

**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 Moving by Cury, LLC

A-2022-3036613
A-8925710

OPINION AND ORDER

BEFORE THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration from Staff Action (Petition), filed on November 17, 2022, by Moving by Cury, LLC (Petitioner or Applicant or Moving by Cury).¹ By this Petition, Moving by Cury seeks reconsideration of the Corrected Secretarial Letter issued by the Commission’s Bureau of Technical

¹ We note at the onset that, according to the Pennsylvania Department of State, the Applicant’s registered legal name is “Moving by Cury, LLC.”

Utility Services (TUS) on November 16, 2022 (*November 2022 Secretarial Letter*).² The *November 2022 Secretarial Letter* denied and dismissed Moving by Cury’s Application for a Certificate of Public Convenience (Certificate), authorizing it to operate as a transporter of household goods in use. The denial was based on the Applicant’s failure to provide evidence of a minimum of two-years’ experience with a licensed household goods carrier, or the equivalent, as required by Commission Regulations at 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-).

The Petition is submitted pursuant to 52 Pa. Code § 5.44. No Answer to the Petition has been filed. For the reasons that follow, we will grant Moving by Cury’s Petition, rescind the *November 2022 Secretarial Letter*, and refer this matter to TUS for such further action as may be necessary and warranted, consistent with the discussion in this Opinion and Order.

Background

On November 4, 2022, Moving by Cury filed an Application for Motor Common Carrier or Motor Contract Carrier of Household Goods in Use (Application)

² On November 9, 2022, the Commission issued a Secretarial Letter to “Moving by Curry LLC” (*Original November 2022 Secretarial Letter*). *Original November 2022 Secretarial Letter* at 1. Subsequently, the *November 2022 Secretarial Letter* corrected typographical errors present in the *Original November 2022 Secretarial Letter*.

with the Commission.^{3,4} The Application requested authority “[t]o transport household goods in use between points in Pennsylvania.” Application at 3, ¶ 10. Attached to the Application are responses to several items requested in the Verified Statement of Applicant.⁵ Application at 9-14.

In response to item number 3 in the Verified Statement of Applicant, Mr. Cury represented, in pertinent part, the following:

3. Please provide evidence of minimum of two-years’ experience with a licensed household goods carrier as required by 52 Pa. Code §3.381 (c)(1)(iii)(A)(II)(-I-).

“I am the Owner of Moving By Cury, LLC and we have been in business for over two years alone as an LLC.”

* * *

“My ownership and experience with Moving By Cury combines to a total of over 15 years in the moving industry. We do not transport any household goods or property for customers ourselves; rather, we provide the moving services and the customers provide their own vehicles. The majority of our work is labor-only services consisting of loading a

³ We note that the Petitioner concurrently filed two applications for authority on November 4, 2022. One application requested Motor Common Carrier of Property authority, at Docket No. A-2022-3036608 (Property Application), and the other application, which is the subject of the instant proceeding, sought Household Goods in Use authority. On November 9, 2022, the Petitioner’s Property Application was conditionally approved pending receipt of evidence of insurance.

⁴ On November 8, 2022, Moving by Cury subsequently filed a corrected version of the Application, reflecting corrections to typographical errors on pages 1 and 5 of the Application.

⁵ We note that the Verification of Application and Verified Statement of Applicant included with the Application were signed by Mr. Jarred Cury (Mr. Cury), identified as the owner and sole member of Moving by Cury. Application at 2, ¶ 5; Verification of Application; Verified Statement of Applicant at 1, 7.

truck, unloading a truck, packing, unpacking services and in-house moves.”

Verified Statement of Applicant at ¶ 3; Application at 9, ¶ 3.

As noted *supra*, the *November 2022 Secretarial Letter* denied and dismissed Moving by Cury’s Application. In pertinent part, the *November 2022 Secretarial Letter* is reprinted below:

The purpose of this Letter is to advise you that your application for Household Goods In Use authority at Docket No. A-2022-3036613 has been **DENIED** by the Pennsylvania Public Utility Commission (Commission). The Commission has determined that a Certificate of Public Convenience shall not be granted for the following reason(s):

- **Failure 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 required 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 2022 Secretarial Letter at 1 (emphasis in original).

The *November 2022 Secretarial Letter* further stated that, if Moving by Cury disagrees with this determination, then a Petition for Reconsideration from Staff

Action may be submitted to the Commission requesting that the Commission change its determination.⁶

As previously noted, on November 17, 2022, Moving by Cury timely filed the instant Petition.⁷ No response to the Petition has been filed.

Discussion

Legal Standards

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.

In considering an appeal from Staff action, the Application and compliance with Commission Regulations, Section 332(a) of the Public Utility Code (Code),

⁶ It should be noted that the *November 2022 Secretarial Letter* stated that all parties to pending Commission proceedings “must open and use an e-filing account through the Commission’s website, or you may submit your filing by overnight delivery.” *November 2022 Secretarial Letter* at 1 (emphasis omitted). The Commission’s records indicate that Moving by Cury is in active e-filer status.

⁷ We note that the Petition is signed by Mr. Andrew Horowitz (Mr. Horowitz), identified as the Counsel for Moving by Cury. Petition at 4.

66 Pa. C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding, Moving by Cury is the party seeking affirmative relief from the Commission. Therefore, Moving by Cury is the party with the burden of proof.⁸

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), an application for a certificate of public convenience 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.” 66 Pa. C.S. § 1103(a). In order to make these determinations, we review the criteria to be taken into consideration for authority to transport goods in household use set forth in our Policy Statement.⁹

⁸ 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) at 6, citing *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950) (*Se-Ling Hosiery*).

⁹ See 52 Pa. Code § 41.14.

With respect to an application seeking the right to transport household goods, the Commission's 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) (*Final Rulemaking Order*).

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. *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 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) at 6.*¹⁰

As noted in the *Final Rulemaking Order*, the pertinent Regulation cited in the *November 2022 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-).

Moving by Cury's Petition

The Petition consists of the following: (1) a typed response to the *November 2022 Secretarial Letter*, signed by Mr. Horowitz; (2) a Verification statement signed by Mr. Cury; (3) a copy of the Application; and (4) a copy of the *November 2022 Secretarial Letter*.

In the Petition, the Petitioner argues that, essentially, Mr. Cury possesses the required experience necessary to operate as a licensed household goods carrier. Petition at 1-3. Specifically, the Petitioner notes that other than driving moving trucks, Mr. Cury has more than fifteen years of experience in “all salient aspects” of the moving business and his family has been providing load and unload (*i.e.*, labor only) moving services for nearly thirty-five years in connection with a family business. Petition at 1-2.

¹⁰ *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.”

The Petitioner claims that it has participated in over 2,000 load and unload jobs and its application provides a list of specific tasks that the Petitioner has performed with respect to load and unload service. Further, the Petitioner notes that because Mr. Cury, a real estate agent, and his fiancée, a registered dietician, are experienced in their respective fields of business and they possess college degrees, they demonstrate fitness to operate a moving company in a safe, legal, and ethical manner.¹¹ Petition at 2. Moreover, the Petitioner questions the equivalency provision of 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-), noting that the duties that a person with experience working for a licensed household goods carrier must perform in order to gain the requisite experience are not specified. Petition at 2-3. The Petitioner asserts that because Mr. Cury has “far more experience in the industry than many movers who would be approved as a matter of course,” granting authority to Moving by Cury is congruent with the policy considerations set forth in the *Final Rulemaking Order*. Petition at 3.

Disposition¹²

Based on our review of the Petition and the associated case documents, we find that reconsideration of the *November 2022 Secretarial Letter* is warranted. The Petitioner has met the standards for reconsideration by identifying considerations which

¹¹ As noted, *supra*, Mr. Cury is the owner and sole member of Moving by Cury. Application at 2, ¶ 5; Verified Statement of Applicant at ¶ 1.

¹² Prior to addressing the arguments raised in the instant Petition, we note that any issue or contention that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. 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).

appear to have been overlooked.¹³ We note that the Petitioner cites to recent decisions, *Application of Exceptional Movers LLC*, Docket Nos. A-2021-3029208 and A-8919919 (Order entered June 16, 2022) and *Application of Reliable Movers LLC t/a Reliable Movers*, Docket No. A-2019-3013695 (Order entered July 16, 2020), in which the Commission granted household authority to applicants who demonstrated the requisite fitness by providing evidence of performing labor-only service with respect to household goods. Petition at 2-3. In those cases, the Commission found that applicants with experience in “labor only moving operations” sufficiently demonstrate the equivalent standard required by Section 3.381(c)(1)(iii)(A)(II)(-1-). *Id.*¹⁴ Given recent Commission precedent, we agree with the Petitioner that it has met the fitness requirement given the years of load and unload experience. Because the Petitioner has fifteen years of experience providing the labor for a household goods operation, the equivalent experience requirement has been met to satisfy the Commission’s fitness standards, consistent with prior Commission precedent. Further, the Petitioner’s Property Application has since been fully approved by the Commission, as the requisite insurance forms were filed. Thus, the Petitioner has demonstrated a willingness to cooperate and fully comply with the Commission’s Regulations.

¹³ See *Duick v. Pennsylvania Gas and Water Company*, 553, 559 (1982) (Requests for reconsideration cannot raise the same questions that were previously decided; rather, they should present new and novel arguments not previously heard or considerations that the Commission may have overlooked).

¹⁴ Moreover, this case appears to be distinguishable from another recent Commission decision, which denied an application when the carrier relied on unauthorized household goods transportation service to satisfy the two-year minimum experience requirement. See *Application of Lytle Property LLC*, Docket No. A-2019-3009244 (Order entered January 3, 2020). In this case, however, there has been no Commission adjudication or other competent record evidence demonstrating that the Petitioner provided unauthorized household goods services.

Conclusion

For the reasons set forth above, we shall grant the Petition, rescind the *November 2022 Secretarial Letter*, and refer this matter to TUS for such further action as may be deemed necessary and warranted, consistent with this Opinion and Order;

THEREFORE,

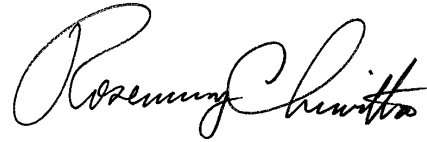
IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action filed by Moving by Cury, LLC, on November 17, 2022, at Docket No. A-2022-3036613, is granted, consistent with this Opinion and Order.

2. That the Secretarial Letter issued on November 9, 2022, and subsequently corrected on November 16, 2022, at Docket No. A-2022-3036613, is rescinded.

3. That this matter, at Docket No. A-2022-3036613, be referred to the Bureau of Technical Utility Services for such further action as may be deemed necessary, consistent with this Opinion and Order.

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: January 12, 2023

ORDER ENTERED: January 19, 2023