

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF:
APPLICATION OF
CANTERBURY INTERNATIONAL, INC. d/b/a
TWO MEN AND A TRUCK
NUMBER A-2011-2251336

EXCEPTIONS

OF

APPLICANT

TO

INITIAL DECISION OF

KATRINA L. DUNDERDALE, ALJ, DATED 5/31/12, SERVED 6/13/12

Dated: July 2, 2012

Filed By:
Kenneth A. Olsen
33 Philhower Road
Lebanon, New Jersey 08833
(908) 832-9207
Attorney for Applicant

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF:
APPLICATION OF
CANTERBURY INTERNATIONAL, INC. d/b/a
TWO MEN AND A TRUCK
NUMBER A-2011-2251336

EXCEPTIONS

OF

APPLICANT

TO

INITIAL DECISION OF

KATRINA L. DUNDERDALE, ALJ, DATED 5/31/12, SERVED 6/13/12

Comes now, Canterbury International, Inc. d/b/a Two Men And A Truck, a corporation of the Commonwealth of Pennsylvania, with address at 3555 Valley Drive, Pittsburgh, PA 15234 (hereinafter referred to as Applicant), by its Attorney, Kenneth A. Olsen, and in accordance with the Rules of Practice of the Pennsylvania Public Utility Commission ("Commission") and pursuant to the secretarial letter issued June 13, 2012 on behalf of the Commission, files this, its Exceptions to the May 31, 2012 Initial Decision of the Hon. Katrina L. Dunderdale, ALJ, served June 13, 2012, in the above entitled proceeding.*

For the purposes of these Exceptions, Applicant adopts the History Of The Proceeding set

*References to the record in this proceeding will be governed by the following abbreviations:
Tr. = Transcript of oral hearing and page number; Ex. = Exhibits received into evidence;
ID. = May 31, 2012 Initial Decision of Hon. Katrina L. Dunerdale, ALJ, and page number

forth at pages 1 to 3 of the Initial Decision. Also, for the purposes of these Exceptions, Applicant adopts the Findings Of Fact and Conclusions Of Law set forth in the Initial Decision as they relate to, find, and conclude that: (a) Applicant has demonstrated its financial and technical fitness and ability to operate its business and the proposed service in a sound, safe, and lawful manner consistent with and in compliance with the Commission's regulations; (b) Applicant has demonstrated a useful public need for the proposed service in Beaver, Butler, Westmoreland, and Fayette Counties, and from points in said Counties to points in Pennsylvania, and vice versa; and (c) a grant of authority to Applicant will not endanger or impair Protestants' operations in Beaver, Butler, Westmoreland, or Fayette Counties contrary to the public interest.

I EXCEPTIONS

1. Applicant excepts to Finding of Fact No. 20 (ID. 7) to the extent that it does not include the witness's testimony of record as to destination points in Washington County.

Emerald Van Buskirk appeared at the January 5, 2012 hearing individually in support of the authority sought by Applicant in the instant proceeding and set forth on Applicant's Ex. 1. (Tr. 44). The Honorable Administrative Law Judge found Ms. Van Buskirk's testimony, along with that of nine (9) other public witnesses, to be "convincing" as to public need for Applicant's proposed services. (ID. 19). Ms. Van Buskirk testified that she will have a need for household goods in use transportation of the contents of her residence in McMurray, Peters Township, Washington County, PA to a point within a 50 mile radius of Pittsburgh, PA, within the next two years, due to household downsizing, her husband's recent retirement, and her husband's recently starting a new business. (Tr. 45-46). Ms. Van Buskirk's stated desire to relocate her household to a point within a 50 mile radius of Pittsburgh, PA certainly includes points in Washington County.

2. Applicant excepts to Finding of Fact No. 27 (ID. 9) to the extent that it does not include the witness's testimony of record as to a destination point in Washington County.

John Sherry appeared at the January 5, 2012 hearing individually in support of the authority sought by Applicant in the instant proceeding and set forth on Applicant's Ex. 1. (Tr. 105). Mr. Sherry will have a need for transportation of household goods in use from his residence in McMurray, Washington County, PA to another point in Washington County, PA in the Spring or Summer of 2012, and to Hidden Valley, Somerset County, PA in the near future. (Tr. 106-108). The first movement involves transportation of household belongings from Mr. Sherry's residence to another house he will be purchasing approximately four miles from his present residence; and the second movement involves transportation of household belongings and hunting trophies in his basement to a resort residence he contemplates purchasing soon in Hidden Valley, Somerset County, PA. (Tr. 107-108). The fact that Mr. Sherry has served as legal counsel to Applicant in the past and has known Applicant's owners for many years should not discount his testimony under oath that he has a need for household goods in use transportation from his present Washington County location to another point in Washington County in Spring or Summer of 2012.

3. Applicant excepts to Finding of Fact No. 38. (ID. 12). This finding of fact is not supported by the testimony or evidence of record. Not one of the Protestants herein submitted any quantitative testimonial or documented evidence of the extent to which the grant of the instant application would endanger or impair their respective operations in Washington County, to the point of being contrary to the public interest. Significantly, Timothy Moore, president and sole owner of Protestants All Ways World Wide Moving, Inc. and McKean and Burt, Inc., stated his companies only provide intrastate household goods transportation services in only a portion of Washington County (ie. 15 miles of City of Washington); his companies have an existing twelve

(12) competitors serving Washington County; his companies' facilities are debt free; and his companies' twenty (20) pieces of equipment are debt free and new (with an average age of Year 2010 with a straight truck purchased in 2011. (Tr. 311-325, 331-345). The foregoing reveals a successful operation, not that of a one whose Washington County operations will be endangered contrary to the public interest, by a grant of authority to Applicant to serve Washington County.

As a matter of fact, Protestant South Hill Movers testified that its company only being able to serve a portion of the territory sought in the instant application, the company received \$2,200,000.00 in Pennsylvania intrastate household goods revenue in 2010 with competition, the company having large facilities with approximately 200 employees and 80 pieces of equipment, and it was not arguing any adverse effect from a grant of the instant application. (Tr. 270-288). Also, Protestant Vesely Bros. Moving testified its company only being able to serve a portion (various points in three counties) of the territory sought in the instant application, still received revenue in 2010 and 2011 for Pennsylvania intrastate household goods transportation, with competition, and the company equipment that is mostly new. (Tr. 289-306). Likewise, Protestant Weleski Transfer testified its company only being able to serve a portion (only some points in Butler and Westmoreland County – but nothing in Beaver, Fayette, or Washington Counties) of the territory sought in the instant application, still received \$1,700,000.00 in Pennsylvania intrastate household goods revenue in 2010 when it had competition, the average age of company equipment was five (5) years old, and the company successfully diversified within the last ten (10) years and is a Atlas Van Lines Agent. (Tr. 346-365).

4. Applicant excepts to Finding of Fact No. 39 (ID. 13) only insofar as it states Protestants did not waive negative impact upon their operations as a reason for their protests. Not one of the Protestants herein submitted any quantitative testimonial or documented

evidence of the extent to which the grant of the instant application would endanger or impair their respective operations in Washington County, or any county, to the point of being contrary to the public interest. Moreover, as stated above in the Exception to Finding of Fact No. 38, all witnesses for Protestants testified their respective companies either could not or did not serve all of Washington County, and their respective companies enjoyed continued business operations and revenue from intrastate Pennsylvania household goods in use transportation, despite competition. Applicant submits that Protestants not arguing negative impact, through testimony or document evidence, is a waiver of the negative impact position.

5. Applicant excepts to the Public Interest Discussion on page 23 of the Initial Decision only insofar as it speaks of there being 35 service providers in Allegheny County.

Applicant submits that the official records of this Commission reflect that there are presently forty-four (44) authorized household goods in use service providers in Allegheny County. Such number does reduce the proportion of service providers to population in Allegheny County, thereby bringing the Allegheny proportion of service providers to population ratio more in line with that in Washington County.

6. Applicant excepts to Conclusion of Law No. 7. (ID. 25) This conclusion of law is neither based upon the evidence of record nor applicable law or regulation. The evidence of record clearly demonstrated Applicant's proposed service will serve a useful public purpose responsive to a public need, in Washington County, as required under 52 Pa. Code §41.14. Witness Van Buskirk testified at the January 5, 2012 hearing that she will have a need for household goods in use transportation of the contents of her residence in McMurray, Peters Township, Washington County, PA to a point within a 50 mile radius of Pittsburgh, PA, within the next two years, due to household downsizing, her husband's recent retirement, and her husband's

recently starting a new business. (Tr. 45-46). Ms. Van Buskirk's stated desire to relocate her household to a point within a 50 mile radius of Pittsburgh, PA certainly includes points in Washington County. The Honorable Administrative Law Judge found Ms. Van Buskirk's testimony, along with that of nine (9) other public witnesses, to be "convincing" as to public need for Applicant's proposed services. (ID. 19).

Witness John Sherry testified at the January 5, 2012 hearing that he will have a need for transportation of household goods in use from his residence in McMurray, Washington County, PA to another point, four (4) miles away, in Washington County, PA in the Spring or Summer of 2012, and to Hidden Valley, Somerset County, PA in the near future. (Tr. 106-108). The fact that Mr. Sherry has served as legal counsel to Applicant in the past and has known Applicant's owners for many years does not discount his testimony under oath that he has a need for household goods in use transportation from his present Washington County location to another point in Washington County in the Spring or Summer of 2012.

Applicant's Ex. 12 was admitted into evidence at the hearings and listed 394 requests received from the public from February 21, 2011 to December 15, 2011 for household goods in use transportation services in the territory proposed in the instant application, including Washington County. (Tr. 171-175). Applicant's Ex. 12 contains forty-three (43) individual requests for household goods in use transportation from and to various points in Washington County, as shown at line item entry Nos. 14, 22, 42, 45, 57, 58, 77, 78, 113, 114, 123, 143, 163, 168, 169, 171, 187, 193, 196, 197, 198, 201, 212, 224, 225, 226, 230, 236, 255, 256, 297, 300, 309, 311, 319, 332, 336, 340, 345, 346, 347, 351, and 365. These listed line item entries show the name and telephone number of the person requesting the household goods in use service, the date of the request, and the origins and destinations of the service requests, such as Washington, Venetia, McMurray,

Peters Township, Houston, Monogahela, and Finleyville, PA. In her Findings of Fact No. 11, the Honorable Administrative Law Judge cited Applicant's Ex. 12 as received in evidence, and found the Applicant received these requests for household goods in use service in the application territory from the public, but declined providing service because the requests were outside Applicant's approved territory. (ID. 5).

In view of the foregoing, Applicant submits that its Exhibit 12 complies with 52 Pa. Code § 3.382(a) because, while each specific listing may not strictly comply with the requirements for service request testimony contained in 52 Pa. Code § 3.382(a), the exhibit listing as a whole is sufficiently relevant and of sufficient probative value as to provide corroboration of the specific need testimony proffered by the public for service to and from Washington County. In re Application of J & J Leasing & Rentals, Inc. d/b/a Anytime-Airport- Taxi by J & J Transportation, A corporation of the Commonwealth of Pennsylvania, Docket No. A-2010-2164865, Initial Decision of ALJ Chestnut at page 24. The public need for household goods in use transportation to and from points in Washington County, demonstrated in Applicant's Exhibit 12, and in witness Van Buskirk's and witness Sherry's testimony, cannot be served by excluding Washington County from a grant of authority to Applicant, as suggested by the Honorable Administrative Law Judge.

An applicant for Commission authority may prove a need or demand for its proposed transportation service through witnesses comprising a representative sampling of the public that will use the proposed service within the application territory. In re Application of J & J Leasing & Rentals, Inc. d/b/a Anytime-Airport- Taxi by J & J Transportation, A corporation of the Commonwealth of Pennsylvania, Docket No. A-2010-2164865, (Order entered December 15, 2011) citing Bluebird, supra. It is not necessary that an applicant for a certificate of public convenience show that a proposed service be absolutely indispensable or establish a demand for

service in every square mile of territory sought, as proof of necessity within an area generally is sufficient to support a grant of authority. Modern Transfer Co. v. Pennsylvania Public Utility Commission, 179 Pa. Super. 46, 115 A.2d 887 (1955); Reeder v. Pennsylvania Public Utility Commission, 192 Pa. Super. 298, 162 A.2d 231 (1960); Zurcher v. Pennsylvania Public Utility Commission, 173 Pa. Super. 343, 98 A.2d 218 (1953); and B. B. Motor Carriers, Inc. v. Com., Public Utility Commission, 36 Pa. Cmwlt. 26, 389 A.2d 210 (1978). While evidence of present need can be presented, the Commission may act upon indicated future need if circumstances require such, and a witness's future need is sufficient to satisfy an Applicant's burden. Highway Exp. Lines, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 92, 169 A.2d 798 (1961). Application of Santos A Melendez t/a Union Cab, Docket No. A-00121472 (Order entered November 13, 2006). Where the scope of the operating authority is narrow or limited, as it is in this case, fewer witnesses are required to prove public need. In re Application of Saferide Transportation Services, LLC, Docket No. A-2010-2159585 (Order entered July 7, 2011) citing Bluebird). Similarly, the Commission determined that the testimony of one witness was sufficient to support a grant of authority from all points in one county, because the testimony represented a reasonable cross section of the public's need for the proposed service. Application of Primo Limousine Company, Inc., Docket No. A-00111548 (Order entered November 29, 1995) Accordingly, Applicant submits the testimonial and documentary evidence of record established the proposed service in Washington County will serve a useful public purpose that is responsive to a public need.

7. Applicant excepts to Conclusion of Law No. 9. (ID. 25) This conclusion of law is neither based upon the evidence of record nor applicable law or regulation. For the reasons set forth above in Applicant's Exception No. 6, Applicant submits the evidentiary record

and applicable law and regulations clearly demonstrated and established that the proposed service in Washington County is responsive to a public need, and will serve a useful public purpose, as required under 52 Pa. Code §41.14.

8. Applicant excepts to Conclusion of Law No. 12. (ID. 25) This conclusion of law is neither based upon the evidence of record nor applicable law or regulation. For the reasons set forth above in Applicant's Exception Nos. 3, 4, and 5, Applicant submits the evidentiary record and applicable law and regulations establish that the proposed service in Washington County will not endanger or impair Protestants' operations in Washington County to the extent that the public interest would be affected.

It has been conclusively determined that the legislature, in enacting the Public Utility Law, did not intend to benefit established carriers by erecting artificial barriers to the entry of new competitors. Merz White Way Tours v. Pennsylvania Public Utility Commission, 204 Pa. Super. 43, 201 A.2d 446 (1964); New Kingsington City Lines, Inc. v. Pennsylvania Public Utility Commission, 200 Pa. Super. 490, 190 A.2d 179 (1963). Moreover, the primary object of the public service laws is not to establish a monopoly or to guarantee the security of investment in public service corporations, but first, and at all times, to serve the interests of the public. D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 185 Pa. Super. 487, 138 A.2d 270 (1958). The law does not guarantee any carrier freedom from competition, and the public convenience and interest may require a proposed service (ie. such as Applicant's herein) even though it results in diversion of business from existing carriers. Railway Exp. Agency, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 394, 171 A.2d 860 (1961). The courts and the Commission have historically recognized that no existing carrier has an absolute right to be free from competition. Noerr Motor Freight, Inc. v. Pennsylvania Public Utility Commission, 181 Pa.

Super. 332, 338, 124 A.2d 393 (1956). The Commission has stated that it promulgated the transportation regulatory policy statement at 52 Pa. Code § 41.14 “to eliminate monopolistic protection of existing motor carriers and to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” Bluebird, supra, at 274. Furthermore, the Commission, in Application of Eazor Express, Inc., 53 Pa. PUC 374 (1979), stated more emphasis would be placed on economic analysis and commission discretion over the level of competition which appears to best serve the public interest, with less emphasis on protecting existing carriers from additional competition.

Not one of the Protestants herein submitted any quantitative testimonial or documentary evidence of the extent to which the grant of the instant application would endanger or impair their respective operations in Washington County, to the point of being contrary to the public interest. As a matter of fact, no Protestant testified that its company was or could serve all of Washington County, or that its company was operating unprofitably to the point of being placed out of business by a grant of the authority to Applicant to serve Washington County. On the other hand, Protestants’ witnesses testified they were generating intrastate Pennsylvania household goods revenue despite the existence of competition, their facilities were being utilized and (in some instances) debt free, and their equipment was relative new and (in some instances) debt free. Merely stating that business has competition implying that revenues may decrease, or that equipment has or will not been fully utilize in the face of more competition, does not establish any adverse public interest endangerment or impairment connection to a grant of authority to serve Washington County. Accordingly, while Applicant submits the evidentiary record in this

proceeding is devoid of how a grant of the instant application to also provide service in Washington County will endanger or impair Protestants' operations contrary to the public interest.

9. Applicant excepts to Conclusion of Law No. 14. (ID. 26) This conclusion of law is neither based upon the evidence of record nor applicable law or regulation. For the reasons set forth above in Applicant's Exception No. 1, 2, 3, 4, 5, 6, 7 and 8, Applicant submits the evidentiary record and applicable law and regulations establish and require that the instant application should also be granted to provide service in the County of Washington, as such proposed service will serve a useful public purpose responsive to a public need and not endanger or impair Protestants' operations in Washington County contrary to the public interest.

II CONCLUSION AND PRAYER FOR RELIEF

Wherefore, the above premises being considered, Applicant seeks the relief set forth in this Commission's rules and regulations, and respectfully prays the Commission reject only that portion of the Initial Decision of the Honorable Administrative Law Judge that restricts against or denies service for Washington County, and find that Applicant has demonstrated a public need for service from points in Beaver, Butler, Washington, Westmoreland, and Fayette Counties to points in Pennsylvania and vice versa.

Dated: July 2, 2012

Respectfully submitted,

Kenneth A. Olsen
33 Philhower Road
Lebanon, New Jersey 08833
(908) 832-9207
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and true copies of the foregoing document, Main Brief of Applicant, upon the persons listed below, via Federal Express, prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

William A. Gray, Esq., Vuono & Gray LLC, Grant Building Suite 2310, 310 Grant St., Pittsburgh, PA 15219-2383 as to a true copy and an electronic copy; the Office of Special Assistants, 3rd Floor, Keystone Bldg., 400 North Street, Harrisburg, PA 17105 as to a true copy plus disk; and to the Hon. Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, 2nd Floor, Keystone Bldg., 400 North Street, Harrisburg, PA 17105-3265 as to an original and nine copies and an electronic copy.

Dated this 2nd day of July, 2012

KENNETH A. OLSEN
Attorney for Applicant