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March 29, 2023

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Via Electronic Filing

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120

RE: Application of Kelvin D. Ferguson & Sons LLC, t/a Kelvin D. Ferguson & Sons
For Household Goods In Use Authority
Docket No. A-2023-3036486

Dear Secretary Chiavetta:

On behalf of Kelvin D. Ferguson & Sons LLC, t/a Kelvin D. Ferguson & Sons, enclosed for electronic filing please find the Petition for Reconsideration of Staff Action. If you need anything further, please let me know. Thank you for your attention to this matter.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Kelvin D. Ferguson & Sons LLC :
t/a Kelvin D. Ferguson & Sons For Household : Docket No. A-2023-3036486
Goods In Use Authority :

**PETITION FOR RECONSIDERATION
OF STAFF ACTION**

Pursuant to Section 5.44 of the regulations of the Pennsylvania Public Utility Commission (“Commission”),¹ Kelvin D. Ferguson & Sons LLC t/a Kelvin D. Ferguson & Sons (“Ferguson & Sons” or “Applicant”) files this Petition for Reconsideration of the Secretarial Letter dated March 9, 2023 denying Ferguson & Sons’ Application for Household Goods in Use Authority. In support of this Petition, Ferguson & Sons avers as follows.

I. INTRODUCTION

The March 9, 2023 Secretarial Letter denied the Application on the grounds that Ferguson & Sons did not provide adequate evidence showing the experience of the applicant working for two years with a licensed household goods mover, or the equivalent. This conclusion was based on the fact Ferguson & Sons is not a licensed household goods mover. Although the predecessor company was also named Ferguson & Sons, it was owned and operated by Mr. Kelvin D. Ferguson, the father of Mr. Djuan Ferguson, who now owns Ferguson & Sons. By this Petition, Ferguson & Sons seeks reconsideration of the denial based on the fact that the present owner, Mr. Djuan Ferguson, obtained nearly 15 years of moving labor services experience while working for the company ran by his father before he commenced the day-to-

¹ 52 Pa. Code § 5.44.

day operation of the company after his father passed away in 2019. At no time has Ferguson & Sons been found by the Commission to be unlawfully engaged in the transportation of household goods in use. The valuable moving labor services experience that Mr. Djuan Ferguson gained while working for his father's household goods moving company from 2004 until 2019 should be viewed as meeting the requirement in the Commission's regulations for the equivalent of working two years for a licensed household goods mover.

II. BACKGROUND

1. The Applicant's predecessor started operating a household goods moving company in the City of Pittsburgh as Kelvin D. Ferguson & Sons in approximately 2004-2005. At that time and until 2019, the business was run by Mr. Kelvin D. Ferguson, who was the father of Ferguson & Sons' current owner, Mr. Djuan Ferguson. When Mr. Kelvin D. Ferguson passed away in 2019, Mr. Djuan Ferguson took over the operation of the business. Among the services that have been furnished by Ferguson & Sons, besides moving household goods in use, are furniture assembly; removal of large furniture and appliances; packing, unpacking and crating; removal of debris; and recycling.

2. When Mr. Djuan Ferguson commenced running the business in 2019, he was unaware of any legal requirement to obtain Commission authority for the portion of the company's services that entailed moving household goods in use. Mr. Djuan Ferguson became aware of this requirement when he was contacted by Commission staff on September 13, 2022 by electronic mail. Since that time, Mr. Djuan Ferguson has closed the business, taken down the company's website and filed an application with the Commission for the requisite authority.

3. Mr. Djuan Ferguson was not the subject of any enforcement action and at no time has the Commission reached a determination that he was unlawfully engaged in household goods in use services. To his knowledge, and as far as Commission records reveal, Mr. Kelvin D. Ferguson

was likewise not the subject of enforcement action and Ferguson & Sons has not been found by the Commission to be providing household goods in use services without authority.

4. While Ferguson & Sons has apparently not obtained authority from the Commission to provide household goods in use services, no evidence exists to show that this omission was done out of a flagrant disregard of a legal requirement. Moreover, nothing in the record suggests that Ferguson & Sons, either the Applicant or its predecessor, ignored Commission directives to obtain authority to operate as a household goods mover.

5. The valuable experience that Mr. Djuan Ferguson obtained while providing moving labor services (not transportation services) over the course of nearly 15 years while his father operated the household goods moving business is of the same nature as if the prior Ferguson & Sons had been operating as a licensed household goods mover. As such, this experience should be viewed as the “equivalent” of two years of working with a licensed household goods mover, thereby demonstrating Applicant’s fitness.

III. APPLICABLE LEGAL STANDARDS

6. Section 5.44 of the Commission’s regulations authorize the filing of petitions for reconsideration from actions of Staff taken under authority delegated by the Commission.² Such petitions must be filed within 20 days or the Staff action will be deemed to be the final action of the Commission. As the Secretarial Letter notifying Ferguson & Sons of the denial of its ETA application was issued on March 9, 2023, this Petition for Reconsideration is timely filed.

7. Requests 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 the Public Utility Code to rescind or amend a prior order in whole or in part. *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553 (1982). What

² 52 Pa. Code § 5.44.

the Commission expects in petitions for reconsideration are new and novel arguments not previously heard, or considerations which appear to have been overlooked by the Commission. Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances. *Id.*

8. Section 3.381 of the Commission’s regulations establishes the procedures for filing an application for the transportation of household goods in use.³ Under Section 3.381(c)(1)(iii)(A) of the regulations, such application may be processed on the basis of a verified statement. The information that must be included in a verified statement is identified in Section 3.381(c)(1)(iii)(A)(II). Among that information at (-1-) is a statement that the applicant has a minimum of 2 years of experience with a licensed household goods carrier or the equivalent.

9. The Commission’s regulations do not define what is the “the equivalent” of a minimum of 2 years of experience with a licensed household goods carrier. However, in proposing the regulations, the Commission stated as follows:

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; Household Goods in Use Carriers and Property Carriers, Docket No. L-2013-2376902 (Order entered September 12, 2013), at 6 (emphasis supplied). The purpose of this requirement that carried over to the final rulemaking, as expressly stated by the Commission, is to ensure that applicants are familiar with the industry before being found eligible to operate.

³ 52 Pa. Code § 3.381.

10. In *Application of Moving by Cury, LLC*, Docket No. A-2022-3036613, 2023 W.L. 358190 (Order entered January 19, 2023), the Commission concluded that based on 15 years of experience providing the labor services for a household goods operation, the applicant had met the equivalent experience requirement necessary to satisfy the Commission’s fitness standard. In granting reconsideration of the staff’s denial, the Commission also emphasized the applicant’s willingness to fully comply with its regulations.

11. In *Application of Exceptional Movers LLC for Carrier of Household Goods in Use Authority*, Docket No. A-2021-3029208 (Order entered June 16, 2022), the Commission also examined the “equivalent experience” language of the regulations in reversing a prior denial of the household goods application. The Commission had previously denied the application due to staff’s interpretation of responses to data requests that the applicant’s owner obtained his experience from operating an unlicensed household goods in use carrier. Upon receiving clarification that the owner’s prior experience with the unlicensed carrier involved only the provision of moving labor services, the Commission rescinded its prior action. *See also Application of Reliable Movers LLC t/a Reliable Movers*, Docket No. A-2019-3013695 (Order entered July 16, 2020),

12. In *Application of Lytle Property LLC*, Docket No. A-2019-3009244 (Order entered January 3, 2020), 2020 WL 128692, the Commission did not accept as “equivalent experience” an applicant’s 7 years of operating a household goods moving business without Commission authority. Contrary to *Reliable Movers*, the Commission in *Lytle* found that the documents provided by the applicant were not persuasive of work experience in the provision of household goods in use service outside of the applicant’s own, unlicensed, operations.⁴

⁴ In *Cury*, the Commission found that it was distinguishable from *Lytle* because there had been no Commission adjudication or other competent record evidence demonstrating that the Petitioner provided unauthorized household goods services. *Cury* January 19, 2023 Order at 10, footnote 14.

13. Work history is a consideration which the Commission may evaluate on a case by case basis in reaching a determination of the issue of whether an applicant has the technical fitness to provide a proposed service for the transportation of household goods in use. *See Re: Petition of Baker's Moving, LLC for Waiver of 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-I-)*, Docket No. P-2018-3000219 (Order entered May 3, 2018).

14. It is well-settled that the actions of an independent corporate entity may not be considered in the context of reviewing an applicant's legal fitness to provide service. *See Rosemont Taxicab, Inc. v. Philadelphia Parking Authority*, 68 A.3d 29, 37 (Pa. Cmwlth Ct. 2013).

IV. RECONSIDERATION IS WARRANTED

15. Reconsideration is warranted because the household goods industry experience gained by the Applicant's owner, Mr. Djuan Ferguson, while he worked for the predecessor company that was operated by his now deceased father from 2004-2019 meets the "equivalent experience" standard in the regulations, as that requirement has been interpreted and applied by the Commission.

16. During the time when the Applicant's owner worked for the predecessor company, he performed moving labor services, which included packing and unpacking customers' household goods and loading and unloading them onto trucks as part of a household goods moving business operated by his father. This experience taught him the importance of treating customers' household goods with care and in accordance with industry standards that call for proper packing materials to be used and household goods to be placed in the truck in a way that protects them during transportation.

17. While the Applicant is not disputing the fact that his father was engaged in operations that require Commission authority, he was not aware of the licensing requirement when he was gaining experience in the household goods industry working for his father's company. As Mr. Djuan Ferguson was not involved in the operation of the predecessor company, the failure of the prior Ferguson & Sons company to obtain authority from the Commission is a matter that was outside his

responsibility of performing the moving labor services. Consistent with Commission precedent, the actions of the predecessor company should not prevent the Applicant from receiving credit for working for a household goods operation where he gained experience in the household goods industry, which is the purpose of the two-year requirement in the regulations.

18. The experience that Mr. Djuan Ferguson acquired working for his father's company is akin to the involvement that the applicant in *Cury* had with a household operation for approximately 15 years when he focused on moving labor services. In the same way that the applicant's denial was rescinded in *Cury*, it should likewise be rescinded in this case. By contrast, this case is distinguishable from *Lytle* where the experience gained by the applicant was solely as the result of his own unlicensed activity as a household goods mover.

19. Mr. Djuan Ferguson was not aware of the Commission's requirement for the company to obtain authority before transporting household goods in use once he took over the business in 2019. However, upon learning of this requirement, Mr. Djuan Ferguson has taken all necessary steps to be compliant by closing the business, taking down the website and filing an application with the Commission. All of these actions show a willingness to comply with the Commission's regulations, which should weigh in favor of granting this Petition.

V. CONCLUSION

WHEREFORE, on the basis of the foregoing, Kelvin D. Ferguson & Sons LLC t/a Kelvin D. Ferguson & Sons respectfully requests that the Commission grant this Petition for Reconsideration and approve the Application for Household Goods in Use Authority.

Respectfully submitted,

/s/ Karen O. Moury

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Date: March 29, 2023

*Counsel for Kelvin D. Ferguson & Sons
LLC t/a Kelvin D. Ferguson & Sons*

VERIFICATION

I, Djuan Ferguson, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: March 29, 2023

Djuan Ferguson

Djuan Ferguson