

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held March 10, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Application of Exceptional Movers LLC for
Carrier of Household Goods in Use Authority

A-2021-3029208
A-8919919

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 on December 13, 2021, by Exceptional Movers LLC (Applicant or Exceptional Movers) requesting reconsideration of the Commission Secretarial Letter issued on November 24, 2021 (*November 2021 Secretarial Letter*), that denied and dismissed Exceptional Movers' application for a Certificate of Public Convenience (Certificate) authorizing it to operate as a carrier of household goods in use (Application).¹ The *November 2021 Secretarial Letter*, per the Commission's Bureau of Technical Utility Services (TUS), denied the Application based on the Applicant's failure

¹ Exceptional Movers filed its Application for Motor Common Carrier or Motor Contract Carrier of Household Goods in Use on October 20, 2021.

to provide evidence of a minimum of two-years' experience with a licensed carrier of household goods, or the equivalent, as required by Commission Regulation at 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-).² The Petition is submitted pursuant to 52 Pa. Code § 5.44 and includes a letter proffered by the Applicant describing the experience of its owner/operator, Mr. Matt Toney, in the moving industry to establish compliance with the applicable Regulation. No Answer has been filed to the Petition and from our review, there is no indication that the Application was published in the *Pennsylvania Bulletin*. For the reasons that follow, we shall deny the Petition, consistent with the discussion in this Opinion and Order.

Background

On October 20, 2021, Exceptional Movers filed its Application with the Commission. Mr. Matt Toney, identified as the sole owner/operator, filed the Application in which he requested authority “[t]o transport household goods in use between points in Pennsylvania.” *See* Application at 3 (Response No. 10). The Application was accepted for filing and docketed by the Commission; however, by Secretarial Letter dated October 25, 2021, the Commission sent Exceptional Movers a request for information asking for evidence to demonstrate that the Applicant has a minimum of two-years' experience working with a licensed carrier of household goods, and the times that the Applicant worked as a loader/unloader. The Commission received the Applicant's response on October 29, 2021. The response included: (1) various documents listing the Applicant's transactions for past household goods moves completed in 2014 and 2018; (2) a Certificate of Organization for “Exceptional Movers LLC” from the Pennsylvania Department of State Corporation Bureau;

² A household goods in use carrier must provide “[a] statement that the applicant has a minimum of 2 years of experience with a licensed household goods carrier or the equivalent. This requirement shall be applicable to all applications for household goods, whether protested or not.” 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-).

(3) Certificates of Liability Insurance for the Applicant for the years 2017, 2019, 2020, and 2021; and (4) a confidential IRS Schedule C Form (Profit or Loss from Business) for 2019.

In response to the requirement that the Applicant provide evidence of a minimum of two years' experience with a licensed household goods in use carrier, or the equivalent, as required by Section 3.381(c)(1)(iii)(A)(II)(-l-) of our Regulations, the Applicant's Verified Statement, attached to the Application, contained the following:

Exceptional Movers LL DOT # 3527313 has been in service since 2014 as a moving labor service with providing loading and unloading help. Applicant has over 7 years['] moving experience.

Verified Statement at 5 (Response No. 3).

The Application's Verified Statement also included supporting information concerning the Applicant's technical and financial fitness to perform the proposed service. This information has not been called into question by TUS in the *November 2021 Secretarial Letter*. The Applicant stated in the Application that he operates his business from his home office where he maintains all business documents in a file cabinet. Verified Statement at 6 (Response No. 4). He currently owns a 2007 Ford F350 truck that is stored in a gated garage in Harrisburg, Pennsylvania that requires a PIN [Personal Identification Number] code to gain access. Verified Statement at 6 (Response Nos.4, 6). His vehicle is "point-inspected" daily using a pre-inspection and post-inspection checklist and it receives routine and systematic maintenance to comply with Pennsylvania State Inspection Requirements. Verified Statement at 7 (Response No. 7). The Applicant also explained that he receives move requests from customers through emails and phone calls and that when jobs are booked, he dispatches his truck to drivers via phone communications to the customer's location. Verified Statement at 6

(Response No. 4). The Applicant indicated that, currently, he is the only driver and that he has a clean driving record with twenty years of trucking experience. Verified Statement at 6 (Response No. 5). As he hires additional drivers in the near future, the Applicant will provide the new drivers with proper training in Federal Motor Carrier Safety Administration (FMCSA) regulations as well as in the handling and care of household goods in use. *Id.* The Applicant commits to a zero-tolerance policy for drug/alcohol violations and driving negligence. *Id.* To enforce this policy, the Applicant will conduct criminal background checks, random drug/alcohol testing, and require that all hired drivers have an acceptable Department of Transportation (DOT) driving record. *Id.*

TUS denied and dismissed Exceptional Movers' Application to operate as a household goods carrier via the *November 2021 Secretarial Letter* because Exceptional Movers failed to provide evidence of two-years' minimum experience with a licensed carrier of household goods, or the equivalent, pursuant to the Commission's Regulation in Section 3.381(c)(1)(iii)(A)(II) (-1-). In this regard, TUS informed Exceptional Movers that:

The Commission has determined that a Certificate of Public Convenience shall not be granted for the following reason(s):

- **Falsification to Demonstrate the Required Fitness.** Under 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-) you are required to demonstrate that you, the applicant, have the required knowledge, fitness, and financial ability to operate as a certificated motor carrier in the Commonwealth of Pennsylvania. You failed to provide adequate evidence that shows you have the required two years of experience working with a licensed household goods carrier, or the equivalent.

November 2021 Secretarial Letter

As noted, on December 13, 2021, the Applicant filed the instant Petition pursuant to 52 Pa. Code § 5.44 requesting that the Commission change its determination.

Discussion

1. Legal Standards

In considering the 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); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

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

- (a) 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 appeal from Staff action, the Application and the compliance with Commission Regulations, 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. Therefore, the Applicant 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); 2015 WL 7008844 (Pa.P.U.C.), citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

In *Se-Ling Hosiery v. Margulies*, *supra*, 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, LLC, t/a College Hunks Hauling Junk, supra*,³ citing *Norfolk & Western Railway Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 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), an Application should be granted only if the Commission finds that “the granting of such certificate is necessary or proper for the service, accommodation,

³ With regard to *Application of 610 Hauling, LLC*, the Commission expressly advised that acceptance of review of the material provided by the Applicant as satisfaction of the requirement at 52 Pa. Code, Section 3.381(c)(1)(iii)(A)(II)(-1-), in lieu of an unequivocal statement of a minimum two years’ experience in the application was limited to that case. And, the facts presented in the Order were not to be cited nor serve as precedent for other applicants who exclude an express statement of their minimum two years’ experience with moving household goods or the equivalent in order to comply with Section 3.381(c)(1)(iii)(A)(II)(-1-). 2015 WL 7008844 at *8.

convenience or safety of the public.” In order to make these determinations, we review the criteria to be taken into consideration for authority to transport household goods in use set forth in our Policy Statement.⁴

With respect to an application seeking the right to transport household goods, consideration is governed by our Order in the *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 Order*). In the *Final Rulemaking Order*, we removed the requirement that an applicant seeking authority to transport household goods in use should establish that approval of the application will serve a useful public purpose responsive to public demand or need. However, the Commission retained requirements addressing fitness.

Based on the foregoing, in order to approve an application for the right to transport as a motor contract carrier of household goods, 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. *Final Rulemaking Order; Application of Kris Eckerl t/d/b/a Michael's Moving and Storage for the right to begin to transport, as a common carrier, by motor vehicle, household goods in use, between points in Pike County*, Docket No. A-2014-2429336 (Order entered November 19, 2015).

In the Commission’s discussion preceding adoption of final rules in the *Final Rulemaking Order*, we stated the following:

Household goods applicants will be required to establish that they have the technical and financial ability to provide the

⁴ See 52 Pa. Code § 41.14.

proposed service safely and legally. Toward this end, we believe that applicants should have at least two (2) years of experience with a household goods carrier, or the equivalent. This requirement would ensure that only those applicants who are familiar with the industry would be eligible to operate. An applicant could satisfy this requirement by hiring managers with the necessary experience. We note that, notwithstanding this requirement, each application will be considered on its own merits.

*Proposed 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 September 12, 2013) (Proposed Rulemaking Order), 2013 WL 5232325 (Pa.P.U.C.) 2013 WL 5232325 at *4.*⁵

As noted in the *Final Rulemaking Order*, the pertinent Regulation cited in the *November 2021 Secretarial Letter* reads as follows:

(-1-) A statement that the applicant has a minimum of 2 years of experience with a licensed household goods carrier or the equivalent. This requirement shall be applicable to all applications for household goods, whether protested or not.

52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-).

2. The Petition

In the instant Petition before the Commission, the Applicant, citing the pertinent language of the Commission Regulation in Section 3.381(c)(1)(iii)(A)(II)(-1-), submitted that he can meet the two-year experience requirement to demonstrate he is

⁵ *Accord, Final Rulemaking Order*, “Commentators generally supported our proposal regarding increasing standards for technical and financial fitness for applicants. We note that we have historically examined each application for authority on the merits of the individual application.”

qualified to be certificated as a mover of household goods because he possesses “equivalent” experience based on his “extensive knowledge, skills and 7 years[’] experience in the moving industry.” Petition at 1.

In support of his equivalent experience, the Applicant stated that, in 2014, he created Exceptional Movers, a moving labor business, in which he had been immersed with hands-on skills and knowledge of the moving industry. *Id.* Specific examples of the experience he acquired involved the loading and unloading of household goods; the care that must be taken in moving household goods to specific locations throughout homes; special packaging requirements of delicate items; proper furniture handling; disassembling and reassembling specialized equipment, appliances, and furniture; and training and guiding crews to assist customers with the loading/unloading of their rental trucks, Pods, U-boxes, or personal vehicles. *Id.* He further averred that he has experience in moving large specialty items requiring safe and strategic handling such as pianos, pool tables, hot tubs, safes, treadmills, appliances, and bathroom vanities. Petition at 1-2. He noted that he is a 5-star mover on U-Haul and Elite moving help portals where he had been advertising his moving labor services and skills for the past seven years during which he had completed over 600 moves which provided him with above-normal skills and leadership in the moving business. Petition at 2. He concludes by stating he constantly uses the business management skills he learned at TCI College to communicate, advise, and assist with customer relations, scheduling of moves, and bookkeeping, and that he stays up-to-date about moving and transportation regulations by studying the Federal Motor Carrier Safety Administration handbook, the Movers Academy website, the DOT website, and his subscription to the Mover’s Development training courses. Petition at 2.

3. Disposition

In its Application, Exceptional Movers averred that it “has been in service since 2014 as a moving labor service with providing loading and unloading help.” It further averred that its sole owner/operator, Mr. Matt Toney, “has over 7 years[’] moving experience.” As noted, Mr. Toney submitted in the Petition that he can meet the Section 3.381(c)(1)(iii)(A)(II)(-1-) minimum two-year experience requirement needed to receive a certification as a mover of household goods because he qualifies based on his “equivalent” experience based on his “extensive knowledge, skills and 7 years[’] experience in the moving industry.” Our review of the Application and the responses provided by the Applicant in response to TUS’ data request reveals that all of the experience gained by Mr. Toney was obtained from operating an *unlicensed* household goods in use carrier over a seven-year period.

This Commission has previously found that an applicant providing prior illegal motor carrier service will not preclude that motor carrier applicant from ultimately obtaining certification from the Commission.⁶ However, we cannot permit a household goods carrier applicant to use its previous illegal operations as the basis to satisfy the two-year minimum experience requirement.⁷ To allow this would violate the Commission Regulation which requires that the household goods carrier demonstrate two-years’ experience with a *licensed* household goods carrier. This requirement goes to

⁶ See *BIE v. Uber Technologies, Inc., Gegen, LLC, Rasier LLC, and Rasier-PA, LLC*, Docket No. C-2014-2422723 (Order entered September 1, 2016) (*Uber*); also *Capital City Cab Serv. v. Pa. PUC*, 138 A.3d 119, 130 (Pa. Cmwlth. 2016) citing *Brinks, Inc. v. Pa. PUC*, 500 Pa. 387, 456 A.2d 1342, 1344 (1983).

⁷ We note that in *Uber*, the Commission was not deciding whether prior illegal operations could serve as the basis to meet a two-year minimum experience requirement with a licensed carrier (as transportation network companies are not subject to such a requirement). Rather, in *Uber*, the Commission found that prior illegal operations did not preclude the applicant from ultimately obtaining certification from the Commission.

the question of whether the applicant possesses the requisite technical and financial fitness regarding the applicant. Additionally, we do not find it in the public interest to incentivize illegal carrier operations in the Commonwealth by permitting household goods carriers to utilize such operations as a basis to obtain a license from the Commission.⁸

As noted, the information contained in the Application and the Applicant's response to TUS' data request demonstrates that the Applicant operated as an unlicensed carrier of household goods for a period in excess of two years. Notwithstanding that work history may be a consideration which we may evaluate on a case-by-case basis on the issue of whether an applicant has the technical fitness to provide a proposed service for transportation of household goods in use, the documents provided are not persuasive of work experience in the provision of household goods in use service outside of the Applicant's own, unlicensed operations. *See Re: Petition of Baker's Moving, LLC for Waiver of 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-l-)*, Docket No. P-2018-3000219 (Order entered May 3, 2018); *also see, Lytle*. Accordingly, we find that the Applicant does not meet the "equivalent" experience requirement because none of the experience in the moving industry that has been provided was experience the Applicant obtained from a licensed carrier of household goods.

Based on the foregoing, because the Applicant has not presented any acceptable new details regarding its compliance with the applicable Commission Regulation requiring two years' minimum experience with a licensed carrier of household goods, or the equivalent, it is appropriate for us to deny Exceptional Movers' request for reconsideration of Staff action in the *November 2021 Secretarial Letter*.

⁸ *See Application of Lytle Property LLC*, Docket No. A-2019-3009244 (Order entered January 3, 2020) (*Lytle*).

We note that if Exceptional Movers has additional details demonstrating its compliance with the two-year experience requirement with a licensed carrier of household goods or similar experience or equivalent, the Applicant may file a new application with the Commission.

Conclusion

Based on our review of the Applicant's verified statements, the instant Petition, and the documents proffered by the Applicant, we conclude that reconsideration of the Staff action in the *November 2021 Secretarial Letter* is not warranted because the Applicant has failed to provide any acceptable new evidence to demonstrate that Exceptional Movers possesses the required two years of experience working with a licensed household goods carrier, or the equivalent. Accordingly, we shall: (1) sustain TUS' decision that denied and dismissed the Application; and (2) deny Exceptional Mover's Petition, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action filed on December 13, 2021, by Exceptional Movers LLC, is denied, consistent with the discussion in this Opinion and Order.

2. That this docket be marked closed.

BY THE COMMISSION

A handwritten signature in cursive script, reading "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 10, 2022

ORDER ENTERED: March 10, 2022