

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

Public Meeting held June 13, 2024

Commissioners Present:

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

Application of His Loving Hand Home Care LLC  
for the Right to Operate as a Paratransit Service

A-2024-3045516

**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 His Loving Hand Home Care LLC (Applicant or His Loving Hand) on March 11, 2024, relative to the above-captioned proceeding. The staff action for which reconsideration is sought is a Secretarial Letter issued on March 1, 2024 (*March 2024 Secretarial Letter*). No response to the Petition has been filed. For the reasons set forth herein, we will grant the Petition, consistent with the discussion in this Opinion and Order.

## History of Proceeding

On January 11, 2024, His Loving Hand filed an Application with the Commission requesting authority to provide paratransit service in Pennsylvania within Montgomery, Chester, Philadelphia, Delaware, and Bucks Counties. Application at 1 and 4.

On January 24, 2024, the Commission issued a Secretarial Letter (*January 2024 Secretarial Letter*) notifying the Applicant of multiple issues with its Application that must be addressed before publication in the *Pennsylvania Bulletin*. In the *January 2024 Secretarial Letter*, the Commission issued a data request asking His Loving Hand to clarify its proposed service, provide a revised driver hiring and employment policy that is compliant with 52 Pa. Code § 29.503-505, and verify the accuracy of its financial statements. The Commission advised the Applicant to forward the information to the Secretary of the Commission within ten (10) working days from the date of the *January 2024 Secretarial Letter*, or February 7, 2024. *January 2024 Secretarial Letter* at 1-2.

On February 14, 2024, the Applicant filed responses to the *January 2024 Secretarial Letter*.

On February 20, 2024, the Commission issued a Secretarial Letter (*February 2024 Secretarial Letter*) notifying His Loving Hand of multiple issues with its Application that were not resolved in the Applicant's February 14, 2024, response to the *January 2024 Secretarial Letter*. In the *February 2024 Secretarial Letter*, the Commission issued a second data request asking His Loving Hand to further clarify its proposed service, provide information required by our Regulations at 52 Pa. Code § 29.504, relating to driver history reports, and further clarification of the Applicant's financial fitness. The Commission advised the Applicant to forward the information to

the Secretary of the Commission within ten (10) working days from the date of the *February 2024 Secretarial Letter*, or March 5, 2024.

On February 29, 2024, His Loving Hand filed responses to the *February 2024 Secretarial Letter*.

On March 1, 2024, the Commission issued the *March 2024 Secretarial Letter* dismissing the Application. The *March 2024 Secretarial Letter* stated that His Loving Hand failed to comply with the requirements of 52 Pa Code § 29.504(a)(2) for paratransit drivers. Specifically, in its February 29, 2024, response to the *February 2024 Secretarial Letter*, the Applicant's revised driver history policy did not meet the requirements of 52 Pa Code § 29.504(a)(2). Based on the foregoing, the *March 2024 Secretarial Letter* denied and dismissed the Application for a lack of fitness to operate. *March 2024 Secretarial Letter* at 1-2.

As noted, His Loving Hand filed the instant Petition on March 11, 2024. No response to the Petition has been filed.

## **Discussion**

### **Legal Standards**

Petitions for Reconsideration from Staff Action are governed by Section 5.44(a) of the Commission's Rules of Administrative Practice and Procedure, 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).

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 (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, His Loving Hand is the party seeking affirmative relief from the Commission. Therefore, His Loving Hand 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) (*Application of 610 Hauling*), 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 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.<sup>1</sup>

## **Petition**

In its Petition, His Loving Hand states it compared its driver license history policy with the requirements of 52 Pa Code § 29.504(a). The Applicant avers that when it compared its submitted language to 52 Pa Code § 29.504(a), it found that its driver license history policy was missing some language. His Loving Hand asserts it has

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<sup>1</sup> 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.

revised its driver license history policy to reflect language to comply with the policy and attached a copy of the policy to its Petition. Petition at 1.

## **Disposition**

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); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Based on our review of the Petition and the record documents, we will grant the Petition. Our Regulation at 52 Pa. Code § 1.15(a)(1), gives us authority to extend a deadline, after the deadline has passed, where reasonable grounds are shown for the failure to act. Under the circumstances of the instant case, rather than deny the Application, we deem it is reasonable to extend the Application deadline for review of information submitted with the Petition and His Loving Hand's Application consistent with this Opinion and Order. *See, Application of Woodrow Cothran, Jr., t/s Moving Others Around Safely*, Docket No. A-2019-3011840 (Opinion and Order entered April 30, 2020).

As previously stated, the *March 2024 Secretarial Letter* denied the Application because Commission staff found that His Loving Hand failed to establish fitness to operate. The Applicant sought reconsideration of the staff's action by updating its driver history report policy.

The evidentiary criteria used by the Commission to decide motor carrier applications examines, among other factors, whether an 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). 52 Pa. Code § 41.14(4). The averments raised by the Applicant in its Petition for Reconsideration indicate that the Applicant has attempted to comply with 52 Pa. Code § 41.14(4), such that it has satisfied its burden of proof this evidentiary standard would likely be met. Thus, an outright denial of the application is not warranted. Rather, referring the matter to the Commission's Bureau of Technical Utility Services (TUS) for review and allowing His Loving Hand to cure any deficiencies is in the public interest, as it affords the Applicant the opportunity to proceed with its Application. Moreover, given the procedural posture of this Application filing, allowing reconsideration of the Application is a more efficient use of the Commission's and the Applicant's resources at this stage.

The Commission takes no position on the merits of His Loving Hand's Application, but solely notes that it is appropriate to refer this matter to TUS based on the responsive information contained in the Petition. Accordingly, we shall refer these matters to TUS for such further action as may be deemed necessary and warranted.

We also note that based on the information filed in this matter that the request set forth by the Application may be for incidental services to the Applicant's home care business and thus the Commission may be without jurisdiction over the matter. *See*, Application of Golden Years Concierge Services LLC, Docket No. A-2022-3036661, A-6425717, (Opinion and Order entered April 20, 2023). Therefore, we encourage staff to obtain adequate information to determine the specifics of the service and in particular, in relation to the existing home care business so the Commission may render an appropriate decision.

## Conclusion

For the reasons discussed herein, we will grant the Petition, rescind the *March 2024 Secretarial Letter*, and refer this matter to TUS for such further action as may be warranted, consistent with this Opinion and Order; **THEREFORE,**

### IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action, filed by His Loving Hand Home Care LLC on March 11, 2024, at Docket No. A-2024-3045516, is granted, consistent with this Opinion and Order.
2. That the Secretarial Letter issued on March 1, 2024, at Docket No. A-2024-3045516, is rescinded.
3. That the matter, at Docket No. A-2024-3045516, be referred to the Commission's Bureau of Technical Utility Services for such further action as may be deemed necessary and warranted, consistent with this Opinion and Order.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: June 13, 2024

ORDER ENTERED: June 13, 2024