

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

Public Meeting held June 16, 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 (Petition), filed on March 25, 2022, pursuant to 66 Pa. C.S. § 703(f) and 52 Pa. Code § 5.572, by Exceptional Movers LLC (Applicant or Exceptional Movers), requesting that the Commission reconsider its Opinion and Order entered March 10, 2022 (*March 2022 Order*), which denied the Application based on the Applicant's failure to provide evidence of a minimum of two-years' experience with a licensed carrier of household goods, or the equivalent, as required by the Commission's Regulation at 52 Pa. Code

§ 3.381(c)(1)(iii)(A)(II)(-1-).¹ No responses have been filed to the Petition. For the reasons that follow, we shall grant the Petition, rescind our *March 2022 Order*, and return the matter to the Bureau of Technical Utility Services (TUS) for appropriate action, as deemed necessary, consistent with this Opinion and Order.

Procedural History

On October 20, 2021, Exceptional Movers filed an Application with the Commission requesting authority to operate as a Carrier of Household Goods in Use.

The Application was accepted for filing and docketed by the Commission; however, by Secretarial Letter dated October 25, 2021, TUS sent Exceptional Movers a request for information requesting evidence to demonstrate the Applicant had a minimum of two-years' experience working with a licensed carrier of household goods and a summary of the times the Applicant worked as a loader/unloader.

On October 29, 2021, the Commission received the Applicant's response which included, *inter alia*: (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; (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.

¹ 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-).

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)(-1-) 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).

On November 24, 2021, the Commission issued a Secretarial Letter (*November 2021 Secretarial Letter*) that denied and dismissed Exceptional Movers' Application to operate as a household goods carrier on the basis of "falsification to demonstrate the required fitness" pursuant to 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-).

On December 13, 2021, Exceptional Movers filed a *pro se* Petition for Reconsideration of Staff Action, pursuant to 52 Pa. Code § 5.44, in which it requested that the Commission change its determination and approve the Application because the Applicant met the requirements of 52 Pa. Code § 3.381 through the extensive knowledge, skills, and over seven-years' experience demonstrating the necessary qualifications and possession of "equivalent" experience in compliance with the Commission's regulations.

On March 10, 2022, the Commission entered the *March 2022 Order* that denied the *pro se* Petition for Reconsideration of Staff Action and dismissed the Application, based on the interpretation of Exceptional Movers' data responses that the owner of Exceptional Movers, Mr. Matt Toney, gained his experience from operating an unlicensed household goods in use carrier.

As noted, on March 25, 2022, Exceptional Movers filed the instant Petition requesting that the Commission rescind the *March 2022 Order* and approve the Application because the Order erroneously found that the Applicant obtained his experience from operating an unlicensed household's good carrier.

By notational vote, the Commission entered an Opinion and Order on April 4, 2022, to preserve Commission jurisdiction.

Discussion

1. Legal Standards

Before addressing the Reconsideration Petition, we note that any issue not specifically addressed herein has been duly considered and will be denied without further discussion. It is well settled that the Commission is 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).

Regarding the instant Petition, we note that the Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsection 703(f), relating to rehearing, as well as Subsection 703(g), relating to the rescission and amendment of orders. 66 Pa. C.S. § 703(f) and § 703(g). Such requests for relief must be consistent with Section 5.572 of our Regulations, relating to petitions for relief following the issuance of a final decision. 52 Pa. Code § 5.572

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the *Pennsylvania Railroad Company* case, wherein it was stated that “[p]arties . . . , cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Duick, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)).

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

In considering the Application, 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 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).

2. The Petition and Disposition

In its Petition, Exceptional Movers first submits that the Commission misinterpreted the nature of the Applicant’s moving labor business and services that were provided on U-Haul’s and Elite’s moving help portals when it stated in the *March 2022 Order* 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.” Petition at 5 (citing *March 2022 Order* at 10-11). The Applicant avers that contrary to the Commission’s interpretation, the Applicant’s moving labor business did not undertake the unlicensed or illegal transportation of property by motor vehicle between points in the Commonwealth. *Id.* Rather, the Applicant explained that “Exceptional Movers’ prior business and experience in the moving industry involved **only** the provision of moving labor services – not the *transportation* of household property between residential dwellings.” Petition at 6 (emphasis by Applicant). The Applicant cites to specific areas in the documents it previously provided in its Application, data responses, or *pro se* Petition for Reconsideration of Staff Action to demonstrate its claim that Exceptional Movers does not advertise nor offer the transportation of household goods in use, but functions only as

a moving labor service that assists clients who rent or obtain their own vehicles. Petition at 6-8. As new evidence to support its claim, the Applicant cited the address of its website (www.excmovers.com) to show that the types of services it currently advertises for compensation do not include the actual transportation of household goods. Petition at 8. In this regard, the Applicant explains that its website explicitly states that the services it provides only includes “loading and unloading,” “wrapping and packing,” and “disassemble [*sic*] & reassemble.” *Id.*

For these reasons, the Applicant requests that we reconsider the wrongfully reached conclusions and grant the Applicant’s request. In light of the additional information, we will grant the Applicant’s requested reconsideration, rescind the *March 2022 Order*, and return this matter to TUS for appropriate action, as deemed necessary, consistent with this Opinion and Order.

Conclusion

In light of the above, we shall grant the Petition for Reconsideration, rescind our *March 2022 Order* and return this matter to TUS for appropriate action, as deemed necessary, consistent with this Opinion and Order. **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration filed by Exceptional Movers LLC, on March 25, 2022, is granted, consistent with the discussion in this Opinion and Order.
2. That the Opinion and Order entered March 10, 2022, at Docket No. A-2021-3029208, is hereby rescinded, consistent with this Opinion and Order.

3. That the Application of Exceptional Movers, LLC be returned to the Bureau of Technical Utility Services consistent with this Opinion and Order for appropriate processing and publication, as it deems necessary.

4. That a copy of this Opinion and Order shall be served on the Bureau of Technical Utility Services.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 16, 2022

ORDER ENTERED: June 16, 2022