

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

Public Meeting held June 15, 2023

Commissioners Present:

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

Application of Vander Hauling Services, LLC

A-2023-3038123  
A-8925919

**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 Vander Hauling Services, LLC (Vander Hauling or Applicant) on April 5, 2023, relative to the above-captioned proceeding. The Petition is directed to the Commission's Secretarial Letter of March 29, 2023 (*March 2023 Secretarial Letter*) which advised that the Commission issued a data request on February 13, 2023 (*February 2023 Data Request*), requesting that Vander Hauling submit evidence of work experience as required by 52 Pa. Code §3.381(c)(1)(iii)(A)(II)(-1-) in order to complete the processing of its application for authority and that Vander Hauling did not adequately

comply with all aspects of the *February 2023 Data Request*. Therefore, the requested Application for authority was denied.

No answers to the Petition have been filed. For the reasons that follow, we will deny the Petition, consistent with the discussion in this Opinion and Order.

### **History of the Proceeding**

On February 3, 2023, Vander Hauling submitted an Application with the Commission seeking authority “To transport household goods in use between points in Pennsylvania.” *See*, Application at ¶ 10. The Application was verified by Mr. Gerald T. Kellner.<sup>1</sup> Mr. Kellner is President of Vander Hauling Services LLC – the entity seeking application authority. *Id.* at 4. Mr. Kellner has also indicated that he is President of an affiliated business entity, First Capital Fibers, Inc., that has a United States Department of Transportation (DOT) identification number of #3983316. *See*, Application at ¶ 9. The Applicant emphasizes that Vander Hauling and First Capital Fibers, Inc. are under common ownership. *See*, Verified Statement of Applicant at ¶ 2.

In response to paragraph No. 3 of the Verified Statement of Applicant, which requested that the Applicant provide evidence of a minimum of two years’ experience with a licensed household goods carrier, or the equivalent, the Applicant responded: “MC No. transfer No.1116407 from DOT No.2044341.” No further information was provided.

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<sup>1</sup> The verification notes the name, “Gerald T. Kellner,” whereas, the signature indicates “Jerry T. Kellner.”

As previously noted, by way of the *February 2023 Data Request*, the Commission's Bureau of Technical Utility Services (TUS) issued data requests. The requests directed the Applicant to submit the following:

- 1.) Please provide evidence of a minimum of two-years' experience working with a licensed household goods carrier or the equivalent as required by 52 Pa. Code §3.381(c)(1)(iii)(A)(II)(-I-), please be advised experience as a Property carrier is not considered the equivalent.
- 2.) You failed to fill out the Statement of Financial Position (Balance Sheet). Please fill out, and date, the Statement of Financial Position, and include it in your response to this data request.

*See, February 2023 Data Request.*

By correspondence of February 16, 2023, Vander Hauling submitted a letter and attachments. The letter explained, in pertinent part, that Vander Hauling was a change in authority from First Capital Fibers, Inc., to Vander Hauling Services LLC, that First Capital Fibers, Inc. was operating under docket #1116407, effective August 11, 2020, and that a DOT docket/identification no. "MC1116407," is transferring to Vander Hauling. A draft balance sheet, Internal Revenue Service (IRS) assignment of an EIN [Employer Identification Number] number, and letter evidencing registration with the Pennsylvania Department of State as a 'LLC' were also attached. No supporting and/or explanatory information or documentation was submitted regarding the federal MC No. 1116407 identification number that was referenced in the letter response.

After review of the February 16, 2023, submittal, TUS issued the *March 2023 Secretarial Letter* giving notice that Vander Hauling did not adequately respond to the *February 2023 Data Request*. Consequently, Vander Hauling was advised

that its Application would be denied and dismissed. Vander Hauling timely filed its Petition, as noted.

## **Discussion**

### **Legal Standards**

Petitions for Reconsideration from Staff Action are governed by the Commission's Rules of Administrative Practice and Procedure at 52 Pa. Code § 5.44(a), which provides the following:

- (a) 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.

Also, in considering the Application and the instant Petition, 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, Vander Hauling is the Applicant and Petitioner. The Applicant, therefore, is the party seeking affirmative relief from the Commission. As such, Vander Hauling is the party with the burden of proof. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (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 its decisions are 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).

Finally, pursuant to Section 1103(a) of the Code, 66 Pa. C.S. § 1103(a), an application 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.”

### **Vander Hauling Petition**

The submittals provided by Vander Hauling, as best we can discern, appear to “cross reference” certain operations as a DOT certified motor carrier company engaged in recycling activity. These operations, again, from what we are able to glean from the documents provided, are part of a change in control of two commonly owned business entities. The Petition explains that Vander Hauling is a newly created corporate entity that has been formed to provide the transport of household goods in use between points in Pennsylvania. The Applicant states in its Petition that it decided to “[s]eparate the trucking entity from the recycling entity circa 2021.” *See*, Petition, at I. An identified DOT docket number is cited in the Petition, in addition to a US DOT “MC” reference number, No.116407.<sup>2</sup> The narrative of the letter is not clear as to

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<sup>2</sup> A review of the U.S. Department of Transportation Federal Motor Carrier Safety Administration Safety and Fitness Electronic Records (SAFER) System website discloses that Vander Hauling Services LLC is registered with DOT as a carrier and assigned US DOT No.3983316 and MC Docket No. 1116407.

which business entity is regarded as the “trucking” entity viz a viz the “recycling” entity and what operations and/or services were involved.

The experience and operations with the DOT certificated business appears to be what the Applicant cites and relies upon in support of its compliance and response to the Commission’s Regulation that requests two years of experience (or the equivalent) with a licensed household common goods carrier in support of a request for household goods transportation authority. The documents tendered by the Applicant, however, do not go beyond their mere submission.

Also, on consideration of the narrative provided with the documents, such narrative describes the intentions for the Applicant’s business operations but does not explain or expand upon the responsiveness of these business operations and/or initiatives to the *February 2023 Data Request*.

In pertinent part, Vander Hauling’s support for its Petition is based on the following rationale:

II. During this process, Vander Hauling Services, LLC was created, and acquired US DOT number 3983316 during this planning process. From August 2020 to February 2023, all for-hire freight has been under First Capital Fibers US DOT and docket number. In February 2023, Vander Hauling Services was insured, all assets and resources transferred from First Capital to Vander Hauling Services. The original docket number 1116407 -listed under First Capital, was also transferred to Vander Hauling as well.

*See, Petition.*

Vander Hauling further explains:

III. Vander Hauling Services, LLC is now operating as its own stand-alone entity with DOT 3983316 and the transferred MC 1116407 it obtained from First Capital Fibers. Both entities stated above operate under common ownership, there has been no change in ownership or control of the businesses.

*See*, Petition.

## **Disposition**

In considering the Petition, we advise that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *See Wheeling & Lake Erie Railway Co. v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001); *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). Any argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

The Applicant's submittals in reply to the *February 2023 Data Request* are not responsive. The documents, on their face, demonstrate a misapprehension that Vander Hauling's trucking operations conducted pursuant to DOT certificated authority involving recycling can, by their mere reference and transfer to a separate business entity pursuant to an internal business decision, address the Commission's Regulations at 52 Pa. Code §3.381(c)(1)(iii)(A)(II)(-1-). In pertinent part, the applicable provision states: "(-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."

The authority conferred by DOT and this Commission are distinct grants of authority and are not interchangeable. The Commission acknowledges that interstate motor carrier operations and intrastate operations may often involve interrelated, possibly overlapping, regulatory obligations as between the Commission and federal agencies. *See, Rita Dalinka v. A. Mastrocco Jr. Moving and Storage*, Docket No. C-2015-2509071 (Initial Decision July 20, 2016); 2016 WL 4366555 (Pa.P.U.C.) (Final Order entered October 4, 2016) – discussing interstate versus intrastate transportation and citing, *inter alia*, cases applying those considerations applicable to deciding whether service is interstate or intrastate in nature; *also Scott Luellen v. Maroadi Transfer & Storage, Inc.*, Docket No. C-2016-2539599 (Initial Decision February 23, 2017; (Final Order entered April 14, 2017); 2017 WL 876281 (Pa.P.U.C.) and *Pa. PUC v. Simon’s Express, Inc.*, Docket No. A-105544C882 (Order entered May 25, 1989); 70 Pa. P.U.C. 96 (1989); 0089 WL 1646818 (Pa.P.U.C.).<sup>3</sup>

However, the transportation of household goods has largely remained within the purview of Commission Regulation in a rather straightforward manner. *See, Re Regulation of Motor Common Carriers of Property*, Docket No. P-00940884 (Order entered December 20, 1994): 83 Pa. P.U.C. 601 (1994); 1994 WL 843034 (Pa.P.U.C.):

On October 28, 1994, we adopted a Tentative Decision at this docket (entered October 31, 1994) seeking comments to a new application procedure for motor carriers of property in light of the Federal Aviation Act of 1994, 49 U.S.C. §§41713(b) and 11501(h).

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<sup>3</sup> Under certain facts, not applicable to this matter, the relationship between federal jurisdictional authority and Commission certificated authority over motor carriers providing intrastate service may become relevant. *See, e.g., Pa. PUC Bureau of Investigation and Enforcement v. C Three Logistics LLC*, Docket No. C-2021-3024623 (Order entered June 16, 2022); *also, Unique Limousine Service, Inc. Objection to the General Assessment for the Fiscal Year July 1, 2010 - June 30, 2011*, Docket No. M-2013-2346890 (Order entered May 17, 2013), pertaining to disputes over Commission assessment of intrastate revenues of motor carriers subject to federal statutes.

As we stated in the Tentative Decision, that Act preempts the authority of states to regulate rates, routes and service of motor carriers, except that matters involving safety and insurance were not affected, nor was the regulation of passenger carriers and household goods carriers.

83 Pa. PUC at 602-603.<sup>4</sup>

Applications seeking the right to transport household goods have been recently addressed in our Order in *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 (Opinion and Order entered June 19, 2014), 2014 WL 2876694 (Pa.P.U.C.) (*Final Rulemaking*).<sup>5</sup>

With respect to an application seeking the right to transport household goods, our *Final Rulemaking, inter alia*, removed the previous requirement to establish that approval of the application will serve a useful public purpose responsive to public demand or need.<sup>6</sup> However, the Commission retained requirements addressing fitness. Thus, 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. *See*,

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<sup>4</sup> *See, e.g., Application of Bekins A-1 Movers, Inc., t/a Ace Moving and Storage, a corporation of the Commonwealth of Pennsylvania, for the amendment to its common carrier certificate, which grants the right, inter alia, to transport by motor vehicle, household goods in use . . . which is to be a transfer of all the rights authorized under the certificate issued at A-00099670 to Delphine Painter, t/a Painter's Van Lines, subject to the same limitations and conditions, Docket Nos. A-00108519, and A-2011-2233671 (Order entered July 7, 2011).*

<sup>5</sup> Effective upon publication in the *Pennsylvania Bulletin* on May 23, 2015.

<sup>6</sup> The Commission also eliminated geographic operating restrictions with the elimination of requiring an applicant to establish public need.

*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); 2015 WL 7008844 (Pa.P.U.C.) (*Application of 610 Hauling*);<sup>7</sup> also *Application of Moving by Cury, LLC*, Docket Nos. A-2022-3036613, A-8925710 (Order entered January 19, 2023); 2023 WL 358190 (Pa.P.U.C.) citing *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); *Application of Philly Moving, LLC*, Docket No. A-2018-3005562 (Order entered August 27, 2020); 2020 WL 5593173 (Pa.P.U.C.); and *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*, Docket No. A-2022-3035356 (Order entered January 12, 2023); 2023 WL 196455 (Pa.P.U.C.) – addressing 52 Pa. Code §§ 41.14 regarding financial fitness.

On consideration of the record, we find that the Applicant has not met its burden of proof, nor met the standards of substantial evidence, in support of its Petition and Application. Based on our review of the Petition, including the documents proffered by the Applicant, we conclude that reconsideration of the *March 2023 Secretarial Letter* is not warranted. The Applicant has failed to provide any acceptable information to demonstrate that Vander Hauling adequately responded that it possesses the required two years of experience working with a licensed household goods carrier, or the

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<sup>7</sup> In addressing the considerations for household goods authority, the Commission noted the following: “We caution that, on our review of the totality of the circumstances presented here, our acceptance of review of the material provided by the Applicant as satisfaction of the requirement at Section 3.381(c)(1)(iii)(A)(II)(1) in lieu of an unequivocal statement of a minimum two years’ experience in the application itself is limited to this case and the facts presented herein.” *Application of 610 Hauling* at 12.

equivalent, that is responsive to the *February 2023 Data Request*. Accordingly, we shall: (1) sustain TUS' decision that denied and dismissed the Application; and (2) deny Vander Hauling's Petition, consistent with this Opinion and Order.

### **Conclusion**

In denying the instant Petition, we would bring to the attention of Vander Hauling two considerations. First, we refer Vander Hauling to a recent Commission proceeding involving reconsideration sought in an application for household goods transportation authority. *See, e.g., Application of Exceptional Movers LLC for Carrier of Household Goods in Use Authority*; Docket Nos. A-2021-3029208 and A-8919919 (Order entered March 10, 2022) (*Exceptional Movers*); 2022 WL 766923 (Pa.P.U.C.); *Application of Exceptional Movers LLC for Carrier of Household Goods in Use Authority*; Docket Nos. A-2021-3029208, A-8919919 (Order entered June 16, 2022); 2022 WL 2237257 (Pa.P.U.C.). Review of the decisions in the matter of *Exceptional Movers* may be helpful for purposes of identifying the type of information that is available to a putative applicant to provide to the Commission that is responsive to the applicable Commission Regulations involving household goods authority.

Second, we advise the Applicant of the Commission Rules of Practice pertaining to the services of an attorney licensed to practice before the Commission. 52 Pa. Code §§ 1.21-1.22. While such requirement for corporations to have legal representation applies when a case becomes a "contested" matter before the Commission, the documents provided to the Commission by the Applicant suggest a need for legal clarity. *See, e.g., Clyde Wenger v. Source Power and Gas, LLC*; Docket No. C-2017-2601754 (Initial Decision September 12, 2017); 2017 WL 4676892 (Pa.P.U.C.); (Order December 26, 2018), pertaining to attorney representation discussing 52 Pa. Code §§ 1.21-1.22; also 52 Pa. Code § 1.8 addressing when a matter becomes a "contested" proceeding.

A suggestion of a need for legal clarity is raised in this matter in order to explain and clarify the business relationship between the Applicant's DOT regulated operations and its, proposed, Commission regulated operations involving the transportation of household goods to points in Pennsylvania. We further observe a need for legal clarity in conjunction with a need to explain and/or establish the relevance, materiality, and responsiveness of a corporate change in control of the entities cited in the Petition, *i.e.*, First Capital Fibers, Inc., and Vander Hauling Services LLC, and how such a change in control applies to the Commission regulated authority sought in the Application; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration from Staff Action filed by Vander Hauling LLC, on April 5, 2023, is denied, consistent with the discussion in this Opinion and Order.
2. That the Application of Vander Hauling Services LLC is denied, consistent with the discussion in this Opinion and Order.

3. That this case shall be marked closed.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: June 15, 2023

ORDER ENTERED: June 15, 2023