

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

Public Meeting held February 1, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn Zerfuss
John F. Coleman, Jr.

Application of VIDA QUARD TRANSPORTATION INC

A-2023-3043315
A-6426577

OPINION AND ORDER

BEFORE THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Rescission (Petition),¹ filed by VIDA QUARD TRANSPORTATION INC (Petitioner or VIDA) on November 13, 2023, relative to the above-captioned proceeding.² The Secretarial Letter to which the Petition refers was issued on October 3, 2023 (*October 2023 Secretarial Letter*). No Answer to

¹ As discussed further herein, the Petitioner's letter requested reconsideration of the denial of VIDA's Application for Motor Common Carrier of Persons in Paratransit Service (Application), but because it was not filed during the period for filing reconsideration, we will treat the filing as a Petition for Rescission.

² According to the Pennsylvania Department of State, the Petitioner's registered legal name is "VIDA QUARD TRANSPORTATION INC."

the Petition has been filed. For the reasons set forth herein, we will grant VIDA’s Petition, rescind the *October 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 the discussion in this Opinion and Order.

History of the Proceeding

On September 18, 2023, VIDA filed the aforementioned Application with the Commission.³ Application at 1. Specifically, VIDA requested authority “to transport, [a]s a contract carrier, by motor vehicle in vehicles (both ambulatory and non-emergency), persons for Pa Managed Care Organizations and between points in the counties of Bucks, Montgomery, and Philadelphia.”⁴ Application at 4. Included with the Application, *inter alia*, is a Statement of Financial Position (Balance Sheet) as of 9/16/2023 (Balance Sheet as of 9/16/23), indicating a total assets balance comprised solely of \$1,000 in cash, and total liabilities of \$0. Application at 33.

As noted, *supra*, on October 3, 2023, the Commission issued the *October 2023 Secretarial Letter* denying and dismissing the Application. In pertinent part, the letter is reprinted below:

The Commission has determined that a Certificate of Public Convenience **WILL NOT BE GRANTED** for the following reason(s):

³ We note that the Verification of Application and Verification of Statement included with the Application are signed by Wissan Barouki, identified as the owner/CEO and sole member of VIDA. Application at 2, 5, 8, 30.

⁴ We note that Question No. 6 in the Application, which requests identification of vehicles to be used in the business, is blank. Application at 7. We further note that no specific vehicles are identified or listed elsewhere in the Application. *See*, Application at *passim*.

- **Lack of financial fitness:** [VIDA]’s [Balance Sheet as of 9/16/23] indicates total assets of \$1000 cash. [VIDA] indicates a lack of vehicle[s] for the requested service, a lack of supporting equipment, and provides no indication that it has obtained insurance quotes or previously obtained coverage. Even in viewing [VIDA]’s financial position in the most favorable light, it has been determined that [VIDA] lacks sufficient financial resources to provide safe, efficient, and reasonable service.

For these reasons the [A]pplication is DISMISSED and DENIED[.]

October 2023 Secretarial Letter at 1 (emphasis in original).

The *October 2023 Secretarial Letter* further stated that, if VIDA disagrees with this determination, then a Petition for Reconsideration may be submitted to the Commission.⁵ *October 2023 Secretarial Letter* at 1. The *October 2023 Secretarial Letter* also stated:

The Petition must be filed with the Commission within twenty (20) days of the date of this letter. If no timely request for reconsideration is made, this action will be deemed to be the final action of the Commission.

The Petition MUST include: (1) a written statement (divided into numbered paragraphs) outlining the reasons for the request, (2) the case docket number(s) (they are provided for you at the top right hand corner of this letter), (3) the name of the person on whose behalf the petition is made, (4) copies of

⁵ It should be noted that the *October 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.” *October 2023 Secretarial Letter* at 1 (emphasis omitted). The Commission’s records indicate that VIDA is not in active e-filer status.

relevant documentation, and (5) a verification with original signature. See 52 Pa. Code §§-1.31 and 5.44.

October 2023 Secretarial Letter at 1-2 (emphasis in original).

As noted earlier, on November 13, 2023, VIDA filed the instant Petition.⁶ No response to the Petition has been filed.

Discussion

We begin by considering the nature of the Petitioner’s filing, because the analysis to be applied depends on the type of filing before us. 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). In this case, a Petition for Reconsideration from Staff action was due on October 23, 2023 (*i.e.*, twenty (20) days after the *October 2023 Secretarial Letter* was issued) but was not received by the Commission by the required due date. Therefore, in accordance with Section 5.44(a) of the Commission’s Regulations, the *October 2023 Secretarial Letter* became final without further Commission action on October 23, 2023, and, although a Final Order was not entered stating as much, the

⁶ Upon review of the Commission’s case management system, several documents labeled as “Petition for Reconsideration conf – Vida Quard Transportation” have been marked as “CONFIDENTIAL.”

October 2023 Secretarial Letter nonetheless became final by operation of law.
52 Pa. Code § 5.44(a).

VIDA filed documents, labeled as “Petition for Reconsideration – Vida Quard Transportation” in the Commission’s case management system, on November 13, 2023, which is twenty-one (21) days after the date that the *October 2023 Secretarial Letter* became the final action of the Commission (*i.e.*, more than fifteen (15) days beyond the deadline for filing a Petition for Reconsideration, pursuant to 52 Pa. Code § 5.572(c)). Because the Petitioner’s filing was made well-past the date that the *October 2023 Secretarial Letter* became final in this case, we will exercise our discretion under 52 Pa. Code § 1.2(a), which requires that our Regulations be liberally construed to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable, and consider the Petitioner’s filing on November 13, 2023, as a Petition for Rescission of the Commission’s final decision.
52 Pa. Code § 5.572(d).

Legal Standards

In considering the 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).

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions, pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of

our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

A petition for rescission or amendment can be filed at any time. *See*, 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572(d).

By the terms of Section 703(g) of the Code, the Commission has the power to amend or rescind its own orders at any time, subject only to the requirements of due process. Section 703(g) of the Code states:

The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa. C.S. § 703(g); *see also*, *Department of Highways v. Pa. PUC*, 185 Pa. Super. 418, 138 A.2d 143 (1958). In exercising Commission authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” *See*, *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *see also*, *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1056 (Pa. Cmwlth. 1995) (*West Penn Power*); *see also*, *Richard Feleccia v. PPL Electric Utilities Corporation, d/b/a PPL Utilities and Barbara A. Lima*, Docket No. C-20016210 (Opinion and Order entered March 7, 2003) (*Feleccia*).

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 (Opinion and Order entered December 17, 1982) (*Duick*) (quoting *Pennsylvania Railroad Co. v. Pennsylvania 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. With respect to petitions for rescission, specifically, we have stated that in order “[t]o establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law.” *Feleccia*, slip op. at 3 (citing *Duick* at 559).

A Commission decision to deny a petition for rescission or amendment is a matter squarely within its discretion, subject to being overturned only where a reviewing court finds “the agency’s decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power.” *West Penn Power*, 659 A.2d at 1065.

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.

* * *

52 Pa. Code § 41.14.⁷

⁷ 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.

VIDA's Petition⁸

The Petition consists of the following: (1) a typed response to the *October 2023 Secretarial Letter*; (2) a signed Verification statement; (3) a Balance Sheet as of 10/16/2023 (Balance Sheet as of 10/26/23), indicating a total assets balance comprised solely of \$40,238 in cash, and a total liabilities balance of \$0; and (4) two Pennsylvania Financial Responsibility Identification Card (Insurance ID) documents that indicate policy information for two different vehicles for the insured party “Wissan Barouki Blanco,” effective June 18, 2023, to December 18, 2023.⁹ Petition at 1-6. Two additional documents filed with the Petition and marked as “CONFIDENTIAL” include: (1) a bank statement of account (Bank Statement) for “VIDA QUARD TRANSPORTATION INC;” and (2) two Pennsylvania Vehicle Registration (Auto Registration) documents.¹⁰

⁸ At this time, we note that the Commission’s Regulations require a corporation, *inter alia*, to be represented by an attorney in an adversarial proceeding before the Commission. 52 Pa. Code § 1.21(b). The term “adversarial proceeding” is defined as “[a] proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons and which will be decided on the basis of a formal record.” 52 Pa. Code § 1.8. We do not, at this time, make a determination to classify this proceeding as an “adversarial” proceeding because we do not have any indication of protests.

⁹ We note that the Verification statement included with the Petition identifies “Wissan Barouki Blanco” as the signatory. As previously noted, the Verification of Application and Verification of Statement included with the Application are signed by “Wissan Barouki,” identified as the owner/CEO and sole member of VIDA. Application at 2, 5, 8, 30.

¹⁰ As the Bank Statement and Auto Registration documents have been marked as “CONFIDENTIAL,” we will not be discussing the specific details of these documents here.

In response to the *October 2023 Secretarial Letter*, the Petitioner states, in pertinent part, the following:

Our company is financially prepared to be in financial compliance with the State of Pennsylvania Public Utility Commission and is able to provide the vehicles necessary to be able to transport individuals in the Philadelphia area and surrounding counties. We have included a bank statement showing our financial capabilities and will could also include, upon request, our insurance agent's information of whom would provide us with Commercial Vehicle as well as Professional General and Liability Insurance for our non-emergency transportation company. [sic]

Petition at 1.

Disposition

Based on our review of the Petition and the associated record documents, we shall rescind the *October 2023 Secretarial Letter*. The Petitioner has met the standard for rescission by first establishing the existence of newly discovered evidence or a substantial change in circumstances. *See, Duick; see also, Feleccia*. Furthermore, the Petitioner has raised new and novel arguments not previously heard. *See, Duick*.

As previously discussed, according to the *October 2023 Secretarial Letter*, VIDA's Application was denied and dismissed because VIDA demonstrated a lack of financial fitness. Specifically, the *October 2023 Secretarial Letter* found that VIDA failed to provide sufficient financial resources to provide safe, efficient, and reasonable service because: (1) VIDA's Application did not indicate any vehicle assets, supporting equipment, or insurance coverage; and (2) the Balance Sheet as of 9/16/23 indicates total assets comprised solely of \$1,000 in cash. *March 2023 Secretarial Letter* at 1.

In the Petition, the Petitioner avers that VIDA is “financially prepared to be in financial compliance” and “is able to provide the vehicles necessary to be able to transport individuals.” Petition at 1. As support, the Petitioner provides a Balance Sheet as of 10/16/23, which indicates a total cash balance of \$40,238, and a Bank Statement.¹¹ The Petitioner also provides two Insurance ID documents and two Auto Registration documents. It appears the Petitioner has established the existence of newly discovered evidence or a substantial change in circumstances. *See, Duick; see also, Feleccia*. It also appears the Petitioner has raised new and novel arguments not previously heard. *See, Duick*. However, the Petitioner’s assertion that VIDA “is able to provide the vehicles necessary to be able to transport individuals” is inconsistent with the Balance Sheet as of 10/16/23, which does not indicate any vehicle assets.¹² *Id.* at 1. Although the Petitioner clearly acknowledges VIDA’s intent to utilize motor vehicles in its operations, the Petitioner does not address the absence of any vehicle assets in the Balance Sheet as of 10/16/23.

An applicant seeking authority to operate as a motor common carrier in the Commonwealth 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, one of the Commission Policy Statement factors we use in evaluating an applicant’s operational fitness is “[w]hether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.” 52 Pa. Code § 41.14(1). Here, based on the lack of consistency and clarity regarding vehicle assets between the Petitioner’s assertion that VIDA “is able to provide the vehicles necessary” to operate

¹¹ As previously noted, we will not be discussing, in specific detail, the documents included with the Petition stamped as “CONFIDENTIAL.”

¹² The Balance Sheet as of 10/16/23 provides space to indicate the balance for, *inter alia*, Motor Vehicle Equipment. However, other than a cash balance of \$40,238, no other asset balances are provided. Petition at 3.

and the Balance Sheet as of 10/16/23, we are unable, at this time, to determine whether VIDA satisfies the operational fitness requirement pursuant to 52 Pa. Code § 41.14(1). Petition at 1. Nevertheless, the Petitioner has: (1) established the existence of newly discovered evidence or a substantial change in circumstances; and (2) presented new and novel arguments not previously heard.

Furthermore, we will also address, *sua sponte*, the nature of VIDA's intended operations. Specifically, in response to Question No. 10 in its Application, VIDA stated that it intends to operate as a "*contract carrier*" passenger service for "Pa Managed Care Organizations." Application at 4 (emphasis added). However, VIDA filed an Application for Motor Common Carrier of Persons in Paratransit service, which requests authority to operate as a *common carrier* passenger service when providing transportation on a nonexclusive, advance reservation basis. *See*, Application at 1. As the specific nature of VIDA's operations is unclear, we are unable to determine the specific service that VIDA is requesting authority to operate.

Notwithstanding the ambiguity in VIDA's statement in its Application for motor common carrier passenger service that it intends to operate as a "contract" carrier, and the inconsistency between the Petitioner's averment that VIDA "is able to provide the vehicles necessary to be able to transport individuals" and the absence of any vehicle assets on the Balance Sheet as of 10/16/23, the Petitioner has satisfied the standard for rescission set forth in *Duick*, as discussed, *supra*. Application at 4; Petition at 1. Indeed, the Petitioner has first established the existence of newly discovered evidence or a substantial change in circumstances and has raised new and novel arguments not previously heard. Therefore, we conclude that, under the circumstances in this case, it is appropriate and reasonable to rescind the *October 2023 Secretarial Letter* and refer this matter to TUS for consideration and such further action as may be warranted, given TUS' expertise in reviewing applications for Commission authority. Such a referral will provide TUS the opportunity to request any additional information or evidence from

VIDA necessary to: (1) demonstrate satisfaction of the fitness standard at 52 Pa. Code § 41.14(1); and (2) clarify the specific service that VIDA is requesting authority to provide in the Commonwealth. 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 VIDA's resources at this stage of the proceeding.

Conclusion

For the reasons discussed herein, we will grant VIDA QUARD TRANSPORTATION INC'S Petition for Rescission, rescind the *October 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 Rescission, filed by VIDA QUARD TRANSPORTATION INC, on November 13, 2023, at Docket No. A-2023-3043315, is granted, consistent with this Opinion and Order.
2. That the Secretarial Letter issued on October 3, 2023, at Docket No. A-2023-3043315, is rescinded.

3. That this matter, at Docket No. A-2023-3043315, 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: February 1, 2024

ORDER ENTERED: February 1, 2024