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March 16, 2012

Re: Canterbury International, Inc. t/a
Two Men and a Truck
Docket No. A-2011-2251336
Our File 1773P-209

Ms. Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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Dear Ms. Chiavetta:

We enclose for filing with the Commission the signed original and nine (9) copies of the Reply Brief of Protestants in connection with the above-captioned proceeding.

A copy of the Reply Brief has been served on Administrative Law Judge Katrina L. Dunderdale and two (2) copies have been served on the attorney for the applicant. We are also sending to the Administrative Law Judge and to the attorney for the applicant a copy of the Reply Brief by email in Word format pursuant to Judge Dunderdale's Briefing Order dated January 20, 2012. We are also enclosing a copy of the Reply Brief on disk, as required by the Briefing Order dated January 20, 2012.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Very truly yours,

VUONO & GRAY, LLC


William A. Gray

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AS/106973

Enclosure

cc: Honorable Katrina L. Dunderdale
Kenneth A. Olsen, Esq.

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2011-2251336

CANTERBURY INTERNATIONAL, INC. t/a
TWO MEN AND A TRUCK

REPLY BRIEF OF PROTESTANTS

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MAR 16 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

WILLIAM A. GRAY, ESQ.

Attorney for

SOUTH HILLS MOVERS, INC.

VESELY BROS. MOVING & STORAGE, INC.

MCKEAN & BURT, INC., t/b/a

ALLWAYS MOVING & STORAGE

ALL WAYS WORLD WIDE MOVING, INC.

WELESKI TRANSFER, INC.

LYTLE'S TRANSFER & STORAGE, INC.

HOY TRANSFER, INC.

Protestants

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Due Date: March 16, 2012

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2011-2251336

CANTERBURY INTERNATIONAL, INC. t/a
TWO MEN AND A TRUCK

REPLY BRIEF OF PROTESTANTS

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I. STATEMENT OF THE CASE

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

By this application, ("the applicant") seeks the following authority:

*Household goods in use, from points in the Counties of
Beaver, Butler, Westmoreland, Fayette and Washington, to
points in Pennsylvania, and vice versa.*

Hearings were held in this case in Pittsburgh on January 5, 2012 and January 11, 2012, before Administrative Law Judge Katrina L. Dunderdale. Main Briefs were filed by the applicant and the protestants filing this Reply Brief ("the protestants"). The Main Brief filed by the applicant sets forth factual and legal arguments which must be addressed by the protestants. The protestants file this Reply Brief to respond to the Main Brief filed by the applicant. Protestants incorporate by reference herein Sections I, II, III, IV, VI and VII of their Main Brief

II. REBUTTAL ARGUMENT

A. THE APPLICANT HAS FAILED TO DEMONSTRATE THAT THERE IS A PUBLIC DEMAND OR NEED FOR THE PROPOSED SERVICE.

52 Pa. Code §41.14(a) provides as follows:

An applicant seeking motor common carrier authority has the burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

The applicant in its Main Brief distorts the testimony of the public witnesses to try to make it appear that the supporting witnesses actually have a need for service. For example, the applicant states at page 11 of its Main Brief that Gillian Yahnite will need household goods service within the next year due to her husband's job promotion. In fact, Ms. Yahnite admitted that the move from their existing residence is entirely dependent upon whether her husband, who works for Westinghouse, gets a promotion, which has not yet occurred. (Tr. 43) Ms. Yahnite admitted that if they did move, it is entirely possible that they could move to a point in Allegheny County where the applicant can already provide service. (Tr. 42-43) In discussing the testimony of Janet Bouma at page 12 of its Main Brief, the applicant referred to "the imminent sale" of her house in Champion. In fact, Ms. Bouma testified that she expects to move within eight months to a year and has not yet found another place in Fayette County to move to. The applicant stated at page 13 of its Main Brief that Suzanne Froelich required service "within the next few months". In fact, Ms. Froelich testified that she doesn't have any move scheduled and hasn't purchased a house. (Tr. 63-64, 69). The applicant stated at page 14 of its Main Brief that Julie Ann Sullivan intends to move to the Mt. Lebanon/Dormont area but

failed to indicate that the applicant can already handle this movement under its existing authority and the testimony of this witness is therefore irrelevant. The applicant states at page 15 of its Main Brief that Edward Sickmund requires service from his residence in McMurray “to another point in the application territory”. In fact, Mr. Sickmund testified that he may require household goods transportation for his daughter from his residence in McMurray to the Squirrel Hill, Allegheny County, area. (Tr. 94) The applicant can already provide this service under its existing authority and this testimony is irrelevant to this application. The applicant states at page 15 of its Main Brief that John Sherry has a need for transportation from his residence in McMurray to another point in Washington County in the spring or summer of this year. In fact, Mr. Sherry, who has been Mr. Coll’s attorney for 41 years and friends with him since first grade, testified that he and his wife may submit a bid on a house four miles from where they live but testified concerning the people that own this house: “I mean, the plans are somewhat tentative because they want to find a place to buy down in Florida first.” (Tr. 105-106) The applicant also stated at page 16 of its Main Brief that Mr. Sherry was contemplating “purchasing soon” a house in Hidden Valley. In fact, Mr. Sherry testified that this purchase has not materialized. (Tr. 106) The fact of the matter is that the applicant has tried to make it appear that its public witnesses have a present need for service when, in fact, they do not.

The applicant also attempted to demonstrate public demand or need for service through the use of Applicant’s Exhibit 12, which the applicant states at page 9 of its Main Brief is a list of service requests but in reality is nothing more than a list of inquiries

made by persons who visited the applicant's website and/or the franchisor's website. The applicant argues at page 9 of its Main Brief that Mr. Coll supervised the creation of Exhibit 12. In fact, Mr. Coll just prepared Exhibit 12 from slips prepared by the applicant's customer service representatives who handwrote information on the slips and gave them to Mr. Coll. (Tr. 195) The slips used to prepare Exhibit 12 were prepared based on a customer service representative returning a call to someone who made a hit on the applicant's website or the franchisor's website. (Tr. 195-197) The underlying documents from which the list of service requests was prepared were thrown away. (Tr. 196) The information on the applicant's website and the franchisor's website did not indicate how many other companies' websites these individuals may also have clicked into and sent their information to. Mr. Coll admitted that they may have sent this information to numerous other moving companies' websites. (Tr. 199, 232) He also admitted that he was not aware of whether any of the persons shown on Exhibit 12 were even moved by a household goods mover. None of these persons were witnesses supporting this application. (Tr. 202-203) Applicant's Exhibit 12 is inherently unreliable and should be given no weight since the applicant failed to produce the witnesses who allegedly took the calls and prepared the slips from which Exhibit 12 was prepared. Not only did the applicant fail to produce the call takers who actually took the calls but also failed to produce the slips, which were destroyed. The protestants were not able to test the credibility of the call takers and were not able to determine the validity of the exhibit without the underlying documentation.

The applicant argues at page 27 of its Main Brief that since the application is “narrow or limited” fewer witnesses are required to prove public need. In fact, this application seeks authority in five western Pennsylvania counties bordering on Allegheny County and these counties have a larger population than many other counties in Pennsylvania. The applicant’s reliance upon Application of Primo Limousine Company, Inc., Docket No. A-00111548 (Order entered November 29, 1995) is misplaced since that case involved limousine authority and the Commission has never required substantial proof for limousine applications and has, in fact, now eliminated altogether the requirement for demonstrating public demand or need for limousine authority.

The applicant argues at page 27 of its Main Brief that a witness’s future need, as opposed to present need, is sufficient to satisfy an applicant’s burden of demonstrating need for service. His argument is incorrect. In Application of Raymond J. Coll¹, A-00119828 (Initial Decision of Administrative Law Judge Larry Gesoff dated March 31, 2004), the Administrative Law Judge denied the application based on the failure of the applicant to demonstrate public demand or need for service where the nine public witnesses had no current moving needs and the witnesses were friends and acquaintances of Mr. Coll, or connected with him in some way. In that regard, the ALJ stated:

The above witnesses were either friends of Mr. Coll or connected with him in some way. Mr. Hanley was a friend of Mr. Coll and testified as a favor to him. Tr. 398. Ms. Rosky, who knew nothing about Mr. Coll, testified at the request of Mr. Felice, a personal friend of the attorney for Mr. Coll. Tr. 470-471. Mr. McLaughlin is a long-time business associate of Mr. Coll, having worked with him until the early 1980’s at Dick Corporation. Tr. 479-480, 487. Ms. Grande is a real estate agent who has Mr. Coll’s home listed for

¹ Mr. Coll is co-owner of the applicant.

sale. Tr. 495. Mr. Sherry has known Mr. Coll since first grade and has represented Mr. Coll as an attorney for many years. Tr. 525-526. Ms. Bonaroti has had a business relationship with Mr. Coll and stated that she was testifying as a favor to him. Tr. 353-371. Ms. Flaherty is an employee of the attorney for Mr. Coll. Tr. 430-431. Dr. Mantia has been a friend of Mr. Coll for more than 20 years and socializes with him. Tr. 549. Mr. Matta has known Mr. Coll for eight or nine years, having served on a Board with him. Tr. 564.

These nine public witnesses have no current moving needs. Ms. Bonaroti testified about Allegheny County, but her AHRCO is no longer in control of future moves for its tenants. Ms. Flaherty testified about Allegheny County, but does not intend to move any time soon. Mr. Felice testified about Westmoreland County, but will not be moving any time soon. Ms. Rosky testified about Westmoreland County and does not expect to move soon. Mr. McLaughlin resides in Allegheny County and has no current moving needs. Ms. Grande services clients moving to and from Allegheny, Washington, Westmoreland, Beaver, Butler, and Fayette Counties, but has no control over the movers appearing on the Howard Hannah list she gives to clients. Dr. Mantia resides in Allegheny County, but has no plans to move in the next five years. Mr. Matta's company no longer handles moves within Allegheny County and he has no plans to move from his home in Allegheny County within the next five years. (emphasis added)

The Commission, in its Opinion and Order entered November 22, 2004, adopted the Initial Decision of Administrative Law Judge Gesoff. The facts of the pending case are similar to the facts in the Coll case. Many of the witnesses here, like in the Coll case, were friends and acquaintances of Mr. & Mrs. Coll. For example, Anthony Pantoni assisted the applicant in securing its office in Sewickley and has maintained a business relationship with Mr. and Mrs. Coll since that time. (Tr. 24-26) John Sherry has been Mr. Coll's attorney for 41 years and he and Mr. Coll have been friends since first grade and he and his wife are social friends with Mr. and Mrs. Coll. (Tr. 110). Kimberly Aukerman became aware of this application through Josh Mastascusa, who is the applicant's Business Manager. (Tr.

119-120) Patsy Mooney is the mother of Kimberly Aukerman and the grandmother of Josh Mastascusa. (Tr. 129-130) Penny Rodgers is an employee of the applicant. (Tr. 233-234) John Lettrich is also an employee of the applicant. (Tr. 153)

The applicant in this case has failed to demonstrate that there is a public demand or need for the proposed service.

B. THE RECORD DEMONSTRATES THAT THE APPLICANT LACKS A PROPENSITY TO OPERATE SAFELY AND LEGALLY.

52 Pa. Code §41.14(b) provides as follows:

(b) 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, and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. (emphasis added)

The protestants in their Main Brief did not contest the fact that the applicant possesses the technical and financial ability to provide the proposed service. They did, however, argue that the application should be denied since the record demonstrates that the applicant lacks a propensity to operate safely and legally. In that regard, the protestants pointed out in their Main Brief that the applicant has provided unlawful service in Washington County on more than one occasion and has been admonished by a PUC enforcement officer that it was not allowed to provide service in Washington County; the applicant unlawfully advertised intrastate service outside of its existing service area, which resulted in the trips set forth on Exhibit 12; the applicant failed to comply with the Commissions regulations at 52 Pa. Code Part 31 in providing household

goods service under its existing authority by failing to weigh shipments before they were moved, regardless of whether they were more than 40 miles or less than 40 miles and by failing to do a written inventory involving shipments over 40 miles; and that the applicant has been cited by the United States Department of Transportation for fatigued driving violations and driver fitness violations in 2010 and 2011. The applicant in its Main Brief attempts to minimize these violations. The applicant argues at pages 23 and 24 of its Main Brief that Mr. Coll explained that the internet advertisements were only generic advertisements and that the movement involved in the PUC complaint proceeding involved a misunderstanding generated by a Zip Code destination and that the federal safety violations were immediately corrected. The excuses proffered by the applicant do not excuse the applicant's unlawful conduct. The Commission should not grant additional authority to a motor carrier that is violating the Commission's rules and regulations in performing service under its existing authority.

The record in this case demonstrates that the applicant lacks a propensity to operate safely and legally.

III. CONCLUSION

For all of the foregoing reasons, and the additional reasons set forth in their Main Brief, the protestants respectfully request that the application of Canterbury International, Inc. t/a Two Men and a Truck be denied.

Respectfully submitted,

VUONO & GRAY, LLC

By: 

William A. Gray, Esq.

Attorney for

SOUTH HILLS MOVERS, INC.

VESELY/BROS. MOVING & STORAGE, INC.

MCKEAN & BURT, INC., t/b/a

ALLWAYS MOVING & STORAGE

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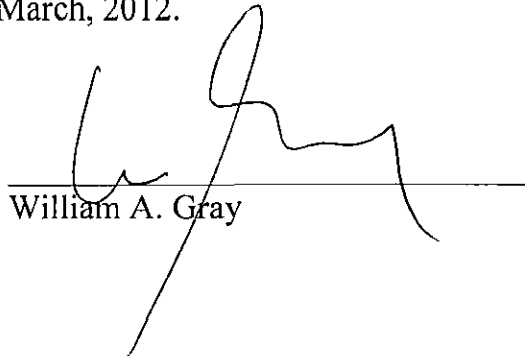
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served two (2) copies of the Reply Brief of Protestants on the following attorney for the applicant by email and by first class mail, postage prepaid as follows:

Kenneth A. Olsen, Esq.
33 Philhower Road
Lebanon, NJ 08833
kolsen53@earthlink.net

Dated at Pittsburgh, PA this 16th day of March, 2012.



William A. Gray



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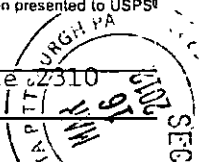
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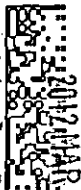
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Canterbury Intl (A-2011-22513361) info
Prot Reply Brief

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