# PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held May 20, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

Application of Stress-Less Moving A-2020-3016610

& Storage Company A-8922920

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration from Staff Action (Petition) filed by Stress‑Less Moving & Storage Company (Stress-Less or Petitioner) on November 12, 2020, relative to the above-captioned proceeding. The Secretarial Letter to which the Petition refers was issued on November 2, 2020 (*November 2020 Secretarial Letter*). No Answer to the Petition has been filed. For the reasons set forth herein, we will deny the Petition, consistent with the discussion in this Opinion and Order.

**History of the Proceeding**

On January 23, 2020, Stress-Less filed an Application for Motor Common Carrier or Motor Contract Carrier of Household Goods in Use (Application) with the Commission.[[1]](#footnote-2)

On February 8, 2020, the Application was published in the *Pennsylvania Bulletin* at 50 *Pa*. *B*. 887. No protests to the Application were filed. The Application was thereafter assigned to the Commission’s Bureau of Technical Utility Services (TUS) for review.

On April 16, 2020, TUS issued a Secretarial Letter (*April 2020 Secretarial Letter*) that conditionally approved the Application upon: (1) the filing of an acceptable Form E, which is proof of bodily injury and property damage liability insurance that must be filed by the applicant’s insurance company; (2) the filing of an acceptable Form H, which is proof of cargo insurance that must be filed by the applicant’s insurance company; and (3) the filing of an acceptable tariff establishing just and reasonable rates. The Form E, Form H and tariff were due to the Commission within sixty (60) days from the date of the *April 2020 Secretarial Letter*,or June 15, 2020.

On October 20, 2020, a representative from TUS sent an informal email regarding Stress-Less to Loren Tingen (*October 2020 TUS Email*).[[2]](#footnote-3) In pertinent part, the email is reprinted below:

It has come to our attention that your compliance period has expired, without the required Form E or Tariff being filed. You will be given until close of business on 10/30/20 to either file the required evidence of insurance and tariff, efile an extension request with justification as to why extension is needed, or ask to withdraw your application.

*October 2020 TUS Email*.

On November 2, 2020, the Commission issued the *November 2020 Secretarial Letter* denying the Application. The *November 2020 Secretarial Letter* indicated that, within the sixty (60) days required by the *April 2020 Secretarial Letter*, Stress-Less failed to: (1) have its insurer file a Form E to the Commission; (2) have its insurer file a form H to the Commission; and (3) file a tariff to the Commission. *November 2020 Secretarial Letter* at 1.

 As noted, *supra*, on November 12, 2020, Stress‑Less filed the instant Petition in response to the *November 2020 Secretarial Letter*. On January 20, 2021, Stress-Less filed a Compliance Tariff (Tariff).

On February 10, 2021, Tristate Household Goods Tariff Conference, Inc. (Tristate) filed a Request to Withdraw and Reject Compliance Tariff (Request to Withdraw) on the grounds that the tariff filed by Stress-Less was a Tristate 51-W tariff and that since Stress-Less was not granted household goods operating authority it, therefore, was not yet a member of Tristate.[[3]](#footnote-4) Consequently, Tristate requested that Stress-Less’ filed tariff be rejected and removed from the Commission’s website.

**Discussion**

**Legal Standards**

In considering this Petition, we are not required to consider, expressly or at length, each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Any argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Petitions for Reconsideration from Staff Action are governed by Section 5.44(a) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.44(a), which provides the following:

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.

52 Pa. Code § 5.44.

Under Section 512 of the Public Utility Code (Code), the Commission has the authority to require insurance. 66 Pa. C.S. § 512. Commission Regulations prohibit a common carrier of property from engaging in intrastate commerce, and no certificate of public convenience will be issued until a certificate of insurance from an insurer authorized to do business in Pennsylvania has been filed and approved by the Commission. 52 Pa. Code § 32.12.

In considering the appeal from Staff Action, the Application and the compliance with Commission Regulations, Section 332(a) of the 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 Stress-Less is the party seeking affirmative relief from the Commission. Therefore, Stress-Less is the party with the burden of proof. *See 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, household goods in use, from points in the counties of Chester, Delaware, Montgomery, Philadelphia, and Bucks, to points in Pennsylvania*, Docket Nos. A-2012-2334103 and A-8915269 (Order entered November 5, 2015) (*Application of* *610 Hauling*), citing *Se‑Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 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. *Application of 610 Hauling*,citing *Norfolk & Western Railway Company v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Pa. Department of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

**Petition and Disposition**

In its Petition, the Petitioner[[4]](#footnote-5) acknowledges that Stress‑Less’ insurance company failed to file the Form E and Form H with the Commission but notes that the forms will be filed immediately. Further, the Petitioner provides that the start of Stress‑Less’ business operations, including the purchase of insurance, was delayed due to the COVID-19 pandemic and its effects on the economy and the industry. Moreover, the Petitioner addresses Stress-Less’ failure to file a tariff, asserting that upon the Commission’s “re-approval,” the tariff will be filed because Stress-Less will be joining Tristate. Petition at 1-2.

Subsequently, on January 20, 2021, Stress-Less filed a Compliance Tariff. The heading on the title page of the Compliance Tariff reads as follows: “Tristate Household Goods Tariff Conference, Inc., Agent, For Participating Motor Carriers Under Power of Attorney.” Compliance Tariff at 1.

Upon further review of the Commission records, we note that Stress-Less has filed a new application for the same type of authority that it requested with the Application in the instant proceeding.[[5]](#footnote-6) Therefore, given these circumstances and in order to secure a speedy and inexpensive determination in this proceeding, we believe that it is reasonable to deny Stress-Less’ Petition. Further, we will not consider the Petitioner’s Compliance Tariff since the dismissal letter rejected the prior application for failure to comply with the conditional approval and the Petitioner has filed a new application for the same service.

**Conclusion**

For the reasons discussed herein, we shall deny Stress-Less Moving & Storage Company’s Petition for Reconsideration from Staff Action, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration of Staff Action, filed by Stress‑Less Moving & Storage Company, on November 20, 2020, at Docket No. A‑2020‑3016610, is denied, consistent with this Opinion and Order.
2. That the Application of Stress-Less Moving & Storage Company, seeking the right to provide, as a common carrier by motor vehicle, transportation of household goods in use between all points in Pennsylvania, at Docket No. A‑2020‑3016610, is denied.
3. That this proceeding, at Docket No. A-2020-3016610, be marked closed.

** BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: May 20, 2021

ORDER ENTERED: May 20, 2021

1. Stress-Less requested authority to operate as a common carrier in order to transport household goods in use between all points in Pennsylvania. *See* Application at 3. [↑](#footnote-ref-2)
2. According to the Application, Loren Tingen is the owner of Stress-Less. [↑](#footnote-ref-3)
3. In regard to Formal Proceedings, our Regulations at 52 Pa. Code §§ 5.94 and 5.539 allow for the filing of withdrawal of pleadings in a contested proceeding and withdrawal of appeals (exceptions filed to a recommended or initial decision), respectively. However, there is no provision in our Regulations that allows a party to file a request to withdraw and reject another party’s compliance tariff. Consequently, we will not consider Tristate’s Request to Withdraw. [↑](#footnote-ref-4)
4. The Petition was signed by Loren Tingen. As noted, *supra*, Loren Tingen is the owner of Stress-Less. [↑](#footnote-ref-5)
5. On March 18, 2021, at Docket No. A-2021-3024721, Stress-Less filed an application for Motor Common Carrier or Motor Contract Carrier of Household Goods in Use with the Commission. On April 3, 2021, the application was published in the *Pennsylvania Bulletin* at 51 *Pa*. *B*. 1942. [↑](#footnote-ref-6)