**BEFORE THE**

 **PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Canterbury International, Inc., :

t/a Two Men and a Truck, for amendment :

to its common carrier certificate, which grants :

the right, inter alia, to transport, by motor : A-2011-2251336

vehicle, household goods in use, from points in :

Allegheny County to points in Pennsylvania and :

vice versa: SO AS TO PERMIT the transportation :

of household goods in use from points in the :

counties of Beaver, Butler, Westmoreland, Fayette :

and Washington to points in Pennsylvania and vice :

versa.

**INITIAL DECISION**

Before

Katrina L. Dunderdale

Administrative Law Judge

HISTORY OF THE PROCEEDING

 On June 1, 2011, Applicant, Canterbury International, Inc., (“Canterbury,” “Two Men and a Truck” or “Applicant”) filed an application seeking Pennsylvania Public Utility Commission (“Commission”) approval to amend its common carrier certificate so as to expand the right, inter alia, to transport, by motor vehicle, household goods in use, to also permit the transportation of household goods in use from points in the counties of Beaver, Butler, Westmoreland, Fayette, and Washington to points in Pennsylvania and vice versa. Said application was published in the Pennsylvania Bulletin on August 6, 2011 and specifically sought the following authority:

For amendment to its common carrier certificate, which grants the right, inter alia, to transport, by motor vehicle, household goods in use, from points in Allegheny County to points in Pennsylvania and vice versa: SO AS TO PERMIT the transportation of household goods in use from points in the counties of Beaver, Butler, Westmoreland, Fayette, and Washington to points in Pennsylvania and vice versa.

On August 19, 2011 and on August 22, 2011, respectively, Debo Moving and Storage, Inc. and The Snyder Brothers Moving, Inc., t/d/b/a George Transportation Company, (collectively, “Debo George Protestants”), filed timely protests. Similarly, on August 19, 2011, timely protests were filed on behalf of South Hills Movers, Inc., McKean & Burt, Inc., t/d/b/a All Ways Moving & Storage, All Ways World Wide Moving, Inc., Weleski Transfer, Inc., Lytle’s Transfer & Storage, Inc., Hoy Transfer, Inc., Vesely Bros. Moving & Storage, Inc., Century III Moving Systems, Inc., t/d/b/a Clairton Transfer Company, and Pleasant Hills Van & Storage, (collectively, “Protestants II”).

On October 4, 2011, the Office of Administrative Law Judge issued a Hearing Notice, setting Tuesday, November 22, 2011, at 10:00 a.m., as the date and time for the Initial In-Person Hearing in this matter. On October 5, 2011, the presiding officer issued the Prehearing Order on Applicant and counselors for the various Protestants.

Upon request of Debo George Protestants, the presiding officer granted a continuance request on October 17, 2011. Thereafter, the Office of Administrative Law Judge issued a Hearing Notice, setting Thursday, January 5, 2012, at 10:00 a.m., as the date and time for the Initial In-Person Hearing.

The presiding officer convened the initial hearing as scheduled on January 5, 2012. Canterbury International, Inc. appeared represented by counsel, Kenneth A. Olsen, Esquire. On January 5, 2012, the parties were unable to present their cases *in toto,* therefore, the Office of Administrative Law Judge issued a Hearing Notice on January 5, 2012, setting Wednesday, January 11, 2012, at 10:00 a.m., as the date and time for the Second Day In-Person Hearing.

At the hearings conducted in this proceeding, Applicant provided the testimonies of 14 “demand” witnesses and the testimony of Applicant’s Vice President. In addition, Applicant offered twelve exhibits at the hearing, marked “Applicant Exhibit 1” through “Applicant Exhibit 12,” which exhibits were admitted into evidence.

Debo George Protestants were represented by John Pillar, Esquire. Protestants II were represented by William Gray, Esquire. Protestants II provided the testimonies of five witnesses, and offered twelve exhibits at the hearing, marked variously as “Debo George Exhibit 1,” “South Hills Exhibits 1 & 2,” “Vesely Bros. Exhibit 1,” “McKean & Burt Exhibit 1,” “All Ways Exhibit 1,” “Weleski Exhibit 1,” “Lytle’s Exhibit 1,” and “Hoy Exhibit 1.” Each exhibit presented by Protestants II was admitted into evidence. The transcript of the hearings consists of 576 pages.

On January 10, 2012, Debo Moving and Storage, Inc. and George Transportation Company (referred to as Debo George Protestants) withdrew their protests to the application. On January 12, 2012, Protestant Century III Moving Systems, Inc., t/d/b/a Clairton Transfer Company and Pleasant Hills Van & Storage (originally referred to as part of Protestants II) withdrew its opposition to the application.

By Briefing Order dated January 20, 2012, the presiding officer established a briefing schedule allowing the parties to file main briefs by February 17, 2012 and reply briefs by March 2, 2012. Thereafter, on February 14, 2012, counsel for Applicant requested additional time within which to submit the briefs due to counsel’s litigation workload. On February 16, 2012, the presiding officer issued an Amended Briefing Order which allowed the parties to file main briefs by March 2, 2012 and reply briefs by March 16, 2012. Applicant filed its main brief on March 1, 2012 and its reply brief on March 16, 2012. Protestants II submitted its main brief on March 2, 2012, and reply brief on March 16, 2012.

On March 21, 2012, the presiding officer issued an Interim Order Closing the Hearing Record.

FINDINGS OF FACT

1. Applicant, Canterbury International, Inc., has its primary business address at 3555 Valley Drive, Pittsburgh, Pennsylvania (“Main Office”), but also has facilities located at 12 South Avenue, Sewickley, Pennsylvania (“Sewickley facility”). (Applicant Exhibit 4).
2. Applicant presently holds authority as a certificated common carrier, by motor vehicle, to transport household goods in use, from points in Allegheny County to points in Pennsylvania, and *vice versa*, under authority from the Public Utility Commission at Certificate No. A-00121505. (Tr. 16, 215, 260; Applicant Exhibits 2 & 4).
3. Applicant presently holds operating authority from the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, to engage in the transportation as a common carrier of household goods by motor vehicle in interstate or foreign commerce, between points in the United States. (Tr. 11; Applicant’s Exhibit 2).
4. Applicant is a franchisee for an interstate company called Two Men and a Truck International. Annually, Applicant pays 6% of its gross revenues to the franchisor in addition to paying 1% of gross revenues to the franchisor for advertising fees and 1% of gross revenues for technology fees. (Tr. 180, 252-254).
5. Applicant is owned and operated by Dorothy (a.k.a. Dottie) Coll and Raymond Coll, her husband, with Dottie Coll as a majority shareholder. (Tr. 11, 17, 18, 211).
6. Applicant currently employs eight office personnel, two dispatchers, twenty drivers, forty movers and one safety supervisor, who work from one of two facilities located in Allegheny County. (Tr. 16, 187; Applicant Exhibits 4, 5 & 7).
7. Currently, Applicant operates eighteen vehicles to move household goods in use, of which six are owned by Applicant. The remaining twelve vehicles are leased under long-term leases. All eighteen vehicles were less than seven years old or had less than 70,000 odometer miles at the time of the hearings. Applicant expects to purchase three more trucks if the application is granted. Applicant has not had any difficulty in obtaining financing when purchasing new vehicles. (Tr. 15, 16, 157, 218; Applicant Exhibit 3).
8. Applicant reported the following revenue amounts in Pennsylvania intrastate household goods in use in 2008, 2009 and 2010, respectively: $1,226,988; $1,188,184; and $1,581,096. (Applicant Exhibit 6).
9. From January 1, 2011 through November 30, 2011, Applicant reported $2,149,796.71 in revenue, $56,569.48 in net income, and $291,274.23 in stated assets. (Applicant Exhibit 6).
10. Currently Applicant has an existing $100,000 PNC Bank line of credit. (Tr. 157, 176).
11. From February 21, 2011 to December 15, 2011, Applicant received over 300 service requests from the public via telephone and electronic mail for movement of household goods in use within the proposed service territory, which requests Applicant declined because the requested moves were outside Applicant’s approved territory. (Tr. 171-175; Applicant Exhibit 12).
12. If this application is granted, Applicant intends to hire four more drivers and approximately one dozen movers. (Tr. 187).
13. If the application is granted, Applicant expects to gross approximately $300,000 in additional revenues annually. (Tr. 186, 187).
14. In 2008, All Ways World Wide Moving, Inc. (“All Ways”), filed an informal complaint against Applicant with the Commission alleging Applicant engaged in moving household goods in use within Washington County, which is outside Applicant’s authorized territory. (Tr. 325, 326).
15. In 2010, the Commission filed a complaint against Applicant because Applicant provided transportation within Washington County, which county is outside Applicant’s current territory. Applicant paid a $250 fine to the Commission. In addition, a Commission enforcement officer verbally advised Applicant that Applicant’s territory did not include Washington County. (Tr. 194, 220, 325, 327-329).
16. In addition to the 2010 Commission complaint, Applicant also moved personal furniture for an apartment complex building manager in May 2010 from a point in Washington County to another point in the same apartment complex in Washington County. (Tr. 223, 224, 325-328).
17. Applicant presently has the necessary equipment, personnel, facilities, insurance, technical and financial ability to perform the proposed service in a lawful and safe manner. (Tr. 15-17, 156-159, 164-170, 176-177, 186-188; Applicant’s Exhibits 3, 4, 5, 6, 7, 8, 9, 10, & 11).
18. Anthony J. Pantoni testified his family will move from Cranberry Township, Butler County to Lancaster Township, Butler County sometime within the next year. He used Applicant one time before when he moved some family belongings from Sharpsburg, Allegheny County to his mother’s home in Midland, Beaver County. He was satisfied with Applicant’s service and he testified he personally would use Applicant’s household goods moving service, if this application is granted, because dependability and reliability are more important to him than cost of service. On cross-examination, he admitted he is a commercial realtor who assisted Applicant in locating and securing the site which became Applicant’s Sewickley location and has a continuing business relationship with Applicant in the form of referrals. When referring customers who need household goods moving services, Mr. Pantoni will provide customers with three names based upon their dependability and reliability. Mr. Pantoni has no other relationship with Applicant. (Tr. 22-34).
19. Gillian Yahnite testified her family currently lives in Monongahela, Washington County, but expects her family to move to Cranberry Township in Butler County within the next twelve to eighteen months when her husband receives a promotion and relocation through work. She met Dottie Coll through women’s networking groups and mutual friends. She would like to use Applicant when the family moves because what is most important to her, when selecting a moving company, is reliability, cleanliness of movers and if the business is woman-owned. Her last move was nine years ago when the family moved from Rochester, New York to Washington County, Pennsylvania. (Tr. 35-43).
20. Emerald Van Buskirk testified her husband and she plan to downsize within the next two years. They currently live in McMurray, Washington County. She has not determined what area to which they will move but expects to relocate within western Pennsylvania in order to be closer to her husband’s customer base for his industrial supply packaging company. She moved to McMurray seven years ago from Southpointe and did not use Applicant then. She does know Applicant now but on a professional basis only. If the application is granted, she would like to use Applicant for moving household goods because Applicant is active in the local Chamber of Commerce and there are no other moving companies within that local Chamber of Commerce. (Tr. 44-49).
21. Janet Bouma testified she resides in a home near North Park in Allegheny County and owns a ski lodge in Champion, Fayette County. She plans to sell the ski lodge and move her household goods to a smaller residence elsewhere in Fayette County within the next year. She would like to use Applicant when she moves her household goods because she had good experiences with them on five previous moves. She moved five times since 2006 and Applicant assisted with all those moves, which occurred within Allegheny County. Ms. Bouma knows Dottie Coll from networking events but has no personal relationship with her. She thinks cost is an important factor when moving but admitted she never checked with other companies to compare rates when she moved previously. She would prefer to use a local mover who is known to her for her future moves and she was satisfied with the service she received from Applicant in her five previous moves. (Tr. 50-61).
22. Suzanne Froehlich testified she had to downsize quickly two years ago from Pine Township, Allegheny County to Zelienople, Butler County, when her residence sold. She and her husband currently live in a rented home but have begun the search for a new home. She expects them to move this spring to either Beaver County or within Butler County. She currently operates a business out of her home with an office in Cranberry Township, Butler County. She learned of Applicant through Dottie Coll about ten years ago because Ms. Froehlich heads up the Women’s Power Lunch group. She knows Dottie Coll both in business and on a social basis. When they move, she would like to use Applicant because she knows Applicant’s corporate officers personally, she used Applicant on their previous move when she found the service to be “astonishing” and was impressed with the quality of service, especially since the move occurred on Super Bowl weekend when there was two feet of snow on the ground. She did compare prices at that time and found Applicant’s costs were comparable with the competitor’s. (Tr. 62-69).

1. Timothy Edris testified his family lives in Beaver Falls, Beaver County and they plan to move back to the Hershey or Harrisburg area in Central Pennsylvania within the next twelve to eighteen months. He would like to use Applicant to move their household goods, even though he has not used Applicant before, because he knows them and trusts them through his networking association with them. He finds cost is one factor when picking a mover but it’s not the determining factor. The determining factors for picking a household goods mover are trustworthiness and quality of service. (Tr. 70-80).
2. Julie Ann Sullivan testified she lives in Peters Township, Washington County but will be moving to Allegheny County by July 2012. She wants to use Applicant to move her household goods, even though she’s never used them before, because she knows Dottie Coll through networking events. (Tr. 81-85).
3. Robert M. Flock testified he lives in Belle Vernon, Westmoreland County, and within the next six to twenty-four months he expects to move with his wife to a smaller residence either elsewhere in Westmoreland County or to Allentown, Lehigh County. He wants to use Applicant to move his household goods because he has known Applicant’s corporate officers professionally and as social acquaintances for fifty years. The last time he used a household goods mover was in 1961. (Tr. 86-93).
4. Edward M. Sickmund testified his family lives in McMurray, Washington County. He expects to need a household goods mover this year in order to move his daughter out of the family home into her first apartment in Allegheny County in May 2012, and to move one or both of his twin sons from their dorm rooms in Erie County into off-campus apartments in August 2012. He has known Applicant’s corporate officers for the past four years through the Southwest Chamber of Commerce and would like to use Applicant for these anticipated moves. He testified that he would consider using any household goods mover who is a member of his local Chamber of Commerce and he would rely on local referrals before selecting a Chamber of Commerce member. (Tr. 93-104).
5. John S. Sherry testified he lives in Washington County and expects to need a household goods mover in 2012 to move his family to another home located four miles from his current residence. In addition, his family plans to purchase a residence in Hidden Valley, Somerset County and will need to move household goods to that location as well. If the application is granted, he would expect to use Applicant for both the Washington County move and the Washington County to Somerset County move. He has never used Applicant before but has known both Dottie and Raymond Coll since the first grade. (Tr. 105-114).
6. Kimberly A. Ackerman testified she currently needs a household goods mover to remove a family member’s belongings from her residence in Westmoreland County to various points in western Pennsylvania. She plans to donate or sell all of these items to individuals she knows through her church. She would like to use Applicant to handle the move. She has never used Applicant before but learned about Applicant through her son, who is Applicant’s business manager at the Sewickley office. (Tr. 115-126).
7. Patsy J. Mooney testified she and her husband need to downsize from their current residence in Aliquippa, Beaver County and plan to purchase a smaller home in Ligonier, Westmoreland County, Pennsylvania. When they move, she would like to use Applicant, who she learned about from her grandson who is employed by Applicant. (Tr. 126-136).
8. Penny Ann Rodgers testified she lives in Andara, Westmoreland County and plans to downsize within the next six months from her family’s home to an apartment in Greensburg, Westmoreland County. She used the services of another franchisee of Two Men and a Truck© one time when she lived in Georgia about six years ago. She likes what the company is about, thinks it’s a good organization and she doesn’t worry about how they will handle her belongings. There is a “nice cozy feel” to Two Men and a Truck©. She admitted on cross-examination that she called Applicant to request service but was told the proposed move was outside Applicant’s current territory. She has also checked on other available movers through Angie’s List© and the Better Business Bureau©, and calls to the customer service representatives at the other movers. She doesn’t like what she learned about the other movers from her inquiries. Cost is a factor for her decision as to which mover to hire but ratings and damage claims are more important factors for her. She is not related to any of the other witnesses testifying in this proceeding and she does not know Applicant’s corporate officers. (Tr. 137-149).
9. John E. Lettrich testified he needs a household goods mover to handle a move he expects to make from his residence in Westmoreland County to either another place in Westmoreland County or to a place in Armstrong County. He plans to downsize as soon as his fiancée’s child leaves to attend college. He has not used Applicant as a mover before but he has been employed by Applicant as a dispatcher in Bethel Park since 2008. (Tr. 150-155).
10. Robert E. Lee testified he is the President of Protestant South Hills Movers, Inc. (“South Hills Movers”), in Bethel Park, Allegheny County. South Hills Movers’ authority from the Commission includes the counties of Allegheny, Fayette, Beaver and Greene, plus areas around Uniontown, Fayette County and Clymer, Indiana County, and any location within 125 miles of Pittsburgh, Allegheny County. Last year, South Hills Movers had $2.2 million in Commission revenues, with a majority of the revenue originating or ending in the requested service territory. South Hills Movers’ territory includes all five counties listed in Applicant’s amended application. (Tr. 270-288; South Hills Exhibit 1).
11. Joseph Vesely testified he is the Vice President at Vesely Bros. Moving & Storage, Inc. (“Vesely”) and Century III Moving Systems, Inc. (“Century III”), with a facility in Belle Vernon, Westmoreland County, Pennsylvania. Their facility is within one mile of Fayette County and within four miles of Washington County. He testified Century III has active authority from the Commission but it is a dormant business at this time because Vesely has the capacity to provide all the service requested by customers at this time. He testified Vesely has been in business since 1921 and received authority to transport household goods in use in 1981.

 The territory for Vesely includes all or portions of Allegheny County, Fayette County, Washington County, and Westmoreland County to points in Pennsylvania and *vice versa*, and that territory is in conflict with the requested amendment. Vesely currently uses nine tractor trailers, fifteen trucks and seven straight vans. Last year, Vesely reported Commission revenues of approximately $400,000, with approximately one-half of the revenue arising from moves within the counties of Fayette, Washington and Westmoreland, and one-half of the revenue from Allegheny County. Vesely currently employs a total of forty people, which includes eighteen drivers. He testified Vesely does not use its equipment at capacity currently due to substantial competition. (Tr. 289-306; Vesely Bros. Exhibit 1).

1. Timothy Moore testified he is the owner and corporate president of All Ways World Wide Moving, Inc., (“All Ways”) and McKean & Burt, Inc., t/d/b/a All Ways Moving & Storage (“McKean & Burt”). His corporation, All Ways, has Commission authority at Docket No. A-00113305, to transport household goods in Washington, Washington County and points within fifteen miles, to other points in Pennsylvania, and *vice versa*. His other corporation, McKean & Burt, has Commission authority at Docket No. A-00091652, to transport household goods and office furniture in most of Washington County and all of Allegheny County. McKean & Burt is a service provider for the Department of Defense. All Ways is an agent of Wheaten Van Lines and provides intrastate service. The corporations occupy and use five buildings, employ twelve drivers and sixteen helpers, and use a total of twenty-three vehicles.

 In 2010 and 2011, All Ways did not turn down any request for a move in Washington County. The two corporations (All Ways and McKean & Burt) are debt-free but currently there is insufficient business to keep the employees busy and to operate corporate equipment at full capacity. Seventy percent of these corporations’ Commission business is in Washington County, which currently has a population of 200,000 people, and where there are twelve competitors. Both corporations advertise in Washington County and in Allegheny County. There are thirty-five competitors in Allegheny County, which currently has a population of 1.2 million people. In 2008, the witness tried to file an informal complaint with the Commission out of concern that Applicant conducted moves outside its territory, did not charge for valuation insurance, and gave away boxes to customers buying more than one hundred boxes. (Tr. 306-346; All Ways Exhibit 1).

1. Michael Chick testified he is the corporate vice president of Weleski Transfer, Inc. (“Weleski Transfer”) with a business address in Tarentum, Allegheny County, which is close to Westmoreland County and Armstrong County. The corporation has Commission authority at Docket No. A-96502 to transport household goods in use in the counties of Allegheny, Armstrong, Butler, Cambria and Somerset, to points in Pennsylvania and *vice versa*. The business does not have authority to operate in the counties of Beaver, Washington or Fayette. Weleski Transfer’s intrastate revenues in 2010 were approximately $1.7 million with seventy percent of its Commission business conducted within those five counties. The business conducted approximately 4000 moves in 2011. Currently, the corporation does not operate its equipment at full capacity and there is more competition than there is need in these five counties. The business uses four warehouses (totaling 400,000 square feet of storage) and one two-story office building with a diversified business that includes distribution, Department of Defense carrier services, international moves and palletized warehouse for household goods. Currently, the business employs 140 people and uses 50 tractor trailers, 30 over-the-road straight trucks, 20 local straight trucks, 12 pack vans, and a fleet of sales cars and company cars. (Tr. 346-365; Weleski Exhibit 1).
2. Protestant Lytle’s Transfer & Storage, Inc., operates from Altoona, Blair County as a household goods in use transportation provider with Commission authority in portions of Blair County, Lehigh County, Northampton County, and Huntingdon County, to points in Pennsylvania and *vice versa*. (Lytle’s Exhibit 1).
3. Hoy Transfer, Inc. operates as a household goods in use transportation provider in Centre County and Mifflin County, to points in Pennsylvania and *vice versa*. (Hoy Exhibit 1).
4. The grant of the instant application will endanger or impair, contrary to the public interest, those Protestants whose territory includes Washington County. (Tr. 306-346).
5. Protestants II did not waive negative impact upon their operations as a reason for the protests but also did not argue the presence of a negative impact.
6. Applicant’s current tariff (Supplement No. 2 to Freight – Pa. P.U.C. No. 1), which became effective on January 7, 2008, provides for the following hourly rates on weekdays and Saturdays:

Vehicle and Driver = $58.00

Additional Men, each = $32.00

Supervisors, each = $45.00

(Tr. 214; Debo George Exhibit 1).

1. In addition to hourly rates, Applicant’s current tariff applies travel charges based on the distance from the terminal to either the origin or destination of shipment, whichever is the greatest distance. The tariff also provides for a minimum charge. (Tr. 256-258; Debo George Exhibit 1).
2. Applicant’s Balance Sheet for 2011 through November 30, 2011 listed $71,674.41 in total current assets and $109,054.00 in total other assets, with $4,619.40 in total current liabilities, $158,901.56 in total long-term liabilities, and $132,752.97 in total equity. (Applicant Exhibit 6).
3. Applicant’s Profit and Loss Statement for 2011, ending November 30, 2011, shows revenues totaling $2,149,796.71, net income totaling $56,569.48 and stated assets totaling $291,274.23. (Applicant Exhibit 6).
4. Applicant currently has sufficient capital, equipment, facilities or other resources necessary to serve the territory. (Applicant Exhibits 3, 4, 5, & 6).
5. Applicant currently has sufficient technical expertise and experience to serve the territory requested. (Applicant Exhibits 3, 4 & 5).
6. Applicant currently has secured vehicle insurance coverage through its current insurance carrier. (Applicant Exhibit 3).
7. Applicant currently has an appropriate plan to comply with the Commission’s driver and vehicle safety regulations and service standards. (Applicant Exhibits 7, 8, 9 & 10).

DISCUSSION

In this proceeding, Applicant applied to the Commission for a certificate of public convenience to permit it:

The right to amend its common carrier certificate, which grants the right, inter alia, to transport, by motor vehicle, household goods in use, from points in Allegheny County to points in Pennsylvania and *vice versa*: SO AS TO PERMIT the transportation of household goods in use from points in the counties of Beaver, Butler, Westmoreland, Fayette, and Washington to points in Pennsylvania and *vice versa*.

Applicant’s Argument

 Applicant contends it satisfied the Commission’s criteria, as set forth in 52 Pa. Code §41.14. Applicant argues approval of its requested amendment serves a useful public purpose responsive to a public demand and need. Secondly, Applicant contends it possesses the technical and financial ability to provide the proposed service in a continuous and lawful manner. Applicant acknowledges it mistakenly operated outside its territory in 2008 on one occasion, but contends its history overall with the Commission illustrates it has a propensity to operate safely and legally. Thirdly, Applicant avers Protestants failed to show or document that their operations would be endangered or impaired contrary to the public interest by a grant of the instant application.

Protestants II’s Argument

 Protestants II argue Applicant failed to demonstrate approval of its application will serve a useful public purpose which is responsive to a public demand or need. In addition, Protestants II contend Applicant lacks a propensity to operate safely and legally as demonstrated by the evidence of Applicant’s failure to comply with Commission requirements to operate only within its own current territory.

Burden of Proof

Section 332(a) of the Public Utility Code (“Code”),[[1]](#footnote-1) generally provides for the party seeking affirmative relief from the Commission to bear the burden of proof. In this proceeding, Applicant seeks to amend its certificate of public convenience so as to permit the transportation of household goods in use as a common carrier by motor vehicle between points in a defined territory within this State that it is currently not authorized to provide. Thus, as the party seeking affirmative relief from the Commission, Applicant bears the burden of proof.

Evidentiary Requirement

In general, the requirements for obtaining a certificate of public convenience to provide motor carrier transportation services are found in Sections 1101 through 1103 of the Public Utility Code.[[2]](#footnote-2) Specific evidentiary requirements have been established by this Commission in its regulation at 52 Pa. Code §41.14, as amended, and these evidentiary criteria are used by the Commission when reviewing applications which seek motor carrier authority. These criteria are:

1. An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.
2. 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 requested.
	2. Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.

* 1. 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.
	2. Whether the applicant has an appropriate plan to comply with the Commission’s driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).
	3. An applicant’s record, if any, of compliance with 66 Pa.C.S. (relating to the Public Utility Code), this title and the Commission’s orders.
	4. Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.
1. The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

Adoption of these criteria effectively eliminates an applicant’s evidentiary burden to demonstrate the inadequacy of existing service.[[3]](#footnote-3) Subsections (a) and (b) clearly place the burden of proof on Applicant to establish that the proposed service will serve a useful public purpose, responsive to a public need or demand, and that Applicant is financially and technically fit to provide the proposed service.

The Commission clarified the type of evidence an applicant may provide to satisfy its burden of proof under 52 Pa. Code §41.14(a) in Application of Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262, 274 (1990), when it stated in pertinent part:

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

The witnesses supporting a motor common carrier application must be legally competent and credible, … and their testimony must be probative and relevant to the application proceeding…. The supporting witnesses must articulate a demand/need for the type of service embodied in the application. Moreover, the supporting 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….

Protestants’ Burden

A protestant carries the burden of proof to show the amended authority requested by an applicant, if approved, would so endanger or impair the operations of that protestant that, on balance, approval of the application would be contrary to the public interest.[[4]](#footnote-4)

In this proceeding, Protestants neither waived the argument nor argued that Protestants’ operations would be endangered or impaired if the application was granted. However, one Protestant (All Ways) did testify its operations were already impaired by a plethora of service providers in the Washington area, especially when comparing the population levels relative to the population in neighboring Allegheny County. Another Protestant (Century III) is dormant because its “sister” corporation (Vesely) currently can handle all requests for service and is not operating at full capacity in that territory (Washington County). Otherwise, Protestants focused their arguments and evidence on attempting to establish the application was contrary to the public interest, and to show Applicant lacked a propensity to operate safely and legally.

Public Demand or Need for Service

 Applicant seeks authority to transport, as a common carrier, by motor vehicle, household goods in use, from points in the counties of Beaver, Butler, Westmoreland, Fayette and Washington, to points in Pennsylvania and vice versa, in addition to its current authority which services Allegheny County. Applicant contends it presented sufficient proof to show this additional authority will serve a useful public purpose and is responsive to public need. Applicant avers it currently possesses sufficient capital, experience, expertise, employees, facilities and all other necessary resources to perform the services consistent with the Commission’s statutes and regulations.

 An applicant is not required to establish a public demand/need for the proposed transportation service in each and every point within the proposed service territory. It is sufficient if an applicant establishes a public demand/need for the proposed service generally throughout the proposed service territory.[[5]](#footnote-5) In the context of Section 1103(a) of the Code, an applicant may prove a public demand/need for its proposed transportation service through witnesses comprising a representative sampling of the public that will use its proposed services within the application territory.[[6]](#footnote-6)

The particular circumstances of a case determine what constitutes sufficient evidence of a public demand/need for applicant’s proposed service. The number of witnesses, which should comprise a cross section of the public on the issue of a public demand/need for an applicant’s proposed service, will necessarily vary with the circumstances of each case. One may consider such factors as the breadth of applicant’s intended operating territory, the population density in the intended operating territory, and the scope of the requested operating authority.[[7]](#footnote-7)

Applicant provided the testimonies of fourteen (14) individuals. Of those individuals, five witnesses were either employees of Applicant, family members of Applicant’s employees, or had close business or personal associations with Applicant. Of the remaining nine individuals, all testified credibly that they anticipated moving in the near- or not-too-distant future, and they expected to use or seriously consider using Applicant for those moves. Most convincing among these nine individuals were the testimonies of Gillian Yahnite, Emerald Van Buskirk, Janet Bouma, Suzanne Froehlich, Timothy Edris, Julie Ann Sullivan, Robert M. Flock, Edward M. Sickmund and Penny Ann Rodgers. Most of these witnesses testified to either using Applicant (or another franchisee) on prior moves or stated a preference to use Applicant due to close networking relationships.

Protestants contend it filed a protest because Applicant’s request for amended authority, if granted, would not serve a useful public purpose which is responsive to a public demand or need, and because Applicant lacks a propensity to operate safely and legally. Protestants urge the Commission to find Applicant failed to meet its burden of proof.

Applicant established there currently **does** exist a public demand for moving services involving household goods in use within four of the requested counties. Applicant produced a number of witnesses who testified they would use Applicant if the amended authority was granted. Applicant provided relevant, admissible evidence which showed numerous ratepayers were willing and interested in securing its services. Some of those individuals testified based on past experiences with this service provider when moving to or from Allegheny County previously. One testified she was interested in using Applicant in the future based on her past experiences with the franchise in another state. Quite a few testified they would use Applicant, if the amended authority was granted, for future moves which the witnesses anticipated they might need sometime in the foreseeable future.

Contrary to Protestants’ assertions, Applicant did not have to produce witnesses who knew precisely to where they were moving or when they would move there in order to testify credibly about public need. It is sufficient evidence of public need to show the individuals knew or know of Applicant, either personally or through business contacts, and they planned to consider using Applicant for their moving needs. Most notable were the individuals who knew Applicant’s corporate officers from networking events who said they would use Applicant because Applicant was the only mover the witnesses knew from their networking groups. Therefore, it is the opinion of the presiding officer Applicant did show a significant demand and need exists for these transportation services within the requested service territory.

Fitness of Applicant

Applicant’s vice president testified credibly Applicant has extensive experience in operating a fleet of vehicles safely and providing satisfactory service. Applicant maintains the current fleet of vehicles in a safe operating condition, as shown by the lack of compliance complaints filed by the Commission. Applicant already maintains a safety and training program for drivers, plus maintaining criminal checks, safe driving records, safety training and training in how to move household goods. In addition, Applicant possesses sufficient financial strength to expand services into the proposed authority.

 Protestants urge the Commission to find Applicant lacks fitness to operate in compliance with the Commission’s regulations, as evidenced by Applicant’s past behavior to provide moving services outside its territory. The evidence presented concerns an occasion in 2010 when Applicant performed a move of household goods in use outside its authorized territory. On another occasion in May 2010, Applicant moved a building manager’s personal furniture from one section of an apartment building complex in Washington County to another building in the same complex.[[8]](#footnote-8) As a result of the first move, the Commission investigated and issued a $250 citation to Applicant, which fine Applicant paid.

I accord some weight to these events but the two occurrences do not establish a pattern or propensity to be non-compliant. In addition, Applicant is a certificated carrier, has been in operation for many years, and has been in compliance with the Commission’s regulations during that time. These two occasions, though noteworthy and cause for caution, do not outweigh the contrary evidence presented through Applicant’s case-in-chief, namely, that Applicant has a propensity to operate in compliance with the Commission’s regulations.

Applicant is a common carrier seeking to expand its territory by adding five additional counties to its current territory, which consists of only one county: Allegheny. Applicant’s technical and financial ability and legal fitness are presumed under the so-called presumption of continuance doctrine:

It is only an application of familiar and elementary common law principle, the so called presumption of continuance doctrine, by which a condition of a continuous nature once established may be assumed to continue until the contrary is shown.[[9]](#footnote-9)

Applicant’s ability and fitness were established and settled when the Commission originally authorized it to operate in the existing territory. Although there were two times when Applicant provided moving services outside its territory in 2010, there is no strong credible proof that Applicant lacks the propensity or willingness to operate in compliance with the Commission’s regulations. Applicant is a certificated carrier in good standing with the Commission, and it provided sufficient evidence to show it is able and likely to financially handle the demands of an increased territory in addition to operating in compliance with the Commission’s rules and regulations. Accordingly, I conclude Applicant demonstrated fitness to operate the business in a sound and safe manner and in a manner consistent and in compliance with the Commission’s regulations.

Public Interest

 As noted above, Protestants bear the burden of showing the authority requested would not be in the public interest. Applicant’s entry into this market would likely benefit the public because Applicant’s public witnesses convincingly portrayed the tendency of individuals to move freely among the communities in the southwestern corner of Pennsylvania without regard to county boundaries. The public interest is best served where competition flourishes and nothing in the record persuades me Applicant’s entry into the market will endanger or impair Protestants’ operations, with one notable exception.

 In the instant proceeding, there is one exception that is not only notable but persuasive. The evidence presented by Protestant All Ways (and to a lesser extent, by Vesely and Century III) convincingly met the burden of showing the authority which Applicant requests is not in the public interest – as it relates to Washington County. In that county, there is a long list of available service providers for a smaller pool of potential customers. All Ways provided credible evidence that adding another service provider in that territory will not benefit the public because it will further impair or endanger Protestant’s operations, which are operating at less than full capacity currently.

 When a protestant shows that entry of a new carrier into the territory would endanger or impair the operations of an existing common carrier in that territory, then granting the new authority would be contrary to the public interest in that territory. To meet this burden, a protestant must show more than diversion of business and more than simply impairment to protestant’s interest. The impairment or endangerment shown must be so great as to implicate the public interest.[[10]](#footnote-10)

 The evidence presented through All Ways, McKean & Burt, Vesely and Century III convincingly showed the entrance of Applicant into the Washington County market will not provide a public benefit or fill a public need, and will endanger or impair those corporations in that county. These companies already operate within or around Allegheny County and Washington County but there are more service providers in Washington County relative to the population than there are in Allegheny County. Washington County only has 200,000 people while Allegheny County has 1.2 million. Therefore, with twelve competitors in Washington County, there is already one service provider for every 16,600 people, while in Allegheny County, which has 35 service providers, there is one service provider for every 37,000 people. In addition, All Ways and McKean & Burt did not turn down any request for moving services in the last two years but still cannot keep their employees busy on a full-time basis.

 Applicant’s witnesses do not rebut sufficiently this evidence of impact. Of the fourteen public witnesses presented by Applicant, there were only four witnesses who currently live in Washington County or who anticipate a move into Washington County and who also do not have an employment relationship or personal/familial relationship with Applicant’s corporate officers: Gillian Yahnite, Emerald Van Buskirk, Julie Ann Sullivan and Edward M. Sickmund. Of those four witnesses, none would be precluded from using Applicant in the future if Applicant’s territory did not include Washington County. In fact, if the application is granted for all requested counties except Washington, all of the witnesses who currently live in Washington County and anticipate a move in the near future would be able to use Applicant because the application requests authority to transfer to or from Applicant’s territory to points in Pennsylvania. So the witnesses who currently live in Washington County could still use Applicant to move from Washington County to another county, such as Allegheny, Beaver, Butler, Westmoreland, or Fayette.

Conclusion

 The questions here are if Applicant proved a need currently exists to amend its authority as a household goods mover into an expanded territory; and if Applicant has the fitness to adequately, safely and satisfactorily provide the service. Applicant is qualified to provide the proposed service and has demonstrated a need for the service, except in Washington County. Applicant is financially able to operate a safe service at this time, the public interest would be served by Applicant’s entry into the territory which includes the counties of Beaver, Butler, Westmoreland and Fayette as another service provider, and Applicant has shown its own fitness. Therefore, for the reasons stated above, the instant Application should be granted in part and denied in part.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding by virtue of 66 Pa. C.S.A. §1102(a)(1).
2. Applicant has the burden of proof in this application proceeding to show its application should be granted and that approval of the application will serve a useful public purpose, responsive to a public demand or need. 52 Pa. Code §41.14(a) and 66 Pa. C.S.A. §332(a).
3. Protestants have the burden of proof in this application proceeding to establish Canterbury International, Inc., t/a Two Men and a Truck, lacks the propensity to operate safely and legally and to prove the entry of a new carrier would endanger or impair the operations of existing carriers to such an extent that, on balance, the granting of the authority would be contrary to the public interest. 52 Pa. Code §41.14(c).
4. The Commission should grant an application for a certificate of public convenience only if the Commission finds “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S.A. §1103(a).
5. The Commission should grant common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing carriers to such an extent that, on balance, the granting of the authority would be contrary to the public interest. 52 Pa. Code §41.14(c).
6. The evidence of record established the proposed service in the counties of Beaver, Butler, Westmoreland and Fayette will serve a useful public purpose as required under 52 Pa. Code §41.14.
7. The evidence of record failed to establish the proposed service in the county of Washington will serve a useful public purpose as required under 52 Pa. Code §41.14.
8. The evidence of record established the proposed service in the counties of Beaver, Butler, Westmoreland and Fayette is responsive to a public need, as required under 52 Pa. Code §41.14.
9. The evidence of record failed to establish the proposed service in the county of Washington is responsive to a public need, as required under 52 Pa. Code §41.14.
10. The evidence of record established Canterbury International, Inc., t/a Two Men and a Truck, possesses the required technical and financial fitness to provide the proposed service.
11. A grant of authority to Canterbury International, Inc., t/a Two Men and a Truck, will not endanger or impair Protestants’ operations in the counties of Beaver, Butler, Westmoreland and Fayette to such an extent that the public interest would be affected.
12. A grant of authority to Canterbury International, Inc., t/a Two Men and a Truck, will endanger or impair Protestants’ operations in the county of Washington to such an extent that the public interest would be affected.
13. The Application filed by Canterbury International, Inc. t/a Two Men and a Truck at Docket No. A-2011-2251336 should be approved for the counties of Beaver, Butler, Westmoreland and Fayette.
14. The Application filed by Canterbury International, Inc. t/a Two Men and a Truck at Docket No. A-2011-2251336 should be denied for the county of Washington.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the application of Canterbury International, Inc., t/a Two Men and a Truck, docketed with the Pennsylvania Public Utility Commission at Docket No. A-2011-2251336, be and is hereby approved in part for the counties of Beaver, Butler, Westmoreland and Fayette.

2. That the application of Canterbury International, Inc., t/a Two Men and a Truck, docketed with the Pennsylvania Public Utility Commission at Docket No. A-2011-2251336, be and is hereby denied in part for the county of Washington.

3. That the certificate issued to Canterbury International, Inc., t/a Two Men and a Truck, be amended to include the following rights:

For amendment to its common carrier certificate, which grants the right, inter alia, to transport, by motor vehicle, household goods in use, from points in Allegheny County to points in Pennsylvania and vice versa: SO AS TO PERMIT the transportation of household goods in use from points in the counties of Beaver, Butler, Westmoreland and Fayette to points in Pennsylvania and vice versa.

4. That Canterbury International, Inc., t/a Two Men and a Truck, shall not engage in any transportation granted herein until Canterbury International, Inc., t/a Two Men and a Truck, submits to the Pennsylvania Public Utility Commission a tariff establishing just and reasonable rates.

5. That the authority granted herein, to the extent it duplicates authority now held by or subsequently granted to the carrier, shall not be construed as conferring more than one operating right.

6. That in the event Canterbury International, Inc., t/a Two Men and a Truck, has not, on or before 60 days from receipt of this Order, complied with the requirements set forth above, this application shall be dismissed without further proceedings.

Date: May 31, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Katrina L. Dunderdale

 Administrative Law Judge

1. 66 Pa. C.S.A. §332(a). [↑](#footnote-ref-1)
2. 66 Pa. C.S.A. §1101-1103. [↑](#footnote-ref-2)
3. Seaboard Tank Line, Inc. v. Pa. P.U.C., 502 A.2d 762 (Pa. Commw. 1985). [↑](#footnote-ref-3)
4. See 52 Pa. Code §41.14(c). [↑](#footnote-ref-4)
5. See Purolator Courier Corp. v. Pa. P.U.C., 414 A.2d 450 (Pa. Commw. 1980); Pa. P.U.C. v. Purolator Courier Corp., 355 A.2d 850 (Pa. Commw. 1976); and Eagle Courier and Limousine Service, Inc., 57 Pa. P.U.C. 404 (1983). [↑](#footnote-ref-5)
6. Blue Bird Coach Lines, Inc., supra at 274 (1990). [↑](#footnote-ref-6)
7. Blue Bird Coach Lines, Inc., supra at 274-275 (1990). See also Application of Michael Odell Pettus, A-00120113, Opinion and Order entered May 24, 2005. [↑](#footnote-ref-7)
8. Applicant contends its authority permits it to move these items belonging to the building manager because it was a “business move” and the items did not “go on a truck.” See page 223 of transcript.

 [↑](#footnote-ref-8)
9. Hostetter v. Pennsylvania Public Utility Commission, 160 Pa. Superior Ct. 94 (1947). See also Re: V.I.P. Travel Service, Inc., 56 Pa. P.U.C. 625 (1982). [↑](#footnote-ref-9)
10. See 52 Pa. Code §41.14(c). Also Re: Richard L. Kinard, Inc., 58 Pa. P.U.C. 548 (1984). [↑](#footnote-ref-10)