’s intended maintenance of records as well as normal business records. *See, e.g.,* Second Petition, Exhibit J, at 12 (original response to inquiry number 4, which described how customer requests are entered into an online scheduling system); First Petition, Exhibit C, second unnumbered page (first supplemental response in June 12, 2014 submission, which repeated the reference to the online scheduling system and attached for the first time the untitled log);[[9]](#footnote-9) and Second Petition, Exhibit H (which although identified as an expanded response to inquiry number 1, also provided expanded information in response to inquiry number 4). The Applicant’s explanation is credible and refutes the conclusion in the *May 2015 Secretarial Letter* that the Applicant has a propensity to operate illegally. Accordingly, we conclude that the record does not support the second reason set forth in our *May 2015 Secretarial Letter* to deny the Application – the propensity to operate illegally.[[10]](#footnote-10)

With respect to our remaining criteria of fitness, upon review of the totality of the information provided by 610 Hauling in both the Application and the supplemental submissions, we find that the Applicant has addressed applicable education and experience; its proposed facilities, record maintenance, and communications network; its proposed employee complement and issues comprising safety, training, and oversight; customer service standards; and actual and projected financial statements. No issues with respect to these criteria other than those addressed herein were raised by any party.

Thus, upon review and consideration of the information provided by the Applicant, we conclude that the Applicant has provided information sufficient to address aspects of its financial and operational fitness. Specifically upon review and consideration of the information provided by the Applicant in its supplemental submissions, we conclude that the Applicant has satisfactorily addressed the inquiries posed, and resolved the only two issues raised, by the Commission Staff in its review of the Application, namely need and propensity to operate illegally. As such, the Applicant has satisfied its burden of proving that it possesses the requisite technical and financial fitness and does not lack the propensity to operate safely and legally, and the Application should be granted with statewide authority.

**Conclusion**

Upon review of the record, we will grant the Second Petition, rescind the *May 2015 Secretarial Letter*, and grant the Application as amended by the Second Petition, all consistent with this Opinion and Order; **THEREFORE,**

 **IT IS ORDERED:**

 1. That the Petition for Reconsideration of Staff Action filed by 610 Hauling, LLC, t/a College Hunks Hauling Junk on June 2, 2015, is granted.

 2. That the Secretarial Letter issued in this matter on May 8, 2015, and reissued on May 14, 2015, is rescinded.

 3. That the Application of 610 Hauling, LLC, t/a College Hunks Hauling Junk, filed on November 5, 2012, and amended on June 2, 2015, is hereby approved and that a certificate be issued granting the following right:

To begin to transport as a common carrier by motor vehicle household goods in use to and from points in Pennsylvania.

 4. That 610 Hauling, LLC, t/a College Hunks Hauling Junk shall not engage in any transportation authorized by this Order until it has received a Certificate of Public Convenience from the Commission.

 5. That a Certificate of Public Convenience shall not be issued until the following items are submitted and approved by the Commission:

1. An acceptable updated Form E, as evidence of bodily injury and property damage liability insurance (arrange for your insurance company to file with the Commission).

1. An acceptable tariff establishing just and reasonable rates. Instructions for filing of a tariff can be found at: *www.puc.pa.gov/general/onlineforms/pdf/initial\_tariff\_instructions.pdf.*

 6. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to 610 Hauling, LLC, t/a College Hunks Hauling Junk, shall not be construed as conferring more than one operating right.

7. That upon compliance with the requirements hereinbefore set forth, a certificate shall issue evidencing the Commission’s approval of the right to operate as above-determined.

8. That in the event 610 Hauling, LLC, t/a College Hunks Hauling Junk has not, on or before sixty days from the date of entry of this Order, complied with the requirements set forth herein, this action shall be rescinded and the application be dismissed without further proceedings in accordance with Commission Regulations.

9. That 610 Hauling, LLC, t/a College Hunks Hauling Junk must demonstrate safety fitness by completing a Safety Fitness Review. 610 Hauling, LLC will be contacted by Commission staff, who will schedule a review to be completed within 180 days of the date the certificate is issued. An overview of the safety regulations can be found on the Commission’s website at [*www.puc.pa.gov/general/onlineforms/pdf/safety\_fitness\_compliance.pdf*](http://www.puc.pa.gov/general/onlineforms/pdf/safety_fitness_compliance.pdf). Failure to submit to a Safety Fitness Review or to attain a satisfactory evaluation will result in cancellation of the certificate.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: November 5, 2015

ORDER ENTERED: November 5, 2015

1. We shall consider the document to be a petition for reconsideration from action of the staff pursuant to our Regulation at 52 Pa. Code § 5.44. [↑](#footnote-ref-1)
2. Although the Second Petition was filed outside the twenty-day review period, the May 8, 2015 Secretarial Letter did not contain notice of the right to seek reconsideration of the staff action within twenty days. Further, review of the record reveals that the May 8, 2015 letter was re-served on May 14, 2015, rendering the present appeal timely. [↑](#footnote-ref-2)
3. Because this is the second time this matter is before us on reconsideration, details that are not pertinent to this disposition are omitted. A full recitation of facts that preceded the first reconsideration is contained in our Order entered November 13, 2014 (*November 2014 Order*) at this docket. [↑](#footnote-ref-3)
4. Our reference to Commission Staff herein refers to the Commission’s Bureau of Technical Utility Services (TUS). [↑](#footnote-ref-4)
5. Revisions to 52 Pa. Code § 3.381 were effective upon publication at 45 *Pa. B.* 2468. [↑](#footnote-ref-5)
6. At the same time we proposed the modifications to our Regulation at 52 Pa. Code § 3.381, we also proposed parallel modifications to this Policy Statement. At the suggestion of the Independent Regulatory Review Commission, provisions contained in proposed modifications to this Policy Statement were moved to the Regulation itself, with formal changes to the Policy Statement deferred to a subsequent order that remains pending. Therefore, while we abide by the revised Regulation and companion Policy Statement in this Order, we consider the latter without reference to its factors regarding need. [↑](#footnote-ref-6)
7. The Applicant stated in its cover letter to the November 20, 2014 submission of information that it was providing “[e]xpanded responses to inquiries numbered **1** and 6.” Second Petition, Exhibit H (emphasis added). The Commission Staff’s inquiries in its May 20, 2014 letter, however, requested a “more complete response” to questions **4** and 6 on the verified statement attached to the Application. First Petition, Exhibit B. We find that the correct reference, and the one pertinent to the finding in the *May 2015 Secretarial Letter* regarding the untitled log, is to question 4 on the Applicant’s verified statement, which requested information on matters such as facilities, record maintenance, communication network, office area and machines, storage facilities, record maintenance, business records, and intake of customer inquiries. [↑](#footnote-ref-7)
8. *See* Second Petition, Exhibit J (Application) at ¶ 2. [↑](#footnote-ref-8)
9. For reasons that are unclear on the record, the Applicant appears to have attached multiple copies of the same log to both the First Petition (Exhibit C) and the Second Petition (Exhibit I). [↑](#footnote-ref-9)
10. To this point it is also notable that we have previously found that “it is not possible to delineate exacting, quantifiable standards of what constitutes *safely and legally.* Each case stands on its own merits, left to the evidence presented and the Commission's sound discretion.” *Final Rulemaking*, 2014 WL 2876694at \*7 (emphasis in original). Moreover, the propensity to operate unsafely and illegally has generally been interpreted to mean a persistent disregard for, flouting of, defiant attitude towards, or natural inclination to operate outside of safety and the law. The fact that the Applicant has attempted to cure all issues raised with respect to the 2012 Application does not appear to exemplify persistent disregard for the law. *Id*. Finally, even if transactions in the untitled log included moves of household goods in use, as opposed to junk as the Applicant averred in 2012 was his existing business, “[i]t is well established that the applicant’s prior unlawful operations do not preclude the PUC from granting authority in a subsequent proceeding.” *Loma, Inc. v. Pa. PUC*, 682 A.2d 424 (Pa. Cmwlth. 1996), citing *Brinks, Inc. v. Pa. PUC*, 500 Pa. 387, 456 A.2d 1342 (1983). [↑](#footnote-ref-10)