

**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 Kindness Services LLC

A-2025-3054435  
A-6427869

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration (Petition) filed by Ms. Naima Witherspoon, on behalf of Kindness Services LLC (Applicant or Kindness), on May 8, 2025, relative to the above-captioned proceeding.<sup>1</sup> The Secretarial Letter to which the Petition refers was issued on May 5, 2025 (*May 2025 Secretarial Letter*).<sup>2</sup>

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<sup>1</sup> Naima Witherspoon is listed as the sole member and officer of Kindness Services LLC. Application at 2, 5, 7.

<sup>2</sup> Because the instant Petition challenges the action taken in the *May 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).

No Answer to the Petition has been filed. For the reasons that follow, we will grant the Petition, rescind the *May 2025 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 this Opinion and Order.

## **I. History of the Proceeding**

On April 4, 2025, Kindness 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 Dauphin, Cumberland, and Perry to points in Pennsylvania and return. Application at 1, 3.

On April 10, 2025, TUS issued a Data Request (*April 2025 Data Request*), wherein it requested clarification regarding the Applicant’s nature of business; whether its clients will be arising through the Applicant’s existing/concurrent home healthcare services; and whether its services will be available to the public at large. *April 2025 Data Request* at 3.

On April 17, 2025, Kindness replied to TUS’s *April 2025 Data Request*. In its reply, Kindness stated that its clients “will be from existing and concurrent home healthcare services within our company with ODP.” Reply to Data Request at 3.

On May 5, 2025, after making a determination that the Applicant’s proposed services were exempt from Commission regulations, TUS issued the *May 2025 Secretarial Letter* denying and dismissing the Application. In pertinent part, the *March 2025 Secretarial Letter* stated, as follows:

Upon full consideration of the information provided in the initial application, it has been determined that the

proposed operations of Kindness Services LLC are incidental to primary non-transportation business.

As such, the requested transportation services remain outside of the Pennsylvania Public Utility Commission's jurisdiction and are exempt from Commission regulation and oversight.

On May 8, 2025, Kindness filed the instant Petition. No response to the Petition was 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, 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, Kindness Services LLC is the party seeking affirmative relief from the Commission. Therefore, Kindness Services LLC 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.<sup>3</sup>

Finally, pursuant to Section 1103(a) of the Code, 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.”

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<sup>3</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.

## **B. Petition**

In its Petition, Kindness seeks reconsideration of the *May 2025 Secretarial Letter*. The Applicant purports that it intends to begin a new, separate, line of service solely for transportation that is not part of any other service currently offered by Kindness. To make it abundantly clear as to the nature of its new transportation service, Kindness provides an example of another service that it currently provides, Home and Community Habilitation. Under this service, for which the Applicant does not need to seek a certificate of public convenience from the Commission, individuals are driven to a community event, or to an appointment. In contrast, Kindness states that as to its new proposed service, it will be using Pennsylvania roads in exchange for payment from clients using the service. Kindness insists that such service is under the Commission's jurisdiction such that the Applicant must obtain a certificate of public convenience. Kindness also notes that the Commission has recently, as of September 2024, licensed another entity who is in the same line of business as the Applicant. According to Kindness, that entity's application was initially denied by the Commission, but that after clarification, the Commission granted the entity a certificate of public convenience for its proposed service. Kindness further notes that most of the Applicant's clients will be referred to the Applicant by county Supports Coordinators who act as case managers for people with disabilities in the identified counties. Kindness explains that payment for this service is paid through Medicaid. Petition at 1.

## **C. 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).

Based on our review of the Petition and the associated record documents, we shall rescind the *May 2025 Secretarial Letter*. Namely, 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. In its Petition, Kindness states that “(W)e would like to clarify that the transportation service we intend to provide is a separate line of service from anything Kindness Services is currently offering...This will be a separate service offering for passengers not in any of its programs.” In our view, the Applicant’s explanation in its Petition appears to correct the finding of TUS in the *May 2025 Secretarial Letter* that “the proposed operations of Kindness Services LLC are incidental to primary non-transportation business.” *May 2025 Secretarial Letter* at 1.

We acknowledge that the Applicant’s responses to TUS’s *April 2025 Data Request* may have been ambiguous. Nonetheless, we find that the clarification provided by the Applicant in its Petition, as well as our review of the information provided by Kindness in its Application regarding the vehicles it intends to use in the proposed service, makes it clear that Kindness intends to provide transportation services. *See* Petition at 1; Application, Verified Statement at ¶ 6. We conclude that, under the circumstances in this case, it is appropriate and reasonable to rescind the *May 2025 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 Kindness, 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 Kindness' resources at this stage of the proceeding.

The Commission takes no position on the merits of Kindness' 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 *May 2025 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 Kindness Services LLC on May 8, 2025, at Docket No. A-2025-3054435, is granted, consistent with this Opinion and Order.

2. That the Secretarial Letter issued on May 5, 2025, at Docket No. A-2025-3054435, is rescinded.

3. That this matter 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.

**BY THE COMMISSION,**

A handwritten signature in black ink, reading "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