

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

Public Meeting held January 15, 2026

Commissioners Present:

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

Application of HILLTOP SERVICE, INC.

A-2025-3057999

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration from Staff Action (Petition) filed by Dale Gassert, owner of HILLTOP SERVICE, INC. (Applicant or HILLTOP), on November 21, 2025, relative to the above-captioned proceeding. The Secretarial Letter to which the Petition refers was issued on November 21, 2025 (*November 2025 Secretarial Letter*).¹ No Answer to the Petition has been filed. For the reasons that follow, we shall grant the Petition, conditionally rescind the *November 2025 Secretarial Letter*, and refer this matter to the Commission's Bureau of Technical Utility

¹ Because the Petition challenges the action taken in the *November 2025 Secretarial Letter* and was filed within twenty days of the issuance of the *November 2025 Secretarial Letter*, we shall regard the Petition as a Petition for Reconsideration from Staff Action, pursuant to 52 Pa. Code § 5.44(a).

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

I. History of the Proceeding

On October 16, 2025, HILLTOP filed an Application to begin service as a Motor Common Carrier of Property (Application) with the Commission.² In its Application, HILLTOP requested authority “to transport asphalt, stone, dirt, and fill” as a commercial carrier of property for compensation between points in Pennsylvania. Application at 1, 3. No Protests were filed to the Application.

On October 22, 2025, TUS issued a data request (*Data Request*), wherein it notified HILLTOP that additional information was required within ten (10) working days of the date on the *Data Request* letter, in order for TUS to proceed with the Application. Further, in the *Data Request*, TUS instructed HILLTOP that its responses must include a signed verification with an original signature, pursuant to 52 Pa. Code § 1.36, and supplied a sample Verification. *Data Request* at 1-2. Moreover, the *Data Request* set forth a specific question pertaining to the scope of the Applicant’s operation:

- (1) On question 10 of your application, we asked you to list the commodities you intend to transport. Your answer was: asphalt, stone, dirt, fill. Will you be using these commodities as part of your landscaping business? Will you be hired by a 3rd party to transport these commodities? Please clarify.

Id. at 3.

No response to TUS’s *Data Request* was received.

² We note that the Verification of Application and the Verified Statement of Applicant included in HILLTOP’s Application was signed by Mr. Dale Gassert, identified as the owner of HILLTOP. Application at 2-3.

On November 21, 2025, the Commission issued the *November 2025 Secretarial Letter* denying and dismissing the Application. In pertinent part, the *November 2025 Secretarial Letter* stated as follows:

- **Failure to File Required Information.**
On October 22, 2025, you were required to file an answer to our data request by November 5, 2025. To date, more than 30 days later, you have not filed this updated information with the Commission.

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

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

In addition, the *November 2025 Secretarial Letter* informed HILLTOP 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 *November 2025 Secretarial Letter*. The Commission 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, the Commission provided the Applicant with a sample verification statement. *November 2025 Secretarial Letter* at 1-2.

As noted, *supra*, on November 21, 2025, HILLTOP timely filed the instant 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, HILLTOP is the party seeking affirmative relief from the Commission. Therefore, HILLTOP 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) (*Application of 610 Hauling*) (citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 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.

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.

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. Petition

The Petition consists of a single-page, typed response to the *November 2025 Secretarial Letter*, signed by Mr. Gassert. Petition at 1.

The Applicant offers an explanation for failing to respond to the *November 2025 Secretarial Letter* sooner, representing that, “[i]n researching this request, it was found that an email was sent requesting information on October 22, 2025. It was our mistake, we simply missed the email.” Therefore, the Applicant requests that the Commission reconsider the *November 2025 Secretarial Letter* that dismissed HILLTOP’s Application. Petition at 1.

The Applicant also attempts to respond to the TUS *Data Request*. Given the nature of the substance of the Applicant’s attempted response, we find it appropriate to reprint the *Data Request* question *supra*, and the attempted response, thereto, as follows:

1. On question 10 of your application, we asked you to list the commodities you intend to transport. Your answer was: asphalt, stone, dirt, fill. Will you be hired by a 3rd party to transport these commodities? Please clarify.

Answer: We may use these commodities for our landscaping business in some circumstances. We may also simply dispose of the materials if they are not needed and cannot be used for our landscaping business. We are generally hired direct without a 3rd party involved but we may have some 3rd party involved in some cases.

See Petition at 1.

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.

On review of the Applicant's Petition, we note that the Applicant has provided information with its Petition in attempt to respond to TUS's *Data Request*. Pursuant to Section 1.2 of our 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 HILLTOP's attempt to respond to the question set forth in TUS's *Data Request*, 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 *November 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 HILLTOP 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 HILLTOP's resources at this stage of the proceeding.

The Commission takes no position on the merits of HILLTOP'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

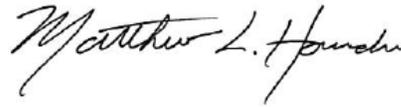
For the reasons discussed herein, we will: (1) grant HILLTOP's Petition; (2) rescind the *November 2025 Secretarial Letter*; and (3) refer this matter to TUS for such further action as may be deemed warranted, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action, filed by HILLTOP SERVICE INC., on November 21, 2025, at Docket No. A-2025-3057999, is granted, consistent with this Opinion and Order.
2. That the Secretarial Letter issued on November 21, 2025, at Docket No. A-2025-3057999, is conditionally rescinded, contingent upon HILLTOP SERVICE INC. responding with the required information outlined in the body of this Opinion and Order, within thirty (30) days of the entry of this Opinion and Order.
3. The Application of HILLTOP SERVICE INC, at Docket No. A-2025-3057999, 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 HILLTOP SERVICE INC. not respond within thirty (30) days of the entry date of this Opinion and Order, as outlined in Ordering Paragraph No. 2 above, the Commission's Secretarial Letter, issued on November 21, 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, reading "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: January 15, 2026

ORDER ENTERED: January 15, 2026