

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

Public Meeting held July 10, 2025

Commissioners Present:

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

Application of Pocono Mountain Transportation, Inc.

A-2025-3053910

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration (Petition) filed on April 9, 2025, by Craig A. Doll, counsel on behalf of Pocono Mountain Transportation, Inc. (Applicant or Pocono Mountain). The Secretarial Letter to which the Petition refers was issued on April 3, 2025 (*April 2025 Secretarial Letter*).¹ No Answer to the Petition has been filed. For the reasons that follow, we will grant the Petition, conditionally rescind the *April 2025 Secretarial Letter*, and refer this matter to the Commission's

¹ Because the instant Petition challenges the action taken in the *April 2025 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).

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

I. History of Proceeding

On March 11, 2025, Pocono Mountain filed an Application with the Commission seeking approval for the right to operate as a motor common carrier of persons in paratransit service from points in the counties of Monroe, Pike, and Carbon and the Townships of Plainsfield, Washington, and Upper Bethel, all in Northampton County, to points in Pennsylvania, and return. Application at 1, 3.

On March 17, 2025, TUS issued a Data Request (*March 2025 Data Request*), wherein it acknowledged acceptance of the Application and requested certain information from the Applicant. TUS included an Attachment to the *March 2025 Data Request*, wherein it requested that Pocono Mountain submit a revised Statement of Financial Position.

Specifically, the *March 2025 Data Request* stated, as follows:

1. Please review the below criteria and submit a revised compliant Statement of Financial Position:
 - a. The statement presented must be **DATED and comprised of information which is less than 6 months old.**
 - b. The submission **MUST be comprised of information which is accurate as of the date provided.**
 - c. **The information is to be exact and should not include estimates or approximations when accurate numbers are available.** Property and vehicle valuations may be approximations; however, if the valuation is higher than typical Kelly Blue Book (or similar) valuations, you should provide an explanation as to why (e.g. vehicle with

an installed wheelchair lift, etc). Bank accounts and loan balances should be exact amounts (rounded to the nearest dollar).

- d. **ALL relevant assets and debts** are to be included (for example: vehicle loan balances/vehicle asset value, lease expenses, etc.).
- e. **The information provided is also to be strictly limited to assets and debts HELD BY THE APPLICANT (POCONO MOUNTAIN TRANSPOTATION, INC.), and not the individual member(s). Any property and accounts listed MUST be registered or titled to the corporation. Bank accounts must be in the name of POCONO MOUNTAIN TRANSPOTATION, INC. Vehicles must be registered to POCONO MOUNTAIN TRANSPOTATION, INC. Property must be titled to POCONO MOUNTAIN TRANSPOTATION, INC. If these items are not in the name of POCONO MOUNTAIN TRANSPOTATION, INC., [they] should NOT be included on the balance sheet.**

If you have not fully funded and equipped the business, now is the time to do so (before re-submitting your corrections). Applicants lacking suitable finances, resources, and equipment will be denied authority.

March 2025 Data Request, Attachment at 1 (emphasis in original).

To further assist the Commission in verifying the accuracy of the Applicant's presented balance sheet, TUS also requested that Pocono Mountain provide either a copy of its bank statement or a notarized/official statement of account balance/ownership provided by bank officers (with current contact information). TUS further requested that the Applicant provide proof of ownership/registration of any and all vehicles and land/building. *March 2025 Data Request, Attachment at 1-2.*

TUS encouraged Pocono Mountain to enlist professional financial assistance if it had trouble in constructing its statement of financial position. TUS

advised the Applicant that failure to provide an acceptable financial statement would be sufficient grounds for the denial of its Application. *March 2025 Data Request* at 2.

TUS has requested that the Applicant provide a response to the *March 2025 Data Request* within ten (10) working days. *March 2025 Data Request, Cover Letter*.

On April 1, 2025, Pocono Mountain filed a timely response to the *March 2025 Data Request*, along with a revised balance sheet.

On April 3, 2025, the Commission issued the *April 2025 Secretarial Letter* denying and dismissing the Application for the Applicant's failure to provide satisfactory evidence of fitness to operate. In pertinent part, the *April 2025 Secretarial Letter* stated, as follows:

The purpose of this Letter is to advise you that your Application, Docket No. A-2025-3053910, has been **DENIED** by the Pennsylvania Public Utility Commission (Commission). The Commission has determined that a Certificate of Public Convenience **WILL NOT BE GRANTED** for the following reason(s):

- **Failure to establish fitness to operate:**

On March 12, 2025, the applicant was issued a detailed 10-day data request seeking verifiable evidence to substantiate the financial position stated in the application. The applicant was supplied with multiple examples of acceptable means of evidence to support its financial position.

On April 1, 2025, the applicant's response was received. The supplied response included revised figures which differed from the original February 27, 2025, dated statement. The submission also lacked any manner of evidence to support the claimed assets and finances.

Absent the requested evidence of assets and financial position the Commission is unable to properly determine that applicant's ability to provide safe, efficient, and reasonable transportation.

For these reasons the application is DISMISSED and DENIED.

April 2025 Secretarial Letter at 1 (emphasis in original).

Additionally, the *April 2025 Secretarial Letter* informed Pocono Mountain that, if it disagreed with the Commission's determination, it could submit a Petition for Reconsideration from Staff Action with the Commission's Secretary within twenty (20) days of the date of the *April 2025 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. *April 2025 Secretarial Letter* at 2.

On April 9, 2025, Pocono Mountain timely filed the instant Petition in response to the *April 2025 Secretarial Letter*. No response to the Petition has been filed.

II. Discussion

A. Legal Standards

Petitions for Reconsideration from Staff Action are governed by the Commission's Rules of Administrative Practice and Procedure at 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).

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, Pocono Mountain is the party seeking affirmative relief from the Commission. Therefore, Pocono Mountain 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)).

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 request.
- (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 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).
- (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 crime of moral turpitude and

remains subject to supervision by a court or correctional institution.

52 Pa. Code § 41.14.²

Finally, 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.”

B. Petition

In the Petition, counsel for Pocono Mountain states that based on TUS’s *April 2025 Secretarial Letter*, it appears that the Application was denied because the revised figures the Applicant provided in the balance sheet that it submitted with its response to the *March 2025 Data Request* were different than the one provided with the Application; and that the submission lacked evidence of support for the assets and finances that were claimed in its balance sheet. Counsel insists that Pocono Mountain heeded to TUS’s advice that it engage its accountant to prepare an updated financial statement from the books and records of the Applicant, and not of the individual owner. Counsel submits that as Poconos Mountain is not currently providing the service requested in the Application, any revenues and expenses can only be estimated, and that, in all other respects, Pocono Mountain has complied with the *March 2025 Data Request*.

² 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. The Final Policy Statement maintained the language of prior subsection (b), which delineates the factors to be considered and examined in determining an applicant’s technical and financial fitness. The Final Policy Statement became effective upon publication in the *Pennsylvania Bulletin* on February 10, 2018, at 48 *Pa.B.* 882.

Finally, counsel states that if TUS needs additional information, it will provide such information. Accordingly, the Applicant requests reconsideration of the *April 2025 Secretarial Letter*, which dismissed Poconos Mountain's Application. Petition at 1-2.

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.

On consideration of the arguments raised by Pocono Mountain, we shall grant the Petition, consistent with the following discussion.

On review of the Applicant's Petition, we note that although the Applicant has not provided evidence in support of its assets and finances, as requested by TUS in the *March 2025 Data Request*, the Applicant has provided information with its Petition attempting to correct certain other deficiencies identified by TUS in both the *March 2025 Data Request* and the *April 2025 Secretarial Letter*. Pursuant to Section 1.2 of the Regulations, 52 Pa. Code §§1.2 (a)-(b), the Commission may exercise its discretion to overlook an error of procedure, where necessary, to secure the efficient resolution of a matter so long as the substantive rights of other parties are not adversely affected. In light of Pocono Mountain's attempt to provide additional documentation, as well as its willingness to cooperate, we conclude that, under the circumstances in this case, it is appropriate and reasonable to conditionally rescind the *April 2025 Secretarial Letter* and refer this matter to TUS for consideration and for such further action as may be warranted, given TUS' expertise in reviewing motor carrier applications for authority. Accordingly, we shall refer this matter to TUS to continue processing the Application and

shall allow Pocono Mountain an additional thirty (30) days in which to provide the required information. In our view, 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 Pocono Mountain's resources at this stage of the proceeding.

Finally, we note that we take no position on the merits of Pocono Mountain's Application at this time. Nonetheless, we wish to emphasize to Pocono Mountain that it should endeavor to provide all information sought by TUS regarding the Applicant's ability to provide the proposed services, in order to facilitate the ability of TUS to perform an exhaustive review of the Application.

III. Conclusion

For the reasons discussed herein, we will: (1) grant the Petition; (2) conditionally rescind the *April 2025 Secretarial Letter*; and (3) 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 Pocono Mountain Transportation, Inc. on April 9, 2025, at Docket No. A-2025-3053910 is granted, consistent with this Opinion and Order.

2. That the Secretarial Letter issued on April 3, 2025, at Docket No. A-2025-3053910, is conditionally rescinded, contingent upon Pocono Mountain Transportation, Inc. responding with the required information within thirty (30) days of the entry of this Opinion and Order.

3. The Application of Pocono Mountain Transportation, Inc., at Docket No. A-2025-3053910, is 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.

4. That should Pocono Mountain Transportation, Inc. not respond within thirty (30) days of the entry date of this Opinion and Order, the Commission's Secretarial Letter, issued on April 3, 2025, will be deemed the final action in this matter, and the case will be closed.

BY THE COMMISSION,

A handwritten signature in black ink that reads "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: July 10, 2025

ORDER ENTERED: July 10, 2025