

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

Public Meeting held January 8, 2025

Commissioners Present:

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

Application of Baboo Home Care and
Baboo Non-Emergency Medical Transportation LLC

A-2024-3049988

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Letter Petition (Petition) filed by Guerdie Pacombe, on behalf of Baboo Home Care Agency and Baboo Non-Emergency Medical Transportation LLC (Applicant or Baboo), on September 13, 2024, relative to the above-captioned proceeding. The Secretarial Letter to which the Petition refers was issued on August 23, 2024 (*August 2024 Secretarial Letter*).¹ No Answer to the Petition has been filed. For the reasons that follow, we will grant the Petition, rescind the *August 2024*

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

Secretarial Letter, and refer this matter to the Commission’s Bureau of Technical Utility Services (TUS) for such further action as may be deemed warranted, consistent with the discussion in this Opinion and Order.

I. History of Proceeding

On May 17, 2024, Baboo filed an Application with the Commission (Application) seeking approval for the right to operate as a common carrier of persons in paratransit service from points in the Counties of Franklin, Adams, Fulton, Cumberland, York, Lancaster, and Perry, and return.²

On July 11, 2024, TUS sent its First Data Request, wherein it requested, *inter alia*, that the Applicant provide an adequate answer to questions #5 and #10 of the Verified Statement of Applicant regarding hiring standards for drivers, including criminal background checks and license history as it relates to 52 Pa. Code §§ 29.503-05. The Applicant was required to describe its service area, and more specifically, the areas/counties from which it intends to originate service.

Additionally, to further assist the Commission in determining jurisdiction of the Applicant’s proposed service, the Applicant was asked whether the service described in the application was “incidental to primarily non-transportation business.” First Data Request at 2.

On July 12, 2024, the Applicant provided its responses to the First Data Request.

² The Applicant did not indicate a service area in its application, however in response to TUS’s July 11, 2024 Data Request (First Data Request), the Applicant indicated Franklin, Adams, Fulton, Cumberland, York, Lancaster, and Perry counties as the service areas from which it intends to provide service.

In its response the Applicant explained its hiring and retention process for its drivers. Notably, the Applicant provided that in order to operate its paratransit vehicle its drivers must be at least eighteen years old and that the Applicant must have obtained and reviewed the criminal history record from the Pennsylvania state police and every other state in which the prospective driver had resided in the last twelve months. The Applicant further explained that the driver's criminal history record will be reviewed once every twelve months. Response to First Data Request at 1-2.

As discussed *Infra*, the Applicant proposed paratransit service between point in the counties of Franklin, Adams, Cumberland, York, Lancaster, Dauphin, and Perry. Response to First Data Request at 1.

In response to whether the Applicant's proposed services were incidental to primary non-transportation business, the following was provided:

- A) Assistance with Ambulation for Clients with various disabilities to include wheelchair and Stretcher or Walkers.
- B) The Transport Trips are for Medical Appointments, Help with Grocery Shopping and Errands.

Response to First Data Request at 1.

Because the Applicant did not provide certain information requested by TUS in the First Data Request, TUS issued a second Data Request (Second Data Request) on July 17, 2024.

Specifically, TUS' Second Data Request stated, in pertinent part, as follows:

- 1.) Please know that the service you describe within your Paratransit application may not require PUC authority,

as it relates to the following exemption. *Incidental to primary non-transportation business.* **To determine jurisdiction over your transportation services, we must receive a better definition of the word clients.**

- A) What other services do these riders receive from your Company? List all that apply.
- B) What is the purpose of those transports/trips?
- C) Please view our complete list of exemptions on our PUC website. If you find that you are exempt from PUC regulation, we ask you to withdraw your application.

The purpose of the verified statement questions is to determine your ability to provide safe, efficient, and reasonable transportation. It is in your best interest to provide accurate, complete, and timely responses. Failure to do so is sufficient grounds to justify the denial of your application because you have failed to provide sufficient evidence of your fitness to operate. Be advised that additional corrections may not always be requested; therefore, prior to submitting your responses, your consultation with an attorney or financial expert familiar with Commission regulated Motor Carrier related proceedings is highly encouraged.

Second Data Request at 1 (emphasis in original).

On July 19, 2024, Baboo filed the following Response to the Second Data Request, providing as follows:

- A) Baboo Home Care Agency and Baboo Non-Emergency Medical Transportation LLC provides transportation for individuals that are not in an emergency situation but need more assistance than a Taxi service is able to provide. We are equipped to transport Wheelchair and Stretcher Services and Ambulatory service to individuals that need assistance getting in and out of Vehicles and assisting these individuals with shopping or getting into buildings or establishments.
- B) To get Individuals to Medical Appointments, Grocery Shopping, Churches or any other Personal

Appointments like Barber Shops, Beauty Salons or other Activities such as a Park or Restaurant.

Response to Second Data Request at 2.

On August 3, 2024, TUS send out a third Data Request (Third Data Request) stating that the Applicant did not fully answer the question on “(w)hat other services do these riders receive from your Company? List all that apply: For example, assistance to the bathroom, room and board, taking medication, taking a bath and more....” Third Data Request at 3.

On August 13, 2024, Baboo filed a Response to TUS’s Third Data Request. The Applicant’s response was similar to the one that was provided to TUS’s Second Data Request. The Applicant stated that it intends to provide transportation for home care clients that are not in an emergency situation, but who require “more assistance than just a taxi service is able to provide.” Additionally, Baboo stated that it would help transport its clients to “Medical Appointments, Grocery Shopping, Churches or any other Personal Appointments like Barber Shops, Beauty Salons or other Activities such as a Park or Restaurant.” Response to Third Data Request at 2.

On August 23, 2024, after making a determination that the Applicant’s proposed services were exempt from Commission regulations, TUS issued a Secretarial Letter (*August 2024 Secretarial Letter*) denying and dismissing the Application. In pertinent part, the *August 2024 Secretarial Letter* stated, as follows:

The purpose of this Letter is to advise you that your application for authority at Docket No. A-2024-3049988, has been **DENIED** by the Pennsylvania Public Utility Commission (Commission). The Commission has

determined that a Certificate of Public Convenience shall not be granted for the following reason(s):

- Applicant is exempt from Commission regulations.

All transportation services described are incidental to primary non-transportation (home care) business, as described in PA PUC Exemptions.

For this reason(s), your application is **DENIED** and **DISMISSED**.

August 2024 Secretarial Letter at 1 (emphasis in original).

Additionally, the *August 2024 Secretarial Letter* informed Baboo that, if it disagreed with the Commission's determination, it could submit a Petition for Reconsideration with the Commission's Secretary within twenty (20) days of the date of the *August 2024 Secretarial Letter*. TUS outlined instructions regarding the form and content of such a Petition, including references to the inclusion of relevant documentation and verification with an original signature, as set forth in 52 Pa. Code §§ 1.31 and 5.44. Further, TUS provided the Applicant with a sample verification statement. *August 2024 Secretarial Letter* at 2.

On September 13, 2024, Baboo timely filed the instant Petition in response to the *August 2024 Secretarial Letter*. 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*, 364 Pa. 45, 70 A.2d 854 (1950) (*Se-Ling Hosiery*)).

In *Se-Ling Hosiery, 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*, 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 § 41.14.³

B. Petition

In its Petition, the Applicant seeks reconsideration of the *August 2024 Secretarial Letter*. Therein, the applicant states, as follows:

³ 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.

Please reconsider my application because I will be providing Transportation to anybody who is looking for transportation to go anywhere. Many people will have access to books[sic] for services online that will be a public service. I want to provide to the clients who live [a]round Franklin county, Adams county, Fulton county, Cumberland county, York county Dauphin and Perry county.

Petition at 1.

C. Disposition

In considering this Petition, we are not required to consider, expressly or at length, each and every contention raised by a party to our proceedings. *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.

Based on our review of the Petition and the associated record documents, we shall rescind the *August 2024 Secretarial Letter*. The Petitioner has met the standard for reconsideration by raising additional information which we find warrants consideration before rendering a final determination on the Application. The Petition states that “I will be providing Transportation to anybody who is looking for transportation to go anywhere.” which appears to successfully rebut the finding of TUS in the *August 2024 Secretarial Letter* that “all transportation services described by the Applicant are incidental to primary non-transportation or home care business.”

We acknowledge that responses the Applicant provided to TUS’s Data Requests may have been ambiguous. Nonetheless, we find that the Applicant has provided sufficient clarification in its Petition. Additionally, in the Application, the Applicant explained that it will use a 2005 Toyota Sienna with a seating capacity of seven

people. As such, we find that this indicates the Applicant's intention to provide paratransit transportation service. We conclude that, under the circumstances in this case, it is appropriate and reasonable to rescind the *August 2024 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 review the information provided with the Petition and to request any additional information or evidence from Baboo, if necessary. 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 Baboo's resources at this stage of the proceeding.

The Commission takes no position on the merits of Baboo's Application at this time, but solely notes that it is appropriate to refer this matter to TUS based on the responsive filing. We encourage that this matter, and any impediments or deficiencies with the Application, be resolved in a cooperative and expeditious manner to ensure that the Applicant and its Application are compliant with applicable law as well as Commission Regulations and Orders.

III. Conclusion

For the reasons discussed herein, we will grant the Petition, rescind the *August 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. The Petition for Reconsideration from Staff Action filed by Baboo Home Care Agency and Baboo Non-Emergency Medical Transportation LLC on

September 13, 2024, at Docket No. A-2024-3049988, is granted, consistent with this Opinion and Order.

2. That the Secretarial Letter issued on August 23, 2024, at Docket No. A-2024-3049988, is rescinded.

3. That this matter, at Docket No. A-2024-3049988, be referred to the Commission's 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 fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 8, 2025

ORDER ENTERED: January 8, 2025