

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

Public Meeting held August 28, 2025

Commissioners Present:

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

Applications of Kelvin D Ferguson & Sons LLC

A-2025-3055257
A-2025-3055259
A-8925552

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), filed on June 23, 2025, by Kelvin D Ferguson & Sons LLC (Ferguson LLC or the Applicant), relative to the above-captioned proceeding.¹ Therein, the Applicant requests reconsideration of the Commission’s Secretarial Letter that was issued to

¹ We note at the onset that, according to the Pennsylvania Department of State, the Petitioner’s registered legal name is “Kelvin D Ferguson & Sons LLC,” formerly “Kelvin D Ferguson & Sons” and, most recently, “Kelvin D. Ferguson & Sons LLC.”

Ferguson LLC on June 3, 2025 (*June 2025 Secretarial Letter*).² No Answer to the Petition has been filed. For the reasons set forth herein, we shall grant the Petition, rescind the *June 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 necessary, consistent with the discussion in this Opinion and Order.

I. Procedural History

On May 19, 2025, Ferguson LLC filed an Application for Motor Common Carrier or Motor Contract Carrier of Household Goods in Use (HGU Application) at Docket No. A-2025-3055257 with the Commission.³ HGU Application at 1. In its HGU Application, Ferguson LLC requested authority “to transport household goods in use between points in Pennsylvania.”⁴ *Id.* at 3.

² Because the Petition challenges the action taken in the *June 2025 Secretarial Letter* and was filed within twenty (20) days of the issuance of the *June 2025 Secretarial Letter*, we shall regard the Petition as a Petition for Reconsideration from Staff Action, pursuant to 52 Pa. Code § 5.44(a). We note that on May 21, 2025, the Commission issued a Secretarial Letter dismissing the Applications. Subsequently, on June 3, 2025, the Commission issued the *June 2025 Secretarial Letter*, wherein “(**Corrected**)” is indicated at top of the letter. *See June 2025 Secretarial Letter* at 1 (emphasis in original).

³ We note that the Verification of Application and Verified Statement of Applicant included with the HGU Application were signed by Djuan Ferguson (Mr. Ferguson), identified as the owner and sole member of Ferguson LLC. HGU Application at 3, 5, 8. We further note that Bryce R. Beard, Esq. (Mr. Beard) is identified as counsel for Ferguson LLC. *Id.* at 2.

⁴ We note that at Docket Nos. A-2022-3036486 and A-8925552, the Commission issued a Certificate of Public Convenience (CPC) to “Kelvin D Ferguson & Sons LLC” evidencing the Commission’s approval to transport, as a common carrier, by motor vehicle, household goods in use, between points in Allegheny County, effective December 22, 2023.

Also, on May 19, 2025, Ferguson LLC filed an Application for Motor Common Carrier of Property (Property Application) (collectively, the Applications), Docket No. A-2025-3055359, with the Commission.⁵ Property Application at 1. In its Property Application, Ferguson LLC requested authority “to transport cargo between businesses and end user customers on a contract basis, such as delivery of large appliance[s] or similar items.” *Id.* at 3.⁶

On May 21, 2025, the Commission’s Bureau of Technical Utility Services (TUS) issued a Secretarial Letter denying Ferguson & Sons’ Applications.⁷

On June 3, 2025, the Commission issued the *June 2025 Secretarial Letter* dismissing both of the Applications. In pertinent part, the *June 2025 Secretarial Letter* stated as follows⁸:

- **Failure to establish fitness to operate.** Under 52 Pa. Code §41.14(4)[,] [t]he Commission is to determine whether an applicant possesses the technical and financial ability to provide the proposed service . . .

⁵ We note that the Verification of Application included with the Property Application were signed by Mr. Ferguson. Property Application at 3. We further note that Mr. Beard is identified as counsel for Ferguson LLC. *Id.* at 2.

⁶ The Commission had previously granted the Petitioner authority to provide Household Goods and Property service within the confines of Allegheny County at Docket No. A-895552.

⁷ TUS combined its denial of both Applications in one Secretarial Letter.

⁸ We note that the *June 2025 Secretarial Letter* included statements pertaining to prior consideration of the Applicant’s fitness, which are irrelevant to the ultimate disposition of this case. Therefore, such statements will be stricken from the *June 2025 Secretarial Letter* and not considered in our disposition. Specifically, on page 1, under the bullet labeled “[f]ailure to establish fitness to operate,” we shall strike: (1) the entirety of the third sentence, beginning with “[i]n 2023...” and ending with “... an uncertificated carrier;” and (2) the following words in the sixth sentence: “... the Commission’s previous reservations ...” *See June 2025 Secretarial Letter* at 1 (emphasis omitted).

[T]he carrier has failed to achieve a satisfactory safety fitness review demonstrating at least a minimal compliance with the Commission's motor carrier safety regulations. In addition to that, the information provided in [the instant] [A]pplication[s] failed to provide acceptable policies for criminal background checks and driver license/history checks that complied with the regulations found at Title 52 Pa[.] Code §§ 31.134, 37.204, and 49 CFR §391.25. Given . . . the [Applicant's] inability to obtain satisfactory safety fitness reviews, and the [Applicant's] failure to provide compliant policies/plans for the hiring/employment of drivers for their vehicles, it has been determined that the [A]pplicant lacks the requisite technical fitness to provide safe, efficient, and reliable transportation.

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

June 2025 Secretarial Letter at 1-2 (emphasis in original).

Additionally, the *June 2025 Secretarial Letter* informed the Applicant that, if it disagreed with the Commission's determination, then it could submit a Petition for Reconsideration from Staff Action with the Commission's Secretary within twenty (20) days of the date of the *June 2025 Secretarial Letter*. Further, TUS outlined instructions regarding the form and content of such a Petition for Reconsideration from Staff Action, including references to the inclusion of relevant documentation and a signed verification statement, as set forth in 52 Pa. Code §§ 1.31 and 5.44. *June 2025 Secretarial Letter* at 2.

As noted, on June 23, 2025, Ferguson LLC timely filed its Petition.⁹ No response to the Petition has been filed.

⁹ We note that the Petition: (1) is signed by Mr. Beard, identified as counsel for Ferguson LLC; and (2) includes a Verification statement signed by Mr. Ferguson. Petition at 7-8.

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.

In considering an appeal from Staff Action, the Applications, and compliance with Commission Regulations, Section 332(a) of the 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, Ferguson LLC is the party seeking affirmative relief from the Commission. Therefore, Ferguson 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 (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 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. *610 Hauling* (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)).

In order to make the determination whether granting a certificate is necessary or proper for the service, accommodations, convenience or safety of the public, 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 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 § 41.14.¹⁰

¹⁰ 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.

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.” 66 Pa.C.S. § 1103(a).

B. Ferguson LLC’s Petition

The Petition consists of the following: (1) a cover letter signed by Mr. Beard; (2) a typed response to the *June 2025 Secretarial Letter* signed by Mr. Beard; (3) a verification statement signed by Mr. Ferguson; and, (4) a nine page document indicating that a “Safety Audit” or “safety fitness review” of “KELVIN D FERGUSON & SONS LLC,” was conducted by the Commission’s Bureau of Investigation and Enforcement (I&E), on June 5, 2025 (Safety Audit Report).¹¹ Petition at 1-19.

In response to the *June 2025 Secretarial Letter*, the Applicant asserts that the *June 2025 Secretarial Letter* “prejudged” the Applications. Petition at 2 (citing *June 2025 Secretarial Letter* at 1). Further, the Applicant asserts that Ferguson LLC has been working in good faith with Commission staff to correct minor record keeping violations that resulted in a failed safety audit earlier in 2025.¹² Petition at 2, 4. Moreover, the Applicant notes that the Commission issued its Safety Audit Report on June 6, 2025, wherein Ferguson LLC: (1) received a *passing safety inspection*; (2) had no reportable accidents to date; (3) resolved its record keeping issues regarding driver’s application; and (4) confirmed the process for running background checks, in compliance with 52 Pa. Code § 32.134(a). *Id.* at 2, 5 (emphasis added). Accordingly, the Applicant

¹¹ See Petition at 12. We note that the Safety Audit Report provides the name of the “Safety Investigator” and a phone number and mailing address for a contact person in I&E. *Id.*

¹² Specifically, the Applicant avers that Ferguson LLC has been working with the Commission’s “Bureau of Transportation & Safety Motor Carrier Enforcement division.” Petition at 2.

avers that Ferguson LLC has met the Commission's technical fitness requirement, thereby rendering the *June 2025 Secretarial Letter* moot. Petition. at 2, 6.

The Applicant also notes that Section 3.381 of the Commission's Regulations, 52 Pa. Code § 3.381, establishes the procedures for filing an application for the transportation of household goods in use. The Applicant continues that an existing licensed carrier, such as Ferguson LLC, is presumed technically fit to operate safely and in compliance with the Commission's Regulations. Petition at 4. Further, the Applicant avers that when Ferguson LLC filed its Applications, a follow-up Commission review / safety audit of Ferguson LLC was pending and corrective actions to remedy the record-keeping issues were already taken. *Id.* at 4-5. Moreover, the Applicant asserts that rescinding the *June 2025 Secretarial Letter* is more administratively effective and reasonable for Ferguson LLC and the Commission than the duplicative work that would be associated with Ferguson LLC filing new applications. *Id.* at 6. The Applicant closes the Petition by requesting that the Commission grant the Petition and rescind the *June 2025 Secretarial Letter*. *Id.* at 7.

C. Disposition

In considering the instant Petition, we note that 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 Applicant's Petition and the associated record documents, we shall grant the Petition, consistent with the following discussion.

As noted, *supra*, Ferguson LLC’s Applications were denied and dismissed because Ferguson LCC failed to: (1) demonstrate “compliance with the Commission’s motor carrier safety regulations;” and (2) “provide acceptable policies for criminal background checks and driver license/history checks” demonstrating compliance with: (a) Section 31.134 of the Commission’s Regulations, 52 Pa. Code § 31.134 (relating to criminal history); (b) Section 37.204 of the Commission’s Regulations, 52 Pa. Code § 37.204 (relating to adoption of portions of Title 49 of the Code and Federal Regulations (CFR));¹³ and (3) Section 39.125 of Title 49 of the CFR, 49 CFR § 391.25 (relating to annual inquiry and review of driving record). *June 2025 Secretarial Letter* at 1.

As noted, *supra*, in its Petition, the Applicant includes a copy of the Safety Audit Report of Ferguson LLC, completed by I&E on June 5, 2025. The Safety Audit Report indicates, *inter alia*, that Ferguson LLC maintains: (1) motor vehicle marking requirements; (2) driver applications; (3) motor vehicle records received from each state; (4) the certificate of driver’s road test, or a copy of the license equivalent; (5) the motor vehicle record from each state driver licensing agency to the annual driver record inquiry; (6) the annual review of driving records for drivers; (7) a list or certificate relating to violations of motor vehicle laws; (8) the medical examiner’s certificate; (9) investigations into the driver safety performance history; (10) a system for recording hours of duty status on 100/150-mile radius drivers and is property using the 100/150 air-mile radius exemption; (11) a requirement that drivers submit records of duty status within thirteen (13) days; (12) records of duty status and supporting documents for

¹³ Pursuant to Section 37.204 of the Commission’s Regulations, 52 Pa. Code § 37.204, the Commission incorporates, by reference, the following sections of Title 49 of the CFR: (1) Part 382 (relating to driver drug and alcohol testing); (2) Part 390 (relating to Federal motor carrier safety regulations, general); (3) Part 391 (relating to qualifications of drivers); (4) Part 392 (relating to driving of motor vehicles); (5) Part 393 (relating to parts and accessories necessary for safe operation); (6) Part 395 (relating to hours of service for drivers); and (7) Part 396 (relating to inspection, repair, and maintenance). 52 Pa. Code § 37.204.

selected drivers; (13) evidence of maintenance files for requested vehicles; (14) evidence of annual inspections for selected vehicles; and, (15) evidence of the qualifications of the mechanic used for vehicle inspections. Petition at 13-14, 16-17.

The Safety Audit Report also indicates that Ferguson LLC does not allow drivers to: (1) exceed the eleven-hour or fourteen-hour rules for property; and (2) drive after having been on duty more than sixty hours in seven consecutive days, or more than seventy hours in eight consecutive days. Petition at 16. Further, the evidence available during the safety audit did not indicate that a selected Ferguson LLC driver had prepared a false record of duty status. *Id.* at 17. Moreover, the Safety Audit Report indicates that Ferguson LLC has conducted driver background checks and ensures that drivers: (1) are physically qualified; (2) operate commercial motor vehicles in accordance with the laws, ordinances, and regulations of the jurisdictions in which they operate; and, (3) are not permitted to drive a vehicle without the cargo property distributed and adequately secured. *Id.* at 14, 17. Furthermore, the Safety Audit Report indicates that no Ferguson LLC driver operated a commercial motor vehicle: (1) while under the influence of, or in possession of, narcotic drugs, amphetamines, intoxicating beverages, or any other substances capable of rendering the driver incapable of safely operating a motor vehicle; (2) within four hours of having consumed intoxicating beverages; and, (3) while texting or using a handheld mobile device. *Id.* at 17. Additionally, the Safety Audit Report indicates that Ferguson LLC: (1) requires drivers to complete vehicle inspection reports daily; (2) ensures that out-of-service defects identified in vehicle inspection reports are corrected before the subject vehicle is operated again; (3) ensures that vehicles declared “out-of-service” do not operate before repairs have been made; and (4) is able to explain its systematic and periodic maintenance program. *Id.* at 17-18.

Based on our review of the Applicant’s Petition, we find that the Applicant has provided more detailed information and documentation to address the pertinent

deficiencies identified by TUS in the *June 2025 Secretarial Letter*. We also acknowledge the Applicant's statement that it has acted in good faith with the Commission to correct the issues identified by the Commission in the prior safety audit of Ferguson LLC.¹⁴

We will also address, *sua sponte*, the service area of Ferguson LLC's intended household goods in use operations. Specifically, in response to Question No. 10 in its HGU Application, Ferguson LLC stated that it intends to transport "household goods in use between points in Pennsylvania." HGU Application at 3. However, as noted above, the Commission previously granted Ferguson LLC the authority to transport, as a common carrier, by motor vehicle, household goods in use, between points in Allegheny County.¹⁵ As Ferguson LLC did not specify the service area proposed in its HGU Application requesting authority to transport household goods in use, we are unable to determine the specific service area that Ferguson LLC is requesting authority to operate beyond its current authority to transport household goods in use in Allegheny County.

Notwithstanding the lack of clarity in the Applicant's description of Ferguson LLC's proposed service area in its HGU Application, we conclude that, under the circumstances in this case, it is appropriate and reasonable to rescind the *June 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 contract carrier applications for authority. Accordingly, we shall utilize the discretion afforded to the Commission in Section 1.2 of our Regulations, 52 Pa. Code § 1.2, and refer this matter to

¹⁴ We note that several comments in the Safety Audit Report indicate that Ferguson LLC "was in violation prior to this audit." Petition at 13-14. As previously noted, the Applicant asserts that Ferguson LLC has worked in good faith with the Commission's staff to correct minor record keeping violations that resulted in a failed safety audit earlier in 2025. *Id.* at 2, 4.

¹⁵ See Docket Nos. A-2022-3036486 and A-8925552.

TUS to continue processing the Applications.¹⁶ Such a referral will provide TUS with the opportunity to review the information and documentation provided with the Petition and to request any additional information or evidence from Ferguson LLC, including clarification from the Applicant regarding Ferguson LLC's proposed service area in its HGU Application. 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 Ferguson LLC's resources at this procedural stage of the proceeding.

We note that the Commission takes no position on the merits of Ferguson LLC's Applications at this time, solely noting that it is appropriate to refer this matter to TUS. Nonetheless, we encourage that this matter, and any impediments or deficiencies with Ferguson LLC's Applications, be resolved in a cooperative and expeditious manner, to ensure that Ferguson LLC's Applications are compliant with the law, as well as the Commission's Regulations and Orders.

III. Conclusion

For the reasons set forth above, we will: (1) grant Ferguson LLC's Petition; (2) rescind the *June 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,**

¹⁶ Pursuant to 52 Pa. Code § 1.2, the Commission may exercise its discretion to secure the efficient resolution of a matter, so long as the substantive rights of other parties are not adversely affected.

IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action filed by Kelvin D Ferguson & Sons LLC, on June 23, 2025, pertaining to the Secretarial Letter issued on June 3, 2025, at Docket Nos. A-2025-3055257 and A-2025-3055259, is granted, consistent with this Opinion and Order.

2. That the Secretarial Letter issued on June 3, 2025, at Docket Nos. A-2025-3055257 and A-2025-3055259, is rescinded.

3. That this matter, at Docket Nos. A-2025-3055257 and A-2025-3055259, be referred to the Bureau of Technical Utility Services for further action and processing, consistent with this Opinion and Order.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: August 28, 2025

ORDER ENTERED: August 28, 2025