

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

Public Meeting held May 21, 2026

Commissioners Present:

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

Application of Dirt Life Excavating LLC

A-2025-3059116
A-8927747

Application of Dirt Life Excavating LLC

A-2026-3060051

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration from Staff Action (Petition), filed on January 5, 2026 by Mr. Byron K. Wagner on behalf of Dirt Life Excavating LLC (Dirt Life Excavating or Petitioner or Applicant), in the above-captioned proceeding.¹ No Answer to the Petition has been filed. In the instant Petition, Dirt Life

¹ We note, at the outset, that Dirt Life is a registered entity with the Pennsylvania Department of State. Application 1. We also note that the Petitioner has a United States Department of Transportation (USDOT) Number of 4221658 as stated on the Application. Application 1-2. Byron K. Wagner is listed as one of the members of Dirt Life Excavating LLC. Application at 2.

challenges the action taken in the Secretarial Letter issued on December 17, 2025 (*December 2025 Secretarial Letter*) relative to this proceeding, which was issued by the Commission's Bureau of Technical Utility Services (TUS) denying Dirt Life's Application requesting authority to transport building materials, utilities, gravel, and general freight as a motor common carrier of property (Application).² More specifically, the Petitioner seeks reconsideration of the denial of its Application because Dirt Life provides operations that were determined to be private transportation of property. As such, the requested transportation services remain outside of this Commission's jurisdiction and thus, are exempt from Commission regulation and oversight. For the reasons set forth herein, we shall deny the Petition, consistent with the discussion in this Opinion and Order.

Because, as discussed, *infra*, Dirt Life Excavating filed a third application at Docket No. A-2026-3060051 requesting authority to transport the same types of materials that are contemplated in this instant Application, we shall consolidate this proceeding with that docket and address both applications in this Opinion and Order.³

² Because the instant Petition challenges the action taken in the *December 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).

³ Section 5.81(a) of the Commission's Regulations provides that "[t]he Commission or presiding officer, **with or without motion, may order proceedings involving a common question of law or fact to be consolidated.** The Commission, or the presiding officer, may make orders concerning the conduct of the proceeding as **may avoid unnecessary costs or delay.**" 52 Pa. Code § 5.81(a) (emphasis added).

In the present case, because Dirt Life Excavating seeks the authority to transport the identical listed materials/items in each of its applications, we shall consolidate Dirt Life Excavating's Application at A-2026-3060051 with this instant Application.

I. History of the Proceeding

On December 8, 2025, Dirt Life Excavating filed an Application with the Commission seeking approval for the right to operate as a motor common carrier of property between points in Pennsylvania to transport building materials, utilities, gravel, and general freight.⁴ Application at 1-3.

On December 9, 2025, the Commission issued a data request (*December 2025 Data Request*), informing the Applicant that additional information was needed in order to proceed with the Application. Specifically, TUS requested clarification regarding the Applicant's nature of business, including: (1) whether the Applicant would be transporting any other commodities other than the materials and freight used for its excavating purposes; (2) an explanation of who hires the Applicant for the transport of items; and (3) whether materials listed on its Application are used exclusively for work/contracts for Dirt Life Excavating. Attachment to the *December 2025 Data Request* at 3. The *December 2025 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 December 2025 Data Request*.

The additional information sought by the Commission in the Attachment to the *December 2025 Data Request* stated, in pertinent part, as follows:

- 1.) Per FMCSA, you are listed as a "Private Property" carrier. Will you be transporting any other

⁴ This December 8, 2025 application was Dirt Life Excavating's second application. On February 21, 2025, Dirt Life Excavating filed its application at Docket No. A-2025-3053539, which the Commission subsequently dismissed for Dirt Life Excavating's failure to comply with the filing requirements requested in a Secretarial Letter dated February 25, 2025.

commodities other than the materials and freight used for your excavating 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.) Please explain in detail 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.
- 3.) Are the materials you listed in Question #10 of your application used exclusively for work/contracts for Dirt Life Excavating LLC? YES NO If no, please explain.

See Attachment to the December 2025 Data Request at 3.

On December 15, 2025, Dirt Life Excavating filed a timely response to the *December 2025 Data Request*. In its reply, Dirt Life Excavating stated that: (1) it will not be transporting any other commodities other than the materials and freight used for its excavating purposes; (2) it provided the names of the entities that hire the Applicant and explained how these entities relate to Dirt Life Excavating's work; and (3) that the materials listed in the Application are used exclusively for Dirt Life Excavating's work/contracts. *December 2025 Data Response at 1.*

On December 17, 2025, upon review of the submitted information, the Commission determined that the Applicant's proposed services are exempt from Commission regulations, and the *December 2025 Secretarial Letter* informed Dirt Life that it was proposing to provide a non-jurisdictional service, *i.e.*, service consider 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. *December 2025 Secretarial Letter at 1.*

The *December 2025 Secretarial Letter* also informed Dirt Life 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 *December 2025 Secretarial Letter*. Further, the *December 2025 Secretarial Letter* 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. *December 2025 Secretarial Letter* at 1-2.

As noted above, on January 5, 2026, Dirt Life Excavating timely filed its instant Petition requesting an appeal of the Commission's denial of its Application based on the additional information and attached a copy of a February 25, 2025 Secretarial issued by the Commission in Dirt Life's first Application, at Docket No. A-2025-3053539, for the same service in which the Commission indicated that its application was approved pending the filing of Form E and Form H for insurance or a Cargo Waiver, if applicable. We note that as mentioned, *supra*, that application was subsequently dismissed due to Dirt Life's failure to comply with the filing requirements stated in the February 25, 2025 Secretarial Letter. Petition 1-3. No response to the Petition was filed.⁵

⁵ On January 23, 2026, Dirt Life Excavating filed a third application at Docket No. A-2026-3060051 requesting a certificate of public convenience representing the authority of Dirt Life to transport building materials, utilities, gravel and general freight.

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.”

(1) 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 this Commonwealth by motor vehicle for compensation, ...

* * *

(3) *The term does not include:*

* * *

(iv) 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...

(v) 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 (emphasis added).

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. Cmwlth. 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, Dirt Life 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 three numbered paragraphs in response to the *December 2025 Secretarial Letter* and a Verification statement signed by Mr. Bryon Wagner. Therein, Dirt Life requests reconsideration of the *December 2025 Secretarial Letter*. Dirt Life notes, *inter alia*, that it will be transporting private property. However, the Applicant stresses that in addition to transporting private property, it also proposes to transport building materials, utilities, gravel, and general freight. Petition at 1.

Dirt Life has also attached to its Petition copies of two additional documents – (1) the *December 2025 Secretarial Letter*; and (2) the February 25, 2025 Secretarial Letter from its first application at Docket No. A-2025-3053539.

Based upon the Petition and attached documents, the Petitioner requests that the Commission reconsider the denial of the instant Application at Docket No. A-2025-3059116. Petition at 1.

C. Disposition

At the outset we note that 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 Dirt Life’s Petition and attached documents, as well as the associated documents of record, we shall deny the Petition. We find that the

Petition, and the attached documents, do not provide any additional information to refute the Commission's initial conclusion that Dirt Life's proposed operation is for the private transportation of property and, therefore, is a non-jurisdictional service, as defined in the Code.

Upon review of this information and our statutory authority, we find that TUS properly concluded that Dirt Life 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 Dirt Life's 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 1; *see also* 66 Pa.C.S. § 102(5).

In addition, we find that the record evidence provided by the Petitioner shows that it plans on transporting building materials, utilities, gravel, and general freight, 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 persuaded that Dirt Life 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' *December 2025 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 Dirt Life falls outside of the definition of a public utility, as the Petitioner has documented that Dirt Life furnishes private

transportation of property. *See* 66 Pa.C.S. § 102, *et seq.* Therefore, we find that Dirt Life 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.

As stated above, we have consolidated a third application of Dirt Life, that it subsequently filed on January 23, 2026 at Docket No. A-2026-3060051, with the instant Application. Therein, the Applicant has sought the same operating authority as set forth in the instant Application. Given our disposition above regarding Dirt Life’s instant Application at Docket No. A-2025-3059116, we find the third application, at Docket No. A-2026-3060051, to be moot and shall, likewise, deny it on the grounds that the proposed services are outside of the Commission’s jurisdiction.

III. Conclusion

For the reasons discussed herein, we will deny Dirt Life’s Petition, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

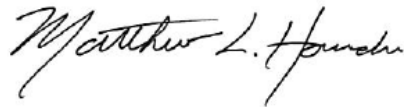
1. That, the Petition for Reconsideration from Staff Action filed by Dirt Life Excavating LLC on January 5, 2026, at Docket No. A-2025-3059116, is denied, consistent with this Opinion and Order.

2. That, the Application filed by Dirt Life Excavating LLC on January 23, 2026, at Docket No. A-2026-3060051 is deemed moot and is denied and dismissed, consistent with this Opinion and Order.

3. That, the Secretary's Bureau shall mark the Application of Dirt Life Excavating LLC, at Docket No. A-2025-3059116, closed.

4. That, the Secretary's Bureau shall mark the Application of Dirt Life Excavating LLC, at Docket No. A-2026-3060051, 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: May 21, 2026

ORDER ENTERED: May 21, 2026