

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

Public Meeting held May 18, 2023

Commissioners Present:

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

Application of ON Time, LLC

A-2022-3033118  
A-6425319

**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 ON Time, LLC (ON Time or Applicant) on March 17, 2023, relative to the above-captioned proceeding. The Secretarial Letter to which the Petition refers, was issued on March 15, 2023 (*March 2023 Secretarial Letter*). No Answer to the Petition has been filed. For the reasons set forth herein, we will grant the Petition, conditionally rescind the *March 2023 Secretarial Letter*, and refer this matter to the Commission's Bureau of Technical Utility Services (TUS) for such further action as may be warranted, consistent with this Opinion and Order.

## History of the Proceeding

On April 5, 2022, ON Time filed an Application with the Commission requesting authority to transport, as a common carrier, by motor vehicle, persons in paratransit service to and from points in the City and County of Philadelphia and Counties of Bucks, Chester, Delaware, and Montgomery.

The Application was published in the July 30, 2022, *Pennsylvania Bulletin*, 52 *Pa.B.* 4381. Protests were due by August 15, 2022. On August 15, 2022, Bucks County Transport, Inc., Bux-Mont Transportation, Inc., Easton Coach Company, Suburban Transit Network, Inc., Tri County Transit Service, Inc., and Rover Community Transportation, Inc. (collectively, Joint Protestants) filed a timely Joint Protest to the Application.

By Hearing Notice dated September 19, 2022, a hearing was scheduled for November 3, 2022, and the matter was assigned to Administrative Law Judge (ALJ) F. Joseph Brady. On November 3, 2022, the hearing convened as scheduled. The Applicant appeared without counsel. The Joint Protestants were represented by Tanya Leshko, Esquire.

On December 6, 2022, the Applicant and the Joint Protestants filed a Restrictive Amendment and Stipulation in which the Joint Protestants agreed to withdraw their Protest to the Application based upon the Restrictive Amendment and its acceptance by the Commission. The Application was amended to clearly identify and specify the type of service and the territory requested so that the authority sought shall read as follows:

To transport, as a common carrier, by motor vehicle, persons in paratransit service, between points in the City and County of Philadelphia and Delaware County and to points in the

Counties of Chester, Montgomery and Bucks and return: and between points in the Counties of Chester, Bucks and Montgomery and to points in the City and County of Philadelphia and Delaware County and return, limited solely to clients of Honest Hands Homecare, LLC and Wright Care Home Care, LLC who receive a minimum of ten hours a week of personal assistance and related homecare services that are reimbursable by a Medicaid Waiver Program in addition to receiving transportation services.

On December 16, 2022, the ALJ referred the Application to the Commission's Bureau of Technical Utility Services for review and resolution pursuant to 52 Pa. Code § 3.381(c).

On December 30, 2022, the Commission issued a Secretarial Letter (*December 2022 Secretarial Letter*) approving the Application conditioned upon the filing of an acceptable Form E, which is proof of bodily injury and property damage liability insurance that must be filed by the Applicant's insurance company, and an acceptable tariff establishing just and reasonable rates. Both the Form E and tariff, or tariff supplement, were due to be filed with the Commission within sixty (60) days of the date on the *December 2022 Secretarial Letter*, or by February 28, 2023.

On or about February 1, 2023, ON Time's insurance agent/broker filed an acceptable Form E with the Commission.

On March 15, 2023, the Commission issued the *March 2023 Secretarial Letter* dismissing the Application. The *March 2023 Secretarial Letter* stated that ON Time failed to file a tariff establishing just and reasonable rates with the Commission, within the sixty (60) days as required by the *December 2022 Secretarial Letter*. Based on the foregoing, the *March 2023 Secretarial Letter* dismissed the Application for non-compliance. *March 2023 Secretarial Letter* at 1.

On March 17, 2023, the Applicant filed the instant Petition in response to the *March 2023 Secretarial Letter*. No response to the Petition has been filed.

## **Discussion**

### **Legal Standards**

Before us is a Petition for Reconsideration from Staff Action, pursuant to 52 Pa. Code § 5.44(a). 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(a).

Under Section 1302 of the Public Utility Code (Code), the Commission has the authority to require a tariff. 66 Pa. C.S. § 1302. Commission Regulations prohibit a paratransit common carrier from engaging in intrastate service until it files with the Commission a tariff showing the rates and rules governing the furnishing of the service. 52 Pa. Code § 23.11.

When evaluating appeals from a Commission staff action under 52 Pa. Code § 5.44, the applicable legal standard is that the moving party has the burden of proof. *See, e.g., Application of Airquest*, Docket No. A-2015-2493073 (Order entered December 8, 2016) (request for reconsideration of Secretarial Letter denying application

for failure to comply with conditions); *Application of Dep't of Transportation (Norfolk)*, Docket No. A-2018-3003795 (November 19, 2019) (request for reconsideration of Secretarial Letter approving application with conditions).

In considering this Petition, we are not required to consider, expressly or at length, each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Any argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

### **Petition**

In the Petition, ON Time states a breakdown in its administrative process caused its failure to timely file a tariff with the Commission. Petition at 1. The Applicant avers it has established that it complies with the Commission's Policy Statement at 52 Pa. Code § 41.14. Petition at 3. Further, ON Time avers that dismissing its Application for lack of timely filing a tariff would be a waste of the resources that would be required for ON Time to again seek a certificate of public convenience. For relief, ON Time requests that the Commission exercise its discretion to rescind the *March 2023 Secretarial Letter* and allow ON Time to proceed through the application process and file a tariff.<sup>1</sup> Petition at 4.

### **Disposition**

Based on our review of the Applicant's Petition and the associated case documents, we will grant the Petition. Our Regulation at 52 Pa. Code § 1.15(a)(1), gives us authority to extend a deadline, after the deadline has passed, where reasonable grounds

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<sup>1</sup> The Applicant attached a copy of the tariff with the instant Petition.

are shown for the failure to act. Under the circumstances of the instant case, rather than deny the Application, we deem it is reasonable to extend the Application deadline for review of ON Time's Application within thirty (30) days of the entry of this Opinion and Order. *See, Application of Woodrow Cothran, Jr., t/a Moving Others Around Safely*, Docket No. A-2019-3011840 (Opinion and Order entered April 30, 2020).

52 Pa. Code § 41.14 sets forth the evidentiary criteria used by the Commission to decide motor common carrier applications:

An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

- (1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.
- (2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.
- (3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.
- (4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards in Chapter 29 (relating to motor carriers of passengers).
- (5) An applicant's record, if any, of compliance with 66 Pa. C.S. (relating to Public Utility Code), this title and the Commission's orders.

- (6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

52 Pa. Code § 41.14

The Applicant established that it complied with these requirements, including timely filing Form E in accordance with the *December 2022 Secretarial Letter*. The averments raised by the Applicant in its Petition for Reconsideration indicate that ON Time has taken action to remedy its error of not timely filing a tariff. Therefore, an outright denial of the application is not warranted. Rather, we direct ON Time to file an acceptable tariff, with an updated effective date, establishing just and reasonable rates within thirty (30) days of the entry date of this Opinion and Order, or such additional time as may be granted, and refer this matter to TUS for such further action as may be warranted.<sup>2</sup>

Moreover, given the procedural posture of this Application filing, extending the deadline for review of the Application is a more efficient use of the Commission's and the Applicant's resources at this stage. Accordingly, pursuant to 52 Pa. Code §§ 1.2(a) and 1.15(a)(1), we will grant the Petition and permit ON Time to proceed with its Application, by referring this matter to TUS for such further action as may be warranted.

### **Conclusion**

For the reasons discussed herein, we will grant the Petition, conditionally rescind the *December 2022 Secretarial Letter*, and refer this matter to TUS for such

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<sup>2</sup> Please email draft tariff for approval to [RA-PCTARIFFFILING@pa.gov](mailto:RA-PCTARIFFFILING@pa.gov).

further action as may be warranted, consistent with this Opinion and Order;

**THEREFORE,**

**IT IS ORDERED:**

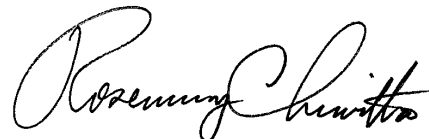
1. That the Petition for Reconsideration, filed by ON Time, LLC, on March 17, 2023, at Docket No. A-2022-3033118, is granted, consistent with this Opinion and Order.

2. That within thirty (30) days of the entry date of this Opinion and Order, or such additional time as may be granted, ON Time, LLC shall file an acceptable tariff establishing just and reasonable rates.

3. That upon the compliance and completion of Ordering Paragraph No. 2 above, the Secretarial Letter issued on March 15, 2023, at Docket No. A-2022-3033118, will be rescinded.

4. That this matter be referred to the Bureau of Technical Utility Services for such further action as may be warranted.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 18, 2023

ORDER ENTERED: May 18, 2023