

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

Public Meeting held March 26, 2026

Commissioners Present:

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

Application of BT Builds LLC

A-2026-3059840

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),¹ filed on February 10, 2026 by BT Builds LLC (BT Builds or Petitioner),² in the above-captioned proceeding. No response to the Petition has been filed. In its

¹ Because the instant Petition challenges the action taken in the Secretarial Letter issued on February 6, 2026 (*February 2026 Secretarial Letter*) relative to this proceeding and was filed within twenty (20) days of the issuance of the *February 2026 Secretarial Letter*, we shall regard the filing as a Petition for Reconsideration from Staff Action pursuant to Commission Regulations at 52 Pa. Code § 5.44(a).

² We note, at the outset, that BT Builds is a registered entity with the Pennsylvania Department of State. Application at 1. We also note that the Petitioner has a United States Department of Transportation (USDOT) Number of 2992301 as stated on the Application. Application at 1-2.

Petition, BT Builds seeks reconsideration of the *February 2026 Secretarial Letter*, which was issued by the Commission's Bureau of Technical Utility Services (TUS) denying BT Builds' Application requesting authority to transport stone and gravel as a motor common carrier of property (Application). More specifically, the Petitioner seeks reconsideration of the denial of its Application because BT Builds provides hauling services for stone and gravel from quarries in its vehicles. For the reasons set forth herein, we shall deny the Petition, consistent with the discussion in this Opinion and Order.

I. Procedural History

On January 14, 2026, BT Builds filed its Application with the Commission, requesting authority to transport stone and gravel as a motor common carrier of property. Application at 1-3.

On January 21, 2026, the Commission issued a data request (*January 2026 Data Request*) informing the Applicant that additional information was needed in order to proceed with the Application. Specifically, TUS sought information regarding the type of service being proposed and the entities that hire the Applicant for transport of the commodities listed in the Application. Attachment to the *January 2026 Data Request* at 3. The *January 2026 Data Request* indicated that additional information was required within ten (10) working days of the date on the letter and further instructed that the Applicant's response should include a signed verification with an original signature, pursuant to 52 Pa. Code § 1.36. A sample Verification was also supplied. See *January 2026 Data Request*.

Additionally, the Attachment to the *January 2026 Data Request* stated, in pertinent part, as follows:

- 1) Will you be transporting any other commodities other than the materials used for your building purposes? YES NO If so, please be specific and list the commodities other than your own that you intend to transport and in what capacity.
- 2) Are the materials you listed in Question #10 of your application used exclusively for work/contracts for BT Builds LLC? YES NO If no, please explain.
- 3) Will the commodities you listed (stone, gravel) be transported by BT Builds LLC to purchasers directly from BT Builds LLC? YES NO
- 4) Please give examples of who hires you for the transport of items you listed in Question #10 of your application and how they are not related to your work as an excavation company.

See Attachment to the January 2026 Data Request at 3.

On February 3, 2026, BT Builds filed a timely response to the *January 2026 Data Request* and indicated that the commodities listed in the Application are the only items transported by the Petitioner. Also, BT Builds stated that the commodities being transported are used solely for work performed by the Petitioner. By further response, BT Builds submitted that the Applicant does not transport the listed commodities to purchasers directly from BT Builds. The Applicant further provided that it hauls for Bullsken Stone Quarry but also buys from the quarry to deliver to customers. *February 2026 Data Response at 1.*

On February 6, 2026, upon review of the submitted information, the Commission issued its *February 2026 Secretarial Letter* informing BT Builds that it was

proposing to provide a non-jurisdictional service, *i.e.*, service considered private transportation of property. The Commission determined that the requested transportation services remain outside of the Commission’s jurisdiction and are exempt from Commission regulation and oversight. *February 2026 Secretarial Letter* at 1.

Additionally, the *February 2026 Secretarial Letter* informed BT Builds 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 *February 2026 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. *February 2026 Secretarial Letter* at 1-2.

As noted above, on February 10, 2026, BT Builds timely filed its Petition requesting an appeal of the Commission’s denial of its Application based on additional information that its primary business is delivering/hauling stone and gravel by the Petitioner’s tri-axle truck that are specifically requested by stone quarries. Petition at 2. BT Builds also attached receipts showing that it hauled the commodities for Bullsken Stone Quarry and a construction company. *Id.* at 3. 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 the Commission's regulatory authority, 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 Petitioner is the party seeking affirmative relief from the Commission. Therefore, the Petitioner 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)).

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, supra*, (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 the instant proceeding, pursuant to Section 1103(a) of the Code, 66 Pa.C.S. § 1103(a), an application for a certificate of public convenience (Certificate) 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.” 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. Pertinent here, the Commission’s enabling statute delineates a list of exemptions, which includes an exemption for transportation incidental to a primary business purpose. *See* 66 Pa.C.S. § 102 *et seq.*

The Commission will only grant a Certificate if the applicant is a “public utility” as defined in Section 102 of the Code, 66 Pa.C.S. § 102. Section 102 provides the following, in pertinent part:

“Public utility”

(1) Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(iii) transporting passengers or property as a common carrier.

(2) *The term does not include:*

- (i) Any person or corporation, not otherwise a public utility, who or which furnishes service only to himself or itself.

66 Pa.C.S. § 102 (emphasis added).

The Applicant also must provide proof that it proposes to provide service as defined in Section 102 of the Code, 66 Pa.C.S. § 102. Section 102 provides the following, in pertinent part:

“Common carrier by motor vehicle”

Any common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within the Commonwealth,but does not include:

- (4) Any person or corporation who or which uses, or furnishes for use, dump trucks for the transportation of ashes, rubbish, excavated and road construction materials...

- (5) Transportation of property by the owner to himself, or to purchasers directly from him, in vehicles owned or operated by the owner of such property and not otherwise used in transportation of property for compensation for others.

66 Pa.C.S. §§ 102(4) and (5).

In every matter before the Commission, we must decide initially whether the Commission has jurisdiction over the Parties and subject matter at dispute. As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Code. 66 Pa.C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny County Port Authority v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); *Behrend v.*

Bell of Pa., 390 A.2d 233 (Pa. Super. 1978); *Pa. Department of Highways v. Pa. PUC*, 182 A.2d 267 (Pa. Super. 1962); and *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa. Cmwlt. 1978). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

In addition, Section 501 of the Code grants the Commission authority to supervise and regulate all public utilities doing business in the Commonwealth and requires all public utilities to comply with regulations and orders. *See* 66 Pa.C.S. § 501. In addition, Section 1101 of the Code provides that it shall be unlawful for a proposed public utility to begin to offer, render, furnish, or supply service within the Commonwealth prior to approval of its application. *See* 66 Pa.C.S. § 1101.

For purposes of this Application, BT Builds must prove that the transportation service it provides falls within the definition of “public utility” service as set forth in the Code and Commission Regulations.

B. Petition

The Petition consists of a four page filing with six numbered paragraphs in response to the *February 2026 Secretarial Letter* and a Verification statement signed by Mr. Benjamin Thompson, owner of BT Builds. Therein, the Petitioner requests reconsideration of the *February 2026 Secretarial Letter*, wherein the Commission denied the Petitioner’s Application. The Petitioner requests consideration of its appeal in light of a clarification of regulatory obligations, its good faith effort to correct any issues, and its willingness to comply with all applicable regulations. Petition at 2.

The Petitioner avers, in pertinent part, as follows:

My initial application issues stemmed from a misunderstanding of the PUC requirements and how they

applied to my specific type of work...At the time of my application, I was confused about whether my business operations required a PUC number, as my hauling work is limited in scope and performed under direct request from stone quarries.

Petition at 2.

The Petitioner states that Mr. Thompson spoke with Commission staff to clarify his understanding of certain regulatory requirements as they pertain to the service he provides. BT Builds also indicates that the Petitioner operates a tri-axle truck primarily engaged in delivering stone and dirt materials “that are called for by stone quarries.” Additionally, the Petitioner submits that “my hauling services are specific to quarry material delivery as requested by those facilities” and indicated that Mr. Thompson may grow his business by supplying trucks needed by the quarries to transport their goods. Petition at 2.

The Petitioner has also attached to its Petition two receipts for commodities sold to BT Builds during the time periods of December 2025 and January 2026. Petition at 3-4. The January 2026 receipt, titled Expenses by Vendor, was issued by Neiswonger Construction Inc. to BT Builds listing quantities by job number. The December 2025 receipt is from Bullskin Stone and Lime under the title of “Hauler Report” indicating that certain commodities were sold to BT Builds and hauled to listed addresses. *Id.* at 4.

Based upon the Petition and attached receipts, the Petitioner requests that the Commission reconsider the denial of its Application. Petition at 2.

C. Disposition

Any argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is 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, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Based on our review of BT Builds' Petition and attached receipts, including the clarification of its provided service, we shall deny the Petition. We find that the Petition, as well as the clarification, does not provide any additional information to refute the Commission's initial conclusion that the transportation of goods in this case is for the Company's own use and, therefore, non-jurisdictional service, as defined in the Code.

Based upon BT Builds' response to the Commission's *January 2026 Data Request*, TUS determined that the proposed transportation services were exempt from Commission regulation because the service is incidental to the Petitioner's primary business, given that the transported commodities are used solely for work performed by the Petitioner. As noted above, in its responses to the Commission's data requests, BT Builds indicated that the Petitioner hauls for Bullsken Quarry and also buys commodities from the quarry to deliver to its customers. *January 2026 Data Response* at 3.

In its Petition, BT Builds continues to indicate that its hauling work is limited in scope and performed under direct request from stone quarries. As noted above, the Petitioner operates a tri-axle truck primarily engaged in delivering stone and dirt materials "that are called for by stone quarries." The Petitioner also submits that "my hauling services are specific to quarry material delivery as requested by those facilities." Petition at 2. In addition, the receipts provided by the Petitioner confirm that the service

it provides is limited to transporting stone and gravel sold to BT Builds for work performed by the Petitioner. *Id.* at 3-4.

Upon review of this information and our statutory authority, we find that TUS properly concluded that BT Builds is excluded from the Commission's jurisdiction. In accordance with Section 102(5) of the Code, we find that the evidence provided in the Petition regarding BT Builds' transportation service demonstrates that its operations meet the statutory exemption because the Petitioner is engaging in providing service to itself to have the requisite materials at its work sites. Petition at 2; *see also* 66 Pa.C.S. § 102(5).

In addition, we find that the record evidence provided by the Petitioner shows that it is transporting excavated materials by dump truck, which is service that is exempted from the definition of common carrier by motor vehicle. *See* 66 Pa.C.S. § 102(4). Therefore, we are not convinced that BT Builds provides jurisdictional service, but rather, clearly falls within the statutory exemption set forth at Section 102(4) of the Code.

As stated previously, upon receiving an Application, it is common for TUS to examine the nature of the service contemplated by an applicant via the issuance of data requests, especially if such nature is not obvious from the detail provided on the application form. Here, the basic information sought in TUS's *January 2026 Data Request* was necessary to the Commission's threshold examination of both whether the service is jurisdictional, as defined in Section 102 of the Code, and whether its provision will be in accordance with Section 1103 of the Code. As noted above, we find that TUS properly concluded that the service provided by BT Builds falls outside of the definition of a public utility, as the Petitioner has documented that BT Builds furnishes transportation of excavated materials only to itself or to purchasers directly from it. *See* 66 Pa.C.S. § 102, *et seq.* Therefore, we find that BT Builds has not provided any

additional evidence to reexamine the Commission's finding that the service in question falls outside of the Commission's jurisdiction. Accordingly, we shall deny the Petition.


III. Conclusion

For the reasons discussed herein, we shall deny BT Builds LLC's Petition for Reconsideration from Staff Action, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration from Staff Action, filed by BT Builds LLC on February 10, 2026, at Docket No. A-2025-3059840, is denied, consistent with this Opinion and Order.
2. That this proceeding, at Docket No. A-2025-3059840, be marked closed.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: March 26, 2026

ORDER ENTERED: March 26, 2026