

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

Public Meeting held April 4, 2024

Commissioners Present:

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

License Application of F&D Partners, Inc. for
Approval to Offer, Render, Furnish or Supply
Electricity or Electric Generation Services as a
Broker/Marketer

A-2023-3043978

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 F&D Partners, Inc. (F&D) on January 9, 2024, in the above-captioned proceeding. The Petition was filed in response to a Secretarial Letter issued January 4, 2024 (*January 2024 Secretarial Letter*) which deemed the Application incomplete and rejected the Application without prejudice. No Answer to the Petition has been filed. For the reasons that follow, we will grant the Petition, rescind the *January 2024 Secretarial Letter*, and refer this matter to the Commission's Bureau of

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

History of Proceeding

On November 1, 2023, the Commission accepted F&D's Application, which was submitted on October 24, 2023, seeking to become a licensed electric generation supplier (EGS) as a broker/marketer, in all the electric distribution company (EDC) service territories throughout the Commonwealth of Pennsylvania. The Application was filed pursuant to the Commission's Regulations at 52 Pa. Code §§ 54.31-54.43, which became effective on August 8, 1998, and which were established under section 2809 of the Public Utility Code (Code), 66 Pa. C.S. § 2809.¹

¹ Section 2809 provides in pertinent part that:

License Requirement.--No person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators and other entities, shall engage in the business of an electric generation supplier in this Commonwealth unless the person or corporation holds a license issued by the Commission.

66 Pa. C.S. § 2809.

An electric generation supplier is defined as:

A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission and distribution facilities of an electric distribution company, or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the

On November 9, 2023, the Commission issued a letter (*November 2023 Secretarial Letter*) informing F&D that certain information was deficient from its Application. Specifically, the November 2023 Secretarial Letter indicated the following:

Sections 1.b, 7.a, 8.d, and 11 of the application were incomplete or not properly completed (ex. 7.a – the filed Bond was not an original document with a raised seal and wet signatures from the principal (applicant) and the issuing bank, and 11 – the Affiant and Name of Applicant were incorrectly placed in both Affidavits).

November 2023 Secretarial Letter at 1.

The Commission’s EGS application requests the following: in the Identification and Contact Information Section - 1.b. asks for the Pennsylvania Address/Registered Agent; in the Financial Fitness Section - 7.a. requests the filing of a bond; in the Technical Fitness Section 8.d. requests details regarding the Oversight of Marketing; and Section 11 requires an Application Affidavit and Operations Affidavit.

On November 27, 2023, F&D filed additional information in response to the *November 2023 Secretarial Letter*, including a resubmitted bond and Proof of Publication of Notice.

On January 4, 2024, the Commission issued a Secretarial Letter (*January 2024 Secretarial Letter*) deeming the Application incomplete and rejecting the Application without prejudice.

jurisdictional transmission and distribution facilities of an electric distribution company.

66 Pa. C.S. § 2803.

On January 9, 2024, F&D filed the Petition. Included with the Petition was additional information providing updates to item 1.b. and 8.d of the Application. No response to the Petition has been filed.

Discussion

Legal Standards

Petitions for Reconsideration of Staff Action are governed by Section 5.44 of our Regulations, 52 Pa. Code § 5.44, 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.

Courts have held that “[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Additionally, Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.

In this proceeding, F&D is the party seeking affirmative relief from the Commission. Therefore, F&D 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 (Opinion and Order entered November 5, 2015), *citing, Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Petition

In the Petition, F&D avers that “[o]n November 9, 2023, we were notified to submit some other documents missing in the initial application. We FedEx-ed documentation, but one of them was missing.” Petition at 1.

Accordingly, F&D requests that the Commission reconsider its January 2024 Secretarial Letter rejecting the Application and that the Commission accept the additional documents attached to the Petition. *Id.*

Disposition

In considering the Petition, we note that any issue not specifically addressed shall be deemed duly considered and denied without further discussion. It is well settled that we are 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); *see also, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Upon review, we shall grant the Petition. Initially, F&D indicated, in its Petition, that it may have left out a document from its submittal. Petition at 1. Consequently, F&D attached additional documents to the Petition along with a request that they be accepted. In addition, as noted, *supra*, F&D submitted additional materials on November 27, 2023. We recognize F&D’s attempt to provide the requested information, as required by TUS. Therefore, out of an abundance of caution, we find it reasonable that the additional documents included with the Petition and the materials

submitted on November 27, 2023, be reviewed to determine if the additional information satisfies the concerns set forth in the *November 2023 Secretarial Letter* and the *January 2024 Secretarial Letter*. In the interest of efficiency and conservation of the Applicant's and the Commission's resources, we will grant the Petition and refer this matter to TUS for such further action, as deemed necessary, consistent with this Opinion and Order.

Conclusion

For the reasons discussed herein, we will grant the Petition, rescind the *January 2024 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 F&D Partners, Inc. on January 9, 2024, at Docket No. A-2023-3043978 is hereby granted, consistent with this Opinion and Order.
2. That the Secretarial Letter issued on January 4, 2024, at Docket No. A-2023-3043978, is rescinded.

3. That this matter be referred to the Bureau of Technical Utility Services for such further action as may be warranted, consistent with this Opinion and Order.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each word being significantly larger and more stylized.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 4, 2024

ORDER ENTERED: April 4, 2024