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November 12, 2011

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Ms Rosemary Chiavetta, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**RE: Application of Bradley A. Kleffel, t/a Kleffel's Moving and Delivery Service
PUC Docket No. A-2010-2202569
Main Brief of Protestants**

Dear Secretary Chiavetta:

Enclosed please find an original Main Brief of Protestants, pertaining to the above-captioned application, and nine copies as required by 52 Pa. Code Section 5.502.

Copies forwarded to the Applicant's attorney, Larry W. Miller, Jr., Esquire, via e-mail and U.S. Mail and to Administrative Law Judge Angela T. Jones via e-mail and U.S. Mail.

Sincerely,



Malou Walther, Paralegal For:

WILLIAM H. R. CASEY

WHRC/mw

Enclosures

cc: Administrative Law Judge Angela T. Jones
Larry W. Miller, Jr., Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of : Docket No. A-2010-2202568
:
Bradley A. Kleffel, t/a :
Kleffel's Moving and Delivery :
Service :

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MAIN BRIEF OF PROTESTANTS

WILLIAM H. R. CASEY, ESQUIRE
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(215) 348-7300

STATEMENT OF THE CASE

On or about September 1, 2010, an Application was filed by Bradley A. Kelffel, t/a Kleffel's Moving and Delivery Service to Docket No. A-2010-2202568 to permit an additional right to transport household goods in use, in the counties of Lehigh, Schuylkill, Lebanon, Carbon and Montgomery.

The application was advertised in the Pennsylvania Bulletin on October 23, 2010. Protests to the application were timely filed by Adam Meyer, Inc.; Clemmer Moving & Storage; Fischer Hughes, Transport T/A Fisher Hughes Relocation Services; Frick Transfer, Inc.; Glose Moving & Storage, Inc.; Glose Moving & Storage, Inc., T/A O'Brien's Moving & Storage; Reads Van Service, Inc.; Shelly Moving & Storage, Inc.; and Shively's Moving & Storage Co.

A hearing was subsequently scheduled before Administrative Law Judge Angela T. Jones on August 23, 2011 in Philadelphia, Pennsylvania, at which time Larry W. Miller, Esquire appeared on behalf of the Applicant and William H. R. Casey, Esquire appeared on behalf of the Protestants.

At the hearing, Mr. Casey advised the Court that Gino Andreussi, Esquire representing Labuda Trucking, Inc. was withdrawing and that he would be representing Labuda Trucking, Inc., in addition to the other protestants.

Thereafter the Applicant presented the testimony of two witnesses, which is summarized as follows:

1. Nickoleen Kleffel:

Ms Kleffel, the office manager of Applicant, stated that they want to provide a service with no minimum charges. (N.T., p. 8) She stated that there are "many people out there that are downsizing such as elderly and they don't have the need for a four hour or even a two hour minimum..." (N.T., p. 10-11)

Ms Kleffel offered an 11-page exhibit of the Protestant tariffs which include minimum charges. She testified that their company has one-hour jobs and eight and ten hour jobs. (N.T., p. 12-13)

She stated they have a contract with an assisted living company where an elderly person doesn't need four hours to take a couple of beds and dressers into a facility. (N.T., p. 14)

In response to a question from Judge Jones, Applicant's attorney stated that the company has a large amount of smaller jobs with a minimum charge. (N.T., p. 19) Further, Mr. Miller stated that a majority of customers are looking for small moves throughout the entire area. (N.T., p. 22)

Ms Kleffel stated that the company had never had a claim against them via the Better Business Bureau or an insurance claim. (N.T., p. 19)

She also stated that Protestants Clemmer and Glose had received some service complaints. (N.T., p. 24)

On-cross examination, Ms Kleffel agreed that Clemmer's two complaints had been fully resolved as had Glose's four complaints. She agreed that the two carriers had large territories and was unable to state how many moves the carriers had made in the time period. (N.T., p. 34-35)

Ms Kleffel stated that their company, a sole proprietorship owned by her husband, has a warehouse in Hamburg, Berks County and an office in Mohrsville. (N.T., p. 38-39)

The Applicant did not offer a copy of their tariff into evidence. (N.T., p. 40)

Regarding the protestant tariffs, Ms Kleffel stated that "I know for a fact that they won't go in and do a job for under two hours." (N.T., p. 43)

In response to questions by Judge Jones, Ms Kleffel stated that the Application included Lancaster County, which it does not. (N.T., p. 49)

In response to questions by Judge Jones, Ms Kleffel stated that the application seeks authority for moves from Berks to the counties applied for and from those counties into Berks County, which is incorrect. There is no "vice versa" on the application. (N.T., p. 50)

Similarly, the Application would not permit, as claimed, moves from a proposed county to another county. (N.T., p. 50)

Ms Kleffel stated that if a job takes longer than estimated, no additional charge would be made to the customer. (N.T., p. 55)

Ms Kleffel now stated the Applicant has two trucks, a 24-foot and a 16-foot truck. (N.T., p. 57)

2. Bradley Kleffel:

Bradley Kleffel, the sole proprietor of Applicant, described his locations and equipment, stated he had one employee besides Mrs. Kleffel and that he had applied for rights in the counties agreed to by Mrs. Kleffel. (N.T., p. 61-63)

Mr. Kleffel testified he does the estimating and helps with moves. (N.T., p.64)

Thereafter, Protestants presented the testimony of two witnesses, which is summarized as follows:

3. Robert D. Clemmer:

Mr. Clemmer is vice president and owner of Protestant Clemmer Moving and Storage, Inc.. The company has been in business since 1904. (N.T., p. 6)

Mr. Clemmer's company has rights for household goods in use within 20 miles of Souderton, Pennsylvania and the Philadelphia "diamond" rights, a portion of Burks, Montgomery, Delaware, Chester plus Philadelphia in its entirety. (N.T., p. 7)

Mr. Clemmer disputed the Applicant's testimony that our protestants cannot provide service for one and two hour moves, which are permitted under his tariff. (N.T., p. 8-9)

On cross examination, Mr. Clemmer repeated that he was familiar with his tariff which provides a one-hour rate, that he provides estimates as required by law and that where a job requires longer than estimated, he charges actual amount, as required by PUC law. (N.T., p. 11-13)

On recross, Mr. Clemmer stated the transportation charge is separate and is required to be charged by the PUC. (N.T., p. 14-16)

4. Stephen Posivak:

Mr. Posivak, operations manager for Glose Moving, Inc. d/b/a O'Brien's Moving and Storage, has fifteen years of experience. (N.T., p. 17-18)

Mr. Posivak described the location of his employer, one in Allentown including an office and a 45,000 square foot warehouse; and an office and 1,300 square foot warehouse in Leesport, Berks County. They also have 20-25 trucks of various sizes and 45-50 employees. (N.T., p. 19)

Mr. Posivak stated that Glose has nine counties in southeastern Pennsylvania to serve with household goods in use. He stated that they combine two or three small jobs into one day to provide small move service. (N.T., p. 20-21)

Mr. Posivak testified that business was off due to the economy and that the summer season has been shortened. (N.T., p. 21)

Mr. Posivak confirmed that the PUC requires the transportation charge to be imposed. (N.T., p. 23)

Mr. Posiak also confirmed that if the estimate is exceeded, the actual time must be charged under PUC rules. (N.T., p. 25-26)

STATEMENT OF THE QUESTIONS

1. Has the Applicant established a public need to be granted household goods in use rights in the area requested?

Suggested Response: No

2. Has the Applicant established that it possesses the propensity operate legally?
- 3.

Suggested Response: No

4. Will the granting of the requested right impair the operations of existing carriers?

Suggested Response: No

PROPOSED FINDINGS OF FACT

1. Applicant is Bradley A. Kelffel, t/a Kleffel's Moving and Delivery Service (Kleffel or Applicant) 5490 Berne Road, Mohrsville, PA 19514.
2. Applicant is a sole proprietorship.
3. Applicant is authorized to transport household goods in use in Berks County, Pennsylvania.
4. Applicant has been in the moving business since 1996.
5. Applicant is in good standing with Pennsylvania regulatory bodies.
6. The Applicant has applied for additional rights to transport household goods in use in five (5) Pennsylvania counties, namely: Lehigh, Schuylkill, Lebanon, Carbon and Montgomery.
7. Applicant wishes to provide a service with no minimum charges and no increase on weekends and holidays, unlike the protestants whose tariffs require minimums and increased charges on weekends and holidays.
8. However, Protestant Clemmer's tariff indicates a one-hour minimum in much of the area sought by Applicant.
9. Applicant claimed "many people out there are downsizing such as elderly..." and need its service, but offered no evidence or testimony supporting this claim.
10. Applicant stated they have a contract with an assisted living company, The Villas, requiring small moves for seniors, but no testimony, evidence or contract was offered. Obviously, The Villas must be located in Berks County, not the requested area.
11. Mr. Miller stated that "a majority of customers are looking for small moves throughout the entire area", but no evidence, testimony or proof of this assertion was offered.
12. Mrs. Kleffel claim that she knew "for a fact" that the Protestants would not do a job for under two hours was proven false by Mr. Clemmer who demonstrated that his tariff permits moves of one hour.

13. Lancaster County is not a requested area according to the Pennsylvania Bulletin notice; 40 Pa.B. 6231, Saturday, October 23, 2010.
14. The requested area advertised in the Pennsylvania Bulletin as aforesaid has no “vice versa” wording as claimed by Applicant.
15. Applicant admits violating PUC regulations by failing to add increased charges when the estimate time is exceeded.
16. It is unclear whether Applicant includes a transportation charge on its estimate as required by the PUC. Applicant did not offer a copy of its tariff in the proceedings.
17. Applicant offered no supporting shipper evidence, beyond their own opinions and therefore their need evidence did not comply with the evidentiary guidelines required by Section 3.382 of the Pennsylvania Code.

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SUMMARY OF ARGUMENT

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Because of the lack of valid evidence, Applicant has failed to sustain its burden of establishing that approval of the Application will serve a useful public purpose, responsive to a public demand or need.

Applicant is a certificated carrier with the PUC and is presumed to have the technical and financial ability to provide the proposed service, but the evidence shows a propensity to operate illegally.

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ARGUMENT

A. RELEVANT LEGAL PRINCIPLES

In this proceeding, Applicant seeks an amendment to its certificate of public convenience to expand its property rights into household goods in use in a five (5) county area of southeastern Pennsylvania.

"Pursuant to the Public Utility Code, 66 Pa C.S.§2203(a), this 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." In order to make these determinations, the Commission has issued regulations discussing the criteria to be taken into consideration. These factors, contained in 52 Pa.Code 41.14, are (1) whether approval of the applications will serve a useful public purpose, responsive to public demand or need; (2) whether the Applicant possesses the technical and financial ability to provide the proposed service, and possesses a propensity to operate safely and legally; and (3) whether entry of a new carrier into the file would endanger or impair the operations of existing carriers to an extent that, on balance, the granting would be contrary to the public interest. The first two factors are involved in this case.

B. NEED

The Commission in Application of Bluebird Coach Lines, Inc., 72 Pa. 262, 274 (1990), clarified the "public need" requirement of the transportation policy statement contained in Subsection 41.14(a);

When, through relevant, probative, competent and *credible evidence of record*, a *motor common carrier* applicant has shown that the applicant's proposed service will satisfy the supporting witnesses' asserted transportation demand/need, the applicant has *sustained its burden of proof under subsection 41.14 (a)* by establishing that "approval of the application will service a useful public need."

The supporting shipper testimony must be legally competent and credible, and must be probative and relevant to the application proceeding. The supporting witnesses must articulate a demand or need for the type of service embodied in the application. The witnesses must identify Pennsylvania origin and destination points between which they require transportation, and these points must correspond with the scope of the operating territory specified in the application.

In this case, there are no supporting witnesses. Applicant apparently claims its “no minimum charge” service entitles it to rights in the requested area without proof of need.

52 Pa. Code §3.382 provides in part, “The weight which will be attributed to the evidence will depend upon the extent to which the alleged requests are substantiated by evidence...”

C. PROPENSITY TO OPERATE LEGALLY

Testimony in this case indicates that Applicant violates on a regular basis the regulation requiring charges for actual service, where the estimate is exceeded in time. Applicant claims this policy sets them above Protestants by benefitting the shipper with a lower charge. They do this intentionally.

Whether the Applicant charges for transportation is not certain due to no tariff in evidence, but if Applicant does not so charge, it is another violation.

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. The burden of proof is on Applicant to establish that approval of the application will serve a useful public purpose, responsive to a public demand or need.
3. Applicant has failed to sustain its burden of establishing that approval of the application will serve a useful public purpose, responsive to a public demand or need.
4. The burden of proof is on Applicant to establish that approval of the application will serve a useful public purpose, responsive to a public demand or need.
5. Applicant has failed to sustain its burden of establishing that it possesses the propensity to provide the proposed service legally.

PROPOSED ORDERING PARAGRAPH

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THEREFORE,
IT IS ORDERED:

That the Application of Bradley A. Kleffel, t/a Kleffel's Moving and Delivery Service at Docket No. A- 2010-2202568, be, and hereby is, denied.

Respectfully submitted,



WILLIAM H. R. CASEY
Attorney for Protestants

Date: 11/11/11

Proof of Service

I, William H.R. Casey, Esquire, hereby verify that a true and correct copy of the attached Brief of Protestants (Application of Bradley A. Kleffel, t/a Kleffel's Moving and Delivery Service, A-2010-2202569) was sent to the following parties:

Ms Rosemary Chiavetta, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120
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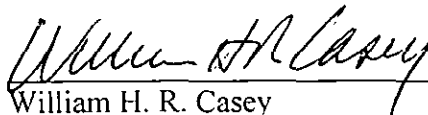
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William H. R. Casey

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