

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

Public Meeting held October 10, 2024

Commissioners Present:

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

Application of NJR Possible Management, LLC

A-2024-3049224

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),¹ filed on August 21, 2024, by NJR Possible Management, LLC (NJR or Petitioner), in the above-captioned proceeding. The Petition seeks reconsideration of the *August 2024 Secretarial Letter*, which was issued by the Commission's Bureau of Technical Utility Services (TUS) after a review of NJR's Application seeking authority to

¹ Because the instant Petition challenges the action taken in the Secretarial Letter issued on August 15, 2024 (*August 2024 Secretarial Letter*) relative to this proceeding and was filed within twenty days of the issuance of the *August 2024 Secretarial Letter*, we shall regard the Petition as a Petition for Reconsideration from Staff Action pursuant to our regulations (Regulations) at 52 Pa. Code § 5.44(a).

operate as a Motor Common Carrier of Property (Application). No response to the Petition has been filed. For the reasons set forth herein, we shall grant the Petition.

I. Procedural History

On May 23, 2024, NJR filed its Application with the Commission, requesting authority to operate as a motor common carrier of property for compensation between points in Pennsylvania. Application at 1.

On May 28, 2024, the Commission issued a Secretarial Letter (*May 2024 Secretarial Letter*) that conditionally approved the Application upon the filing of: (1) an acceptable Form E, which is proof of bodily injury and property damage liability insurance; and (2) an acceptable Form H, which is evidence of cargo liability insurance. *May 2024 Secretarial Letter* at 1. The *May 2024 Secretarial Letter* also stated that failure to file the required evidence of insurance within sixty (60) days from the date of the *May 2024 Secretarial Letter*, “**WILL RESULT IN THE DISMISSAL OF THE APPLICATION AND REQUIRE THE FILING OF A NEW APPLICATION AND FILING FEE.**” *Id.* at 2 (emphasis in original).

On July 1, 2024, NJR’s insurer filed Form E (evidence of bodily injury and property damage liability insurance) with the Commission. To date, no Form H (evidence of cargo liability insurance) has been submitted to the Commission by NJR’s insurer, as required by the *May 2024 Secretarial Letter*.

On August 15, 2024, the Commission issued a Secretarial Letter (*August 2024 Secretarial Letter*) denying and dismissing the Application for failure to comply with the proof of insurance requirements set forth in the *May 2024 Secretarial Letter*. Specifically, the *August 2024 Secretarial Letter* indicated that NJR failed to, within sixty (60) days of the *May 2024 Secretarial Letter*, have its insurer file a Form H

with the Commission. The *August 2024 Secretarial Letter* further stated that, if NJR disagreed with this determination, then a Petition for Reconsideration from Staff Action may be submitted to the Commission. *August 2024 Secretarial Letter* at 1. As noted, on August 21, 2024, NJR timely filed its Petition. No response to the Petition has been filed.

II. Discussion

A. Legal Standards

Before us is a Petition for Reconsideration from Staff Action, pursuant to 52 Pa. Code § 5.44(a). 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 considering the appeal from Staff Action, the Application and compliance with Commission Regulations, 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, the Applicant is the party seeking affirmative relief from the Commission. Therefore, the Applicant 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).

In *Se-Ling Hosiery v. Margulies*, *supra*, 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. *Application of 610 Hauling, LLC, t/a College Hunks Hauling Junk*, *supra*, citing *Norfolk & Western Railway Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Also, 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.” 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 evidentiary criteria used to decide motor carrier applications and includes, *inter alia*:

(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.

52 Pa. Code § 41.14.

Finally, under Section 512 of the Code, the Commission has the authority to require insurance. 66 Pa.C.S. § 512. Commission Regulations prohibit a common carrier of property from engaging in intrastate commerce, and no certificate of public convenience will be issued, until a certificate of insurance from an insurer authorized to do business in Pennsylvania has been filed and approved by the Commission. 52 Pa. Code § 32.12. Furthermore, a common carrier of property shall file cargo liability insurance in accordance with Commission Regulations. 52 Pa. Code § 32.13.

B. Petition

The Petition consists of the following: (1) a typed response to the *August 2024 Secretarial Letter*; (2) a Verification statement signed by Mr. Nasir Zaka, NJR's sole member; and (3) a copy of NJR's cargo insurance policy in effect from August 12, 2024 to August 12, 2025. Petition at 1 and Attachment.

The Petitioner avers, in pertinent part, as follows:

Petitioner, through its attorney, provided to an insurance broker a copy of the Commission's approval letter and received assurances that the proper insurance coverage would be placed.

Petitioner received a Dismissal Notice on August 15, 2024 due to failure of his insurance carrier to provide Form H to the Commission.

Petitioner repeatedly attempted to contact his insurance broker to find out why Form H had not been submitted and never received a satisfactory response.

Petitioner finally succeeded in placing the necessary cargo insurance coverage (attached).

Petitioner's insurance broker has advised him that they are unable to upload Form H with Tyler Insurance Filings because 'The insurance company stated since the file was closed that they cannot submit. It has to be reopened'. This can be verified by Dietz and Bluett Insurance, 2000 S Queen St, York, PA 17403; Phone: (717) 757-2761.

Petition at 1, ¶¶ 2-6.

As relief, the Petitioner asks, "that the Commission reconsider its dismissal of Petitioner's application and take whatever action is needed to allow Petitioner's insurance provider to deliver Form H to the Commission, and upon submission thereof give final approval to Petitioner's application." Petition at 2.

As previously noted, no Answer has been filed responding to the Petition.

C. Disposition

Any argument that we do not specifically delineate 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).

The Commission's authority to require insurance of motor carriers is clear. *See*, 66 Pa. C.S. § 512; 52 Pa. Code §§ 32.12 and 32.13. Sections 32.12(a) and 32.13(a) of the Commission's Regulations require common carriers to file with the Commission a certificate of insurance in an amount satisfactory to the Commission. *See*, 52 Pa. Code § 32.12(a) (regarding liability insurance) and § 32.13(a) (regarding cargo insurance). An original of each such certificate of insurance must be filed by the carrier's insurer authorized to do business in the Commonwealth. *Id.*; 52 Pa. Code § 32.2(c).

We recognize that the Petitioner does not have direct control over the filing of the Form H (cargo insurance) and must, in large measure, rely on the representations made by the insurance agent/broker that the matter is being handled in a timely way. However, the Commission has held that it is the carrier, as the regulated entity, that remains ultimately responsible for adherence to the requirements of the Code, and the Commission's Regulations, and therefore, must take all steps necessary to assure that timely filings are made. *See, e.g., Pa. PUC v. C Three Logistics LLC*, Docket No. C-2021-3024623 (Order entered June 16, 2022); *Pa. PUC v. Application of Siscon Logistics LLC for Motor Common Carrier of Property*, Docket No. C-2021-3027455 (Order entered November 18, 2021); *Pa. PUC v. Elite Excavating Services LLC*, Docket No. C-2021-3024155 (Order entered August 26, 2021); *Pa. PUC v. Plastic World Recycling, Inc.*, Docket No. C-2019-3014435 (Order entered June 17, 2021).

Furthermore, NJR is reminded that the *May 2024 Secretarial Letter* advised, as follows:

Applicants are responsible for monitoring their account online. You can do this by visiting the following web address: <https://www.puc.pa.gov/search/utility-authority-search/>. Enter your company name, click submit, then click

on your utility code hyperlink. Navigate to the “Insurance Info” tab, where you can view accepted forms.

May 2024 Secretarial Letter at 1.

Upon review of Commission records, we confirm that on July 1, 2024, NJR’s insurer filed Form E with the Commission. However, our records show no evidence of the filing of Form H by NJR’s insurer, which is consistent with the Petitioner’s factual statements in the Petition.² Petition at 1-2.

The Petitioner notes that, “through its attorney, [it] provided to an insurance broker a copy of the Commission’s approval letter and received assurances that the proper insurance would be placed.” Petition at 1. After it received the *August 2024 Secretarial Letter* dismissing its Application, the “Petitioner repeatedly attempted to contact his insurance broker to find out why Form H had not been submitted and never received a satisfactory response.” *Id.* The Petitioner then states that it “finally succeeded in placing the necessary cargo insurance coverage (attached).” *Id.*³

Based on our review of the Petition and the record, 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

² As noted, *supra*, in its Application, NJR requested authority to operate as a commercial carrier of property (more particularly, the transportation of books). Application at ¶ 10.

³ The cargo liability policy attached to the Petition is for NJR’s coverage commencing on August 12, 2024, three days **before** the Commission’s issuance of the *August 2024 Secretarial Letter* dismissing the Application for failure to file Form H, but 14 days after the 60-day compliance timeframe expired. Petitioner offers that its insurer had difficulty accessing the Tyler Insurance Filings site and Petitioner lists the name and telephone number of its insurance agent, whom it says can confirm this information.

Application, we deem it is reasonable to extend the compliance deadline to have the Applicant ensure that its insurer submits full proof of insurance in support of NJR's Application within twenty (20) days of the entry of 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).

The Petitioner's explanation for its insurer's failure to have filed a Form H is reasonable and, upon receiving the *August 2024 Secretarial Letter*, the Petitioner promptly contacted its insurance agent and sought to rectify the error. Moreover, the Petitioner timely submitted a Form E and now has obtained an effective cargo insurance policy. Allowing evidence of same to be submitted to the Commission is reasonable.⁴

Based on the foregoing considerations, we find the Applicant has met its burden of proof for reconsideration of a Staff Action. Furthermore, given the procedural posture of this Application filing, and its uncontested nature, extending the deadline to allow NJR to file a Cargo Waiver or have its insurer file the acceptable proof of cargo insurance (*i.e.*, Form H) is a more efficient use of the Commission's, and the Petitioner's, resources at this stage. This action also furthers the Commission's support for small businesses operating in the utility sector while still maintaining our regulatory standards.

Therefore, pursuant to 52 Pa. Code §§ 1.2(a) and 1.15(a)(1), we shall:

(1) grant the Petition consistent with this Opinion and Order; (2) conditionally rescind the *August 2024 Secretarial Letter*; (3) require NJR to file an Exemption from PUC Cargo

⁴ We also observe that the Petitioner has indicated in its Application that it will be transporting books. Thus, it is possible that the Petitioner may be eligible for an exemption from cargo insurance because it will be transporting goods where the value of any one load being transported will not be more than \$500 in value. If that is the case, NJR is authorized to seek such a Waiver by timely submitting an appropriate Exemption from Cargo Insurance Regulations form (Cargo Waiver) and accompanying verification, in lieu of its current cargo insurance and Form H.

Insurance Regulations and verification or have its insurance company file the required cargo insurance Form H, whichever is appropriate; and (4) refer this matter to TUS for such further action as may be warranted. We further remind NJR that it should timely comply with any requests from TUS to complete the application process.

III. Conclusion

For the reasons discussed herein, we will grant the Petition, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action, filed by NJR Possible Management, LLC, on August 21, 2024, at Docket No. A-2024-3049224, is granted, consistent with this Opinion and Order.
2. That within twenty (20) days of the entry date of this Opinion and Order, NJR Possible Management, LLC shall have its insurer file the Applicant's proof of cargo insurance (Form H) or an Exemption from PUC Cargo Insurance Regulations and verification.
3. That upon the compliance and completion of Ordering Paragraph No. 2 above, the Secretarial Letter issued on August 15, 2024, at Docket No. A-2024-3049224, will be rescinded.
4. That this matter is referred to the Bureau of Technical Utility Services for such further action as may be warranted.

5. That if NJR Possible Management, LLC fails to comply with Ordering Paragraph No. 2, the Secretarial Letter issued on August 15, 2024, at Docket No. A-2024-3049224, will be the Commission's final action in this proceeding.

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: October 10, 2024

ORDER ENTERED: October 10, 2024