

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

Public Meeting held January 12, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Application of Northeastern Movers, Inc. for the
Right to Transport, as a Common Carrier, by Motor
Vehicle, Household Goods in Use, Between Points
in Pennsylvania

A-2022-3035356

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration from Staff Action (Petition) filed by Northeastern Movers, Inc. (Northeastern or Petitioner) on November 29, 2022, relative to the above-captioned proceeding. The staff action for which reconsideration is sought is a Secretarial Letter issued on November 29, 2022 (*November 2022 Secretarial Letter*), which denied and dismissed Northeastern's Application seeking approval to begin the exercise of the right and privilege of operating motor vehicles as a common carrier for the transportation of household goods, between

points in Pennsylvania.¹ No Answer has been filed to the Petition, and, from our review, there is no indication that notice of the Application was published in the *Pennsylvania Bulletin*. For the reasons set forth herein, we shall deny the Petition, consistent with the discussion in this Opinion and Order.

History of Proceeding

On September 12, 2022, Northeastern filed its Application with the Commission.² Included with the Application is a Statement of Financial Position (Balance Sheet), which indicated that, as of August 31, 2022, the Petitioner's liabilities exceeded its assets (including only \$1,000 in current cash assets) by \$169,598 (\$244,563 - \$74,965).

Upon review of the Petitioner's Application, the Commission's Bureau of Technical Utility Services (TUS) determined there was a need for additional information and requested supplemental responses regarding, *inter alia*, the Petitioner's financial

¹ See the Application filed on September 12, 2022 (Application) at ¶ 10.

² We note that the Verification of Application and the Verified Statement of Applicant included with the Application were signed by Mr. Edward T. Mckeon, identified as the President of Northeastern. Application at 4, 7.

position through data requests dated September 26, 2022.³ Northeastern was given ten days to provide the requested information.

On September 28, 2022, Northeastern's counsel filed his Entry of Appearance, concurrently requesting a seven-day extension of time to respond to the pending TUS data requests, which would postpone the initially required due date of the responses from October 5, 2022 until October 12, 2022.

On October 10, 2022, Northeastern timely filed its responses to TUS' September 26, 2022 data requests (Reply to Data Requests). The Petitioner's Reply to Data Requests stated, *inter alia*:

Applicant updates its statement of financial interests, attached. It appears that the discrepancy described in the data request letter was caused by the fact that the original statement omitted the funds in Applicant's investment account.

Reply to Data Requests at 2.

³ Specifically, regarding Northeastern's financial position, TUS' data request stated as follows:

The Statement of Financial Interest indicates that there is a financial fitness issue. Under Current Assets, you have \$1,000.00 in cash assets. Under Other Current Assets (specify), you have \$43,965.00. Under Current Liabilities (Due within one year of date), you owe \$1,000.00 for a Loan, and \$34,563.00 for Credit cards/revolving credit. Under Long Term Liabilities (Due after one year of date), you owe \$200,000.00 for a Long-Term Commercial Loan. Your Total Liabilities are \$244,563.00. You state that your Company has been grossing close to 2 million dollars consistently for the past two years; however, your account only shows \$1,000.00 in Current Cash Assets. What are the terms of your loans and credit cards? What are Other Current Assets (specify)? Please explain.

As noted, *supra*, on November 29, 2022, the Commission issued the *November 2022 Secretarial Letter* denying and dismissing the Application. In pertinent part, the letter is reprinted below:

The purpose of this Letter is to advise you that your Application, Docket No. A-2022-3035356, has been **DENIED** by the Pennsylvania Public Utility Commission (Commission). The Commission has determined that a Certificate of Public Convenience **WILL NOT BE GRANTED** for the following reason(s):

- **Insufficient Verified Statement of Applicant – Financial Information.** The Commission has determined that the financial statements included in your Verified Statement of Applicant are not sufficient to show that you possess sufficient capital to operate safely, reasonably, and efficiently. On September 26, 2022, the Commission sent you a letter requesting that you to submit additional information with greater details regarding your financial position. On October 10, 2022, Applicant filed a Reply to Data Request; however, the questions regarding Applicant’s financial fitness were not answered thoroughly and no further supporting financial data has been received. That letter advised you that failure to comply with this request within ten (10) days would result in denial of your application. To date, more than ten (10) days later, you have not filed this information with the Commission.

For this reason(s), your application is **DENIED** and **DISMISSED**.

November 2022 Secretarial Letter at 1 (emphasis in original).

The *November 2022 Secretarial Letter* further stated that, if Northeastern disagrees with this determination, a Petition for Reconsideration from Staff Action may be submitted to the Commission within twenty days of the date of the letter, requesting

that the Commission change its determination. The *November 2022 Secretarial Letter* also stated:

The Petition MUST include: (1) a written statement (divided into numbered paragraphs) outlining the reasons for the request, (2) the case docket number(s) (they are provided for you at the top right-hand corner of this letter), (3) the name of the person on whose behalf the petition is made, (4) copies of relevant documentation, and (5) a verification with original signature. See 52 Pa. Code §§ 1.31 and 5.44.

November 2022 Secretarial Letter at 1-2 (emphasis in original).

As noted, the Petitioner filed the instant Petition on November 29, 2022. No response to the Petition has been filed.

Discussion

Legal Standards

In considering the Petition, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania, et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (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, 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(a).

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 Petitioner is the party seeking affirmative relief from the Commission. Therefore, the Petitioner 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), 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*, 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).

Petition

In its Petition, Northeastern asks the Commission to reconsider its *November 2022 Secretarial Letter*, positing that, since it has included with its Petition additional information (an updated Balance Sheet) to support its financial fitness, which was previously inadvertently excluded from its Reply to Data Requests, the data request regarding the Petitioner's financial fitness should now be considered to have been thoroughly answered. Petition at 1. The updated Balance Sheet, included with its Petition as Exhibit A, shows total assets of \$158,838 and total liabilities of \$244,563 as of August 31, 2022.

Disposition

Upon review, we shall deny Northeastern's Petition. The Petition attempts to address the portion of TUS' September 26, 2022 data requests regarding more detail in support of its financial fitness. However, the Petition fails to adequately address the areas of clarification sought by TUS.

In analyzing the requirements for an applicant seeking authority to operate as a motor common carrier in the Commonwealth, the applicant must satisfy the standards in Section 1103(a) of the Code and in the Commission's Regulations by demonstrating, *inter alia*, that it has the financial ability to provide the proposed service. 52 Pa. Code § 41.14. Accordingly, one of the Commission Policy Statement factors we use in evaluating an applicant's financial fitness is "[w]hether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested." 52 Pa. Code § 41.14(1). The Petitioner's updated Balance Sheet reflects the

following items: (1) \$1,000 cash on hand; (2) \$43,965 available in checking; (3) \$83,873 in investment accounts; and (4) \$30,000 in motor vehicle equipment, for a total of \$158,838 in assets. Petition, Exhibit A. Additionally, the Petitioner's updated Balance Sheet presents current liabilities (due within one year) of \$44,563, and total liabilities of \$244,563, consisting primarily of long-term debt related to vehicle financing. *Id.* This equates to a negative equity of \$85,725.

In addition to the less than modest financial position, suggested by the negative equity illustrated on the updated Balance Sheet, a further concern is the additional \$43,965 cash balance and additional \$83,873 in investment accounts from that which was shown on the Petitioner's original Balance Sheet submitted with its Application. The inclusion of these additional assets only amplifies the Petitioner's lack of clarity in its Balance Sheet, as Northeastern has not submitted any supporting documentation verifying, *inter alia*, whether these additional assets totaling \$127,838 are in the name of Northeastern or of its President, Mr. Mckeon.

Furthermore, Northeastern's Application indicated that it has "warehouses, 8 trucks, [and] offices fully staffed." Application at 5. These assets, as well as those which may coincide with fully staffed offices (*i.e.*, computers, fax machines, and copiers), have not been reflected as assets on either the Petitioner's original Balance Sheet submitted with its Application or its updated Balance Sheet included with its Petition. Specifically, regarding Northeastern's eight trucks and its \$200,000 in auto loans, as indicated on its Balance Sheet, Northeastern correctly listed its auto loan amount in the liabilities section of its Balance Sheet; however, the Petitioner has only listed \$30,000 in actual cash value of its vehicles in the assets section of its Balance Sheet. This indicates that the Petitioner theoretically has \$170,000 in negative equity, or owes \$170,000 more than the vehicle(s) is worth.

Moreover, TUS' data request specifically questioned Northeastern's assertion that it has been grossing close to \$2 million consistently for the past two years, as well as requested an explanation of the terms of the Petitioner's loans and credit cards. Neither Northeastern's Reply to Data Requests nor its Petition provides an adequate response to the financial information requested in TUS' data requests. Although the Application did not require Northeastern to submit an income statement as a prerequisite to establishing its burden to show it holds the necessary financial resources and sufficient capital to provide the proposed services outlined in its Application, the failure of Northeastern to support its purported revenue and reconcile it with the liquid assets shown on its updated Balance Sheet results in an insufficient response to the required financial information requested in TUS' data request.

Given that Northeastern failed to adequately respond to TUS' September 26, 2022 data requests or provide a sufficient Balance Sheet to the Commission, we are unable to conclude that Northeastern satisfies the fitness standard at 52 Pa. Code § 41.14(1). Therefore, we note that the Petitioner has not provided any information to show that it has remedied the issues that precipitated the denial of its Application. Accordingly, we shall deny the Petition. We note that, if Northeastern has details and evidence that demonstrate and satisfy all the fitness standards in the Commission's Policy Statement at 52 Pa. Code § 41.14 (1)-(6), Northeastern may file a new application with the Commission.

Conclusion

For the reasons discussed herein, we find that the Petitioner has presented no grounds on which to overturn the conclusion of the *November 2022 Secretarial Letter*. Accordingly, we shall deny Northeastern's Petition for Reconsideration from Staff Action, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action, filed by Northeastern Movers, Inc. on November 29, 2022, at Docket No. A-2022-3035356, is denied, consistent with this Opinion and Order.
2. That this proceeding, at Docket No. A-2022-3035356, be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 12, 2023

ORDER ENTERED: January 12, 2023