

**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 Kelvin D. Ferguson & Sons LLC

A-2022-3036486
A-8925552

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 March 29, 2023, by Kelvin D. Ferguson & Sons LLC (Ferguson LLC, Petitioner, or Applicant), relative to the above-captioned proceeding.¹ The Secretarial Letter to which the Petition refers was issued to Ferguson LLC on March 9, 2023 (*March 2023 Secretarial Letter*). No Answer to the Petition has been filed. For the reasons set forth herein, we will grant Ferguson LLC's Petition, rescind the *March 2023 Secretarial Letter*, and refer this matter to the Commissions' Bureau of Technical Utility

¹ We note at the onset that, according to the Pennsylvania Department of State (PA DOS), the Petitioner's registered legal name is "Kelvin D. Ferguson & Sons LLC," formerly "Kelvin D. Ferguson & Sons."

Services (TUS) for such further action as may be deemed necessary, consistent with the discussion in this Opinion and Order.

I. Procedural History

On November 1, 2022, Ferguson LLC filed an Application for Broker of Household Goods in Use (Broker Application) with the Commission.² On January 23, 2023, TUS issued a data request to Ferguson LLC (*January 23 TUS Letter*), notifying Ferguson LLC that a response to the attached request for additional information (Attachment to the *January 23 TUS Letter*) was required within ten (10) days of the date on the *January 23 TUS Letter*, in order for TUS to proceed.³ *January 23 TUS Letter* at 1. The Attachment to the *January 23 TUS Letter* requested that the Applicant address the following: (1) correct the business name registered with PA DOS, as the Applicant “needs to be registered as an LLC;” (2) given that the information provided in the Broker Application implies that Ferguson LLC is intending to offer household goods in use service and that “the [A]pplicant also applied for Property rights,”⁴ clarify the service that Ferguson LLC is requesting authority to operate and submit a new application requesting that authority; and (3) if the Applicant is “currently operating or holding itself out for

² In its Broker Application, Ferguson LLC requested authority “[t]o arrange for the transportation of goods between points in [the] City of Pittsburgh, Western Pennsylvania, and the Allegheny County area.” Broker Application at 3.

³ Subsequently, on January 24, 2023, Ferguson LLC filed a petition requesting an extension of time to respond to the *January 23 TUS Letter*. Consequently, on January 25, 2023, TUS issued a letter (*January 25 TUS Letter*) granting Ferguson LLC’s request for an extension until April 9, 2023. *January 25 TUS Letter*.

⁴ On September 14, 2022, at Docket No. A-2022-3035241, Ferguson LLC filed a prior application to operate as a commercial carrier of property (Prior Property Application) with the Commission, but the Prior Property Application was dismissed due to non-compliance. Subsequently, on October 14, 2022, at Docket No. A-2022-3036131, Ferguson LLC filed a prior application to operate as a broker who will arrange for the transportation of household goods in use with the Commission, but that application was also dismissed due to non-compliance.

hire, it is to immediately refrain from doing so until such time as certificated by this Commission.”⁵ Attachment to the *January 23 TUS Letter* at 1-2.

On February 28, 2023, Ferguson LLC timely filed a response to the data requested in the Attachment to the *January 23 TUS Letter* (Response No. 1 to Data Request No. 1), which included: (1) a revised version of Ferguson LLC’s Application for Broker of Household Goods in Use (Revised Broker Application);⁶ and (2) a copy of Ferguson LLC’s “Certificate of Amendment - Domestic Limited Partnership/Limited Liability Company,” issued by the PA DOS’ Bureau of Corporations and Charitable Organizations (Certificate of LLC). Response No. 1 to Data Request No. 1 at 2-11. Response No. 1 to Data Request No. 1 also included a cover letter that states, in pertinent part, as follows:

- (3) Question #10 has been expanded and explained[.]
- (4) The geographical area has been explained. The 170-mile move was a onetime move several years ago by Kelvin Ferguson (deceased) for a family friend for no remuneration.

⁵ We note that, upon further review of the Commission’s case management system, on or about September 13, 2022, TUS issued, via email, a letter to Ferguson LLC (*September 2022 TUS Letter*) at BP8 No. 3030914. The *September 2022 TUS Letter* explained that, essentially, information before the Commission indicates that the company has been engaged in the service of transporting property between points in Pennsylvania for compensation without a certificate of public convenience issued by the Commission authorizing it to provide such service, in violation of 66 Pa. C.S. § 1101. As such, the *September 2022 TUS Letter* directed Ferguson LLC to cease and desist from further violations of the Public Utility Code (Code).

⁶ We note that the information provided in the Revised Broker Application, aside from updated signatures and the addition of LLC to the Applicant’s name, is essentially the same information that was provided in the Broker Application. Thus, Ferguson LLC again requested authority “[t]o arrange for the transportation of goods between points in [the] City of Pittsburgh, Western Pennsylvania, and the Allegheny County area.” *Id.* at 3.

- (5) [Ferguson LLC] does not have a website, and since receiving notice[,] its social media has remained idle.
- (6) [Ferguson LLC] has filed an Application for Motor Common Carrier of Household Goods in Use.

Id. at 1.⁷

On March 1, 2023, TUS issued a second data request to Ferguson LLC (*March 1 TUS Letter*), notifying Ferguson LLC that a response was required to the attached request for additional information (Attachment to the *March 1 TUS Letter*) within ten (10) days of the date on the *March 1 TUS Letter*, in order for TUS to proceed. *March 1 TUS Letter* at 1. The Attachment to the *March 1 TUS Letter* stated, in pertinent part, as follows:

1. Question #9 of the application asks you to describe the service area proposed by this application. Your answer, “[t]o arrange for the transportation of goods between points in the City of Pittsburgh, Western Pennsylvania, and the Allegheny County area[,]” is not acceptable. The proposed service area needs to have clear and defined boundaries that can be easily identified on a map. Western Pennsylvania and Allegheny County area would be considered ambiguous, and as such, needs to be clearly defined. Please clarify the proposed service area with clear and defined boundaries.
2. In [the *January 23 TUS Letter*], you were asked to remove mention of offering moving services done by the [A]pplicant themselves. However, in [Response

⁷ We note that, upon further review of the Commission records: (1) the information provided in this cover letter, aside from an updated date and subject line, is essentially the same information that was provided in a cover letter attached to a response filed in the proceeding for the Prior Property Application; and (2) there is no record of Ferguson LLC having filed an Application for Motor Common Carrier of Household Goods in Use at the time that Response No. 1 to Data Request No. 1 had been filed.

No. 1 to Data Request No. 1], once more your Verified Statement of Applicant again refers to operating as a household goods in use service. Please resubmit a new application that reflects that the [A]pplicant is applying for a brokerage license to arrange transportation of household goods in use, not to transport household goods in use. If they do not wish to operate as a broker of household goods in use, then the applicant needs to withdraw their application of such.

Attachment to the *March 1 TUS Letter*.

On March 1, 2023, Ferguson LLC timely filed a response to the data requested in the Attachment to the *March 1 TUS Letter* (Response No. 1 to Data Request No. 2), which included, *inter alia*,: (1) a second revised version of Ferguson LLC’s Application for Broker of Household Goods in Use (Second Revised Broker Application);⁸ (2) a copy of the cover letter included in Response No. 1 to Data Request No. 1; and (3) a copy of Ferguson LLC’s Certificate of LLC. Response No. 1 to Data Request No. 2 at 1-11.

Then, on March 2, 2023, Ferguson LLC timely filed a second response to the data requested in the Attachment to the *March 1 TUS Letter* (Response No. 2 to Data Request No. 2), which included: (1) a cover letter explaining the purpose of the filing; and (2) Ferguson LLC’s Application for Motor Common Carrier or Motor Contract Carrier or Motor Contract Carrier of Household Goods in Use (MCC Application), requesting authority “[t]o transport household goods in use between points in Allegheny County.”⁹ Response No. 2 to Data Request No. 2 at 1-9.

⁸ In its Second Revised Broker Application, Ferguson LLC requested authority “[t]o arrange for the transportation of goods between points in [the] Allegheny County area.” Second Revised Broker Application at 3.

⁹ We note that the Verification of Application and Verified Statement of Applicant included with the MCC Application were signed by Mr. Djuan Ferguson (Mr. Ferguson), identified as the owner of Ferguson LLC. MCC Application at 4, 7.

On March 6, 2023, TUS issued a third data request to Ferguson LLC (*March 6 TUS Letter*), notifying Ferguson LLC that a response to the attached request for additional information (Attachment to the *March 6 TUS Letter*) was required within ten (10) days of the date on the *March 6 TUS Letter*, in order for TUS to proceed with the MCC Application. *March 6 TUS Letter* at 1. The Attachment to the *March 6 TUS Letter* stated, in pertinent part, as follows:

1. Question #3 of the application asks you to provide evidence of [a] minimum of two-years' experience with a licensed household goods carrier or the equivalent as required by 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-I-).
 - Please note, experience gained through operating illegally will not be considered. Please provide evidence of two-years' experience with a licensed household goods carrier or the equivalent.

Attachment to the *March 6 TUS Letter*.

On March 7, 2023, Ferguson timely filed a response to the data requested in the Attachment to the *March 6 TUS Letter* (Response No. 1 to Data Request No. 3), which included: (1) a copy of the cover letter that was included with Response No. 2 to Data Request No. 2; and (2) a revised version of Ferguson LLC's MCC Application (Revised MCC Application).¹⁰ Response No. 1 to Data Request No. 3 at 1-9. In response to Question No. 3 in the Verified Statement of Applicant included in the Revised MCC Application, Mr. Ferguson represented, in pertinent part, the following:

¹⁰ We note that, in its Revised MCC Application, Ferguson LLC again requested authority “[t]o transport household goods in use between points in Allegheny County.” Revised MCC Application at 3. We further note that the Verification of Application and Verified Statement of Applicant included with the Revised MCC Application were signed by Mr. Ferguson, identified as the owner of Ferguson LLC. *Id.* at 4, 7.

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

I have been hauling and moving with my father for 20 years. My father died recently and I took over the business. Our business is in the City of Pittsburgh. My training has been on the job with my father when he was alive.

* * *

[Ferguson LLC] has described work experience in the provision of household goods in use service that satisfies the “equivalent” standard. 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) (*Baker's Moving*)]. Also, all services performed by [Mr. Ferguson] in their provision of services and/or employment with these companies do not appear to be in violation of the prohibition against the provision of service without first having obtained a certificate of public convenience that could be found to be improper. See [Application of *Lytle Property LLC*, Docket No. A-2019-3009244 (Order entered January 3, 2020) (*Lytle*)].

Revised MCC Application at 5-6, ¶ 3, fn. 1.

As noted, *supra*, on March 9, 2023, the Commission issued the *March 2023 Secretarial Letter* denying and dismissing Ferguson LLC's Revised MCC Application. The *March 2023 Secretarial Letter* referenced 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-I-) to note that the Applicant is required to: (1) demonstrate that it has the required knowledge, fitness, and financial ability to operate as a certificated motor carrier in Pennsylvania; and (2) provide evidence of at least two years' experience with a licensed household goods carrier, or the equivalent. The *March 2023 Secretarial Letter* found that because the evidence of two-years' experience provided by the Applicant was “obtained from operating illegally,” Ferguson LLC failed to provide sufficient evidence of

experience working with a licensed household goods carrier or the equivalent, and, therefore, failed to demonstrate the required fitness. *March 2023 Secretarial Letter* at 1. The *March 2023 Secretarial Letter* further stated that, if Ferguson LLC 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.¹¹ *Id.* at 1-2.

As noted, *supra*, on March 29, 2023, Ferguson LLC timely filed its Petition.¹² No response to the Petition has been filed.

II. Discussion

A. Legal Standards

In considering 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).

¹¹ It should be noted that the *March 2023 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.” *March 2023 Secretarial Letter* at 2 (emphasis omitted). The Commission’s records indicate that Ferguson LLC is in active e-filer status.

¹² We note that the Petition: (1) is signed by Ms. Karen O. Moury, identified as Counsel for Ferguson LLC; and (2) includes a Verification statement signed by Mr. Ferguson. *Id.* at 10.

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).

The 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.

Additionally, we recognize that while a petition under Section 703(g) may “properly raise any matter designed to convince the commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part”, at the same time “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (*Duick*) (quoting *Pennsylvania Railroad Co. v. Pa. Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)). 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. As we stated in *Duick*:

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 or not addressed by the commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick at 559.

In considering an appeal from Staff Action, the Revised MCC Application and compliance with Commission Regulations, 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, Ferguson LLC is the party seeking affirmative relief from the Commission. Therefore, Ferguson LLC 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) (*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).

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.” In order to make these determinations, the Commission’s Regulations, at 52 Pa. Code §§ 3.381-85, and the Commission’s Policy Statement, at 52 Pa. Code § 41.14, establish the evidentiary guidelines and criteria to be examined by the Commission when considering whether to grant or deny an application for passenger carrier authority.

The Commission’s Policy Statement at 52 Pa. Code § 41.14 provides as follows:

§ 41.14. Evidentiary criteria used to decide motor common carrier applications--statement of policy.

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 § 41.14.¹³

B. Ferguson LLC's Petition

In response to the *March 2023 Secretarial Letter*, the Petitioner argues that while Ferguson LLC was operated by Mr. Ferguson's father from approximately 2004 to 2019, Mr. Ferguson gained household goods industry experience that meets the

¹³ By Final Policy Statement, entered December 7, 2017, at Docket No. M-2017-2629722, the Commission modified the Policy Statement at 52 Pa. Code § 41.14 by eliminating prior subsections (a) and (c) to be consistent with the amended Regulations in the Final Rulemaking Order. Notably, the Final Policy Statement maintained the language of prior subsection (b), related to the factors to be examined in determining an applicant's technical and financial fitness and propensity to operate safely and legally. The Final Policy Statement became effective upon publication in the *Pennsylvania Bulletin*, on February 10, 2018, at 48 *Pa. B.* 882.

equivalent standard in the Commission’s Regulations. Petition at 2-3, 6. Specifically, the Petitioner notes that Mr. Ferguson “performed moving labor services, which included packing and unpacking customer’s household goods and loading and unloading them onto trucks,” and treating customers’ household goods with care and protection, in accordance with applicable industry standards. *Id.* at 6. Further, the Petitioner notes that, although Ferguson LLC failed to obtain the requisite Commission authority, Mr. Ferguson was not involved in Ferguson LLC’s uncertificated service operations and was unaware of the licensing requirement while working for his father. *Id.* at 6. Moreover, the Petitioner argues that the failure of Ferguson LLC to obtain Commission authority “is a matter that was outside of [Mr. Ferguson’s] responsibility of performing the moving labor services” and “should not prevent [Mr. Ferguson] from receiving credit for working for a household goods operation where he gained experience in the household goods industry.” *Id.* at 6-7.

The Petitioner also avers that the experience Mr. Ferguson gained from working for Ferguson LLC, while it was operated by Mr. Ferguson’s father, is similar to “the involvement that the applicant in [*Application of Moving by Cury, LLC*, Docket No. A-2022-3036613 (Order entered January 19, 2023) (*Cury*)] had with a household operation for approximately 15 years when he focused on moving labor services.” Petition at 7. Further, the Petitioner states that, “in the same way that the applicant’s denial was rescinded in *Cury*, it should likewise be rescinded [here].” *Id.* Moreover, the Petitioner argues that the instant case is distinguishable from *Lytle*, where the applicant’s experience was gained “solely as the result of [the applicant’s] own unlicensed activity as a household goods mover.” *Id.* (citing *Lytle*). Furthermore, the Petitioner contends that, although Mr. Ferguson was unaware that Ferguson LLC was required to obtain authorization from the Commission before transporting household goods in use once he took over the business, Ferguson LLC’s subsequent actions, including closing the business, taking down the website, and filing an application with the Commission, weigh in favor of granting the Petition. *Id.* at 7.

C. Disposition

Based on our review of the Petition and the associated record documents, we find that reconsideration of the *March 2023 Secretarial Letter* is warranted. The Petitioner has met the standards for reconsideration by raising considerations that appear to have been overlooked or not addressed in our *March 2023 Secretarial Letter*. *See, Duick; See also, Cury.*

As previously discussed, according to the *March 2023 Secretarial Letter*, Ferguson LLC's Revised MCC Application was denied because Ferguson LLC failed to demonstrate adequate evidence of fitness to operate. Specifically, the *March 2023 Secretarial Letter* found that because the Applicant based its evidence of the requisite two-years' experience with an unlicensed household goods carrier, or the equivalent, on experience that "was obtained from operating illegally," Ferguson LLC failed to provide sufficient evidence of experience working with a licensed household goods carrier, or the equivalent. *March 2023 Secretarial Letter* at 1.

Work history may be 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, Application of Exceptional Movers LLC*, Docket Nos. A-2021-3029208 and A-8919919 (Order entered June 16, 2022) (*Exceptional Movers*); *See also Application of Reliable Movers LLC t/a Reliable Movers*, Docket No. A-2019-3013695 (Order entered July 16, 2020) (*Reliable Movers*). In *Exceptional Movers*, the Commission determined that the applicant provided additional information and evidence sufficient to support its claim of prior work experience "only in the provision of moving labor services – not the transportation of household property between residential dwellings." *Exceptional Movers* at 6-7 (emphasis omitted). Similarly, in *Reliable Movers*, the Commission concluded that because the applicant

provided documentation suggestive of work experience involving the loading and unloading of household goods, the applicant “presented acceptable new details regarding its compliance with the applicable Commission Regulation.” *Reliable Movers* at 12, 15.

Here, the Applicant’s explanations of prior work experience to satisfy the requirements of 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-), provided in the Petition and the Revised MCC Application, are inconsistent and ambiguous. Specifically, in the Verified Statement of Applicant included in the Revised MCC Application, Mr. Ferguson asserted that he was “hauling and moving with [his] father for 20 years,” and his “training has been on the job with [his] father.” Revised MCC Application at 5, ¶ 3.¹⁴ However, in the Petition, the Petitioner asserts that while working for his father, Mr. Ferguson “performed moving labor services, which included packing and unpacking customers’ household goods and loading and unloading those goods onto trucks as part of a household goods moving business.” Petition at 6. Based on the lack of consistency and clarity regarding prior work experience between the Petition and the Verified Statement of Applicant, we are unable, at this time, to determine whether the Applicant satisfies the requirement of two-years’ experience with a licensed household goods carrier, or the equivalent, pursuant to 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-).

Nevertheless, the Petitioner has presented new considerations that may not have been previously considered. However, given the absence of a consistent response, and because Ferguson LLC, by its own admission, has previously provided uncertificated household goods services, we find that, under the circumstances presented here, it is

¹⁴ The Applicant further states that it “has described work experience in the provision of household goods in use service that satisfies the ‘equivalent’ standard, and that “all services performed by” the Applicant “do not appear to be in violation of the prohibition against the provision of services without first having obtained a certificate of public convenience that could be found to be improper.” See Revised MCC Application at 5-6, ¶ 3, fn. 1. However, the Applicant does not provide any further explanation in support of this claim.

appropriate to refer this matter to TUS for further review and action to determine whether the facts and circumstances in this case are consistent with the considerations in *Reliable Movers*, *Exceptional Movers*, and *Cury*, where acceptable prior experience focused on moving labor services, or whether the circumstances presented by Ferguson LLC are similar to the considerations in *Lytle*, where an applicant's submission to satisfy the requirements of 52 Pa. Code § 3.381(c)(1)(iii)(A)(II)(-1-), consisted entirely of uncertificated service.

With respect to the matter before us, the Petitioner's prior work experience is unclear – the Petition states that Mr. Ferguson performed, essentially, labor-only moving services for approximately 15 years, as compared to the Verified Statement of Applicant which stated that Mr. Ferguson “haul[ed] and mov[ed] with [his] father for 20 years.” Petition at 6-7; Revised MCC Application at 5, ¶ 3. Given the inherent ambiguity in the Applicant's explanation of prior work history experience, and that Ferguson LLC is not, and was not previously, a certificated household goods carrier, the circumstances in the instant case warrant referral of this matter to TUS for appropriate action and review. Such referral will provide TUS the opportunity to seek further documentation and evidence from Ferguson LLC, as needed, to review and make an informed determination on this issue.

Furthermore, we will also address, *sua sponte*, the requirements for an applicant seeking authority to operate as a motor common carrier in the Commonwealth. Specifically, we note that 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 operational ability to provide the proposed service. *See*, 52 Pa. Code § 41.14. Accordingly, two of the Commission Policy Statement factors we use in evaluating an applicant's operational fitness are: (1) “[w]hether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested;” and

(2) “[w]hether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.” 52 Pa. Code § 41.14(1) and (2).

We note that in the Revised MCC Application, and specifically, to Question No. 4 in the Verified Statement of Applicant, Ferguson LLC responded:

- 4. Describe your facilities, record maintenance plan and your communication network. Please include a description of your physical location, to including [sic] office machines that will be utilized, and the facility to house vehicles. As a carrier of household goods in use, applicant should include a description of storage facilities, if applicable. Please include an explanation of your plan to maintain records required by the PUC, as well as normal business records. In regard to your communication network, please explain how you will receive customer requests for transportation, how you will dispatch the vehicles to fulfill the request, and how you will maintain communication with your drivers.**

* * *

Our trucks are parked. Our trucks are parked at a secure storage, gated lot over night. Trucks are inspected yearly and maintained monthly lights, reflectors, tires and brakes daily Trucks are inspected lights turned on, signals, brakes, ties, daily before they leave the lot.

Drivers have valid licenses, drivers records reviewed, annual review, road test

Communication network is via cell phone. The business uses email and social media

Customers are received by word of mouth, social media and business cards. We keep the records required in a secure location at the owners home offices Business hours are Mon – Fri 9-5 and Sat 10-5 [sic]

Revised MCC Application at 5, ¶ 4.

As set forth above, Ferguson LLC avers that its: (1) vehicles are: (a) stored overnight in a gated lot; (b) “inspected yearly and maintained monthly;” and (c) inspected daily for operational lights, reflectors, tires, signals, brakes, and ties; (2) drivers have valid licenses and their records are regularly reviewed; (3) communication network utilizes cell phones, email, and social media; (4) “[c]ustomers are received by word of mouth, social media, and business cards;” (5) records are securely stored at Mr. Ferguson’s “home offices;” and (6) business hours are 9:00 a.m. – 5:00 p.m. Monday through Friday, and 10:00 a.m. – 5:00 p.m. Saturday. Revised MCC Application at 5, ¶ 4. Although Ferguson LLC clearly acknowledges records maintenance and the communication network, it, however, does not explain *how* it will maintain and/or facilitate its records retention and communication network. Further, beyond noting that its trucks are stored overnight in a gated lot and its records are stored at the owner’s home, Ferguson LLC has not provided a description of its physical location.

Furthermore, we note that Question No. 5 in the Verified Statement of Applicant states, “[p]lease state the number of drivers you intend to use or hire in your business and explain why that number of drivers is appropriate for the size of the territory you will be serving. In addition, please explain: c. Your driver training program; d. Your system for conducting driver license checks.” Revised MCC Application at 6, ¶ 5. In its response to Question Nos. 5.c. and 5.d., Ferguson LLC responded, in pertinent part:

We stay current with the laws for the trucking industry and every six months our insurance company runs a drivers history on us. This helps us keep our premiums down.

Id. Although Ferguson LLC states its intent to “stay current with the laws for the trucking industry,” there is no information of Ferguson LLC’s proposed program for training drivers or its proposed system for conducting driver license checks. *Id.*

Notwithstanding Ferguson LLC’s responses to Question Nos. 4 and 5 in the Verified Statement of Applicant, the Petitioner has satisfied the standard for reconsideration set forth in *Duick*, as discussed, *supra*. Indeed, there appear to be new issues raised in the Petition and other issues described herein that may not have been considered or were overlooked.¹⁵ Therefore, we conclude that, under the circumstances in this case, it is appropriate and reasonable to refer this matter to TUS for consideration and such further action as may be warranted, due to TUS’ expertise in reviewing applications for Commission authority. Such a referral will provide TUS the opportunity to request any additional information or evidence from Ferguson LLC necessary to demonstrate satisfaction of the fitness standards at 52 Pa. Code § 41.14(1) and (2), in order to consider and determine whether Ferguson satisfies those fitness standards. *See, Application of Philly Fast Track Limousine LLC*, Docket No. A-2022-3036789 (Order entered April 20, 2023). Moreover, given the procedural posture of this case, acknowledging the new considerations provided in the Petition and referring this matter to TUS for further consideration is a more efficient use of the Commission’s and Ferguson LLC’s resources at this stage of the proceeding.

¹⁵ In addition, we acknowledge that Ferguson LLC has demonstrated a willingness to cooperate, as it has timely filed its Petition and its responses to all of TUS’ data requests.

III. Conclusion

For the reasons set forth above, we will grant Kelvin D. Ferguson & Sons LLC's Petition for Reconsideration from Staff Action, rescind the *March 2023 Secretarial Letter*, and refer this matter to TUS for such further action as may be deemed necessary, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action filed by Kelvin D. Ferguson & Sons LLC, on March 29, 2023, at Docket No. A-2022-3036486, is granted, consistent with this Opinion and Order.
2. That the Secretarial Letter issued on March 9, 2023, at Docket No. A-2022-3036486, is rescinded.
3. That this matter, at Docket No. A-2022-3036486, 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,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 18, 2023

ORDER ENTERED: May 18, 2023