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#  PENNSYLVANIA

 **PUBLIC UTILITY COMMISSION**

 **Harrisburg, PA 17105-3265**

 Public Meeting held September 27, 2012

Commissioners Present:

 Robert F. Powelson, Chairman

 John F. Coleman, Jr., Vice Chairman

 Wayne E. Gardner

 James H. Cawley

 Pamela A. Witmer

Application of Canterbury International, Inc., A-2011-2251336

t/a Two Men and a Truck, 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

**OPINION AND ORDER**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Canterbury International, Inc., t/a Two Men and a Truck (Applicant) on July 3, 2012, in response to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale issued herein on June 13, 2012. Also before the Commission are the Reply Exceptions filed on July 12, 2012, by the following Parties: South Hills Movers, Inc.; Vesely Bros. Moving & Storage, Inc.; McKean & Burt, Inc., t/d/b/a Allways Moving & Storage; All Ways World Wide Moving, Inc.; Weleski Transfer, Inc.; Lytle’s Transfer & Storage, Inc.; and Hoy Transfer, Inc. (Protestants).[[1]](#footnote-1)

**History of the Proceeding**

 On June 1, 2011, the Applicant filed an Application seeking Commission approval to amend its Certificate of Public Convenience (Certificate). The Application was published in the *Pennsylvania Bulletin* on August 6, 2011, 41 *Pa. B.* 4273, 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 the Parties referred to above as the Protestants, plus the following entities: Century III Moving Systems, Inc., t/d/b/a Clairton Transfer Company and Pleasant Hills Van & Storage. The Protestants plus the two other entities will be referred to as “Protestants II.”

The proceeding was assigned to ALJ Dunderdale and a hearing was scheduled for January 5, 2012. The hearing was convened as scheduled. The Applicant was represented by counsel. Since the Parties were unable to present their cases *in toto* on the day of hearing, a second hearing was scheduled for January 11, 2012.

At the hearings, the Applicant provided the testimony of fourteen “demand” witnesses and the testimony of Applicant’s Vice President. In addition, the Applicant offered twelve exhibits, which were admitted into evidence.

Debo George Protestants were represented by counsel, as were Protestants II. Protestants II provided the testimony of five witnesses, and offered twelve exhibits. Each exhibit presented by Protestants II was admitted into evidence. The transcript of the hearings consists of 576 pages.

On January 10, 2012, Debo George Protestants withdrew their Protests to the Application. On January 12, 2012, Century III Moving Systems, Inc., t/d/b/a Clairton Transfer Company and Pleasant Hills Van & Storage, the two entities which were joined with the Protestants to constitute “Protestants II,” withdrew their opposition to the Application.

The Applicant filed its Main Brief on March 1, 2012 and its Reply Brief on March 16, 2012. Protestants submitted their Main Brief on March 2, 2012, and their Reply Brief on March 16, 2012. The record was closed on March 21, 2012.

 In her Initial Decision, issued on June 13, 2012, ALJ Dunderdale recommended that the Application be granted, in part, and denied, in part. I.D. at 24. Specifically, the ALJ recommended that the Application be granted as to the counties of Beaver, Butler, Westmoreland and Fayette, but that it be denied as to Washington County. *Id.* Exceptions and Reply Exceptions were filed as above noted.

**Discussion**

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania, et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

In her Initial Decision, ALJ Dunderdale reached forty-seven Findings of Fact, I.D. at 4-14, and fourteen Conclusions of Law, *Id.* at 24-26. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

**Legal Standards**

Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding, the Applicant is the party seeking affirmative relief from the Commission, and therefore it is the party with the burden of proof. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

In *Se-Ling Hosiery*, the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Additionally, the Commission must ensure that the decision is supported by substantial evidence in the record. The Pennsylvania appellate courts have defined substantial evidence to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Railway Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Additionally, pursuant to the Code, 66 Pa. C.S. § 1103(a), this Application should be granted only if the Commission finds that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” In order to make these determinations, the Commission, in a policy statement, set forth the criteria to be taken into consideration. These factors, found at 52 Pa. Code § 41.14, are:

§ **41.14. Evidentiary criteria used to decide motor common carrier applications--statement of policy.**

 (a)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.

 (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. 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.

 (3) 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.

 (4) 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).

 (5) 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.

 (6) 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.

 (c) 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.

 (d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331--29.335 (relating to limousine service.)

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.” *Application of Blue Bird Coach Lines, Inc.,* 72 Pa. PUC 262, 274 (1990).

 Thus, in order to approve an application for a Certificate, the Commission must find that an applicant has sustained its burden of proving, by substantial evidence, a public demand or need for the service as well as that it possesses the requisite technical and financial fitness and propensity to operate safely and legally. Since, in this case, it is the Protestants which allege impairment or adverse economic impact, Section 41.14(c) places the burden of proof with respect to that issue on the Protestants herein. *Id*. at 286.

**Exceptions and Disposition**

The Applicant contends that the ALJ erred by not granting its Application with respect to Washington County. With respect to the issue of public demand or need for service, the Applicant objects to Finding of Fact No. 20, found on page 7 of the Initial Decision, which is as follows:

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).

Specifically, the Applicant points out that this Finding does not include the witness’ testimony of record as to destination points in Washington County. The Applicant further points out that the ALJ found Ms. Buskirk’s testimony, along with that of nine other public witnesses, to be convincing as to public need for the Applicant’s proposed services. I.D. at 19. Exc. at 3.

 In response, the Protestants point out that the witness, Mrs. Buskirk, who resides in Washington County, testified that she and her husband are “considering” downsizing within the next two years. Tr. at 44-45. However, the witness and her husband have not chosen a location to which they plan to move and, indeed, have not even looked. Tr. at 45; R. Exc. at 3.

On review, we conclude that this Exception lacks merit. We have reviewed the pertinent section of the transcript, and we concur with the Protestants that the witness testified that she and her husband have not yet even actively looked for a site for possible relocation. Tr. at 45. Additionally, the witness admitted that, if she and her husband do relocate, it may be to a point in the Applicant’s existing service territory and that, if that were to occur, the Applicant could already provide the service. *Id.* at 46-47. Due to the uncertainty of the witness’ plans, her testimony cannot be considered to weigh heavily on the issue of the need for the pertinent service.

 The Applicant also objects to Finding of Fact No. 27, found on page 9 of the Initial Decision, which is as follows:

27. 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).

Specifically, the Applicant points out that Mr. Sherry testified that he will have a need for transportation of household goods in use from his residence in McMurray, Washington County, to another point in Washington County, in the Spring or Summer of 2012. He also will have need of transportation of his belongings to Hidden Valley, Somerset County, in the near future. Tr. at 106-108; Exc. at 4. The first move involves the transportation of household belongings from the witness’ residence to another house that he will be purchasing, which is located about four miles from his present residence. The second move involves transportation of household belongings and hunting trophies in his basement to a resort residence that he contemplates purchasing soon in Hidden Valley. Tr. at 107-108; Exc. at 4.

 In response, the Protestants aver that Mr. Sherry’s plans for the relevant moves are somewhat tentative. Specifically, the witness, who resides in Washington County, testified that he and his wife may submit a bid on a house located four miles away from his present residence, but he also testified, with regard to the present owners of that house, as follows: “I mean, the plans are somewhat tentative because they want to find a place to buy down in Florida first.” Tr. at 105-106; R. Exc. at 4.

 On review, we conclude that this Exception lacks merit. We have reviewed the pertinent section of the transcript, and we concur with the Protestants that the witness’ plans for the moves that he discussed are still tentative. In addition to the tentative nature of the plans for the witness’ move to the house located four miles away, the witness also testified about possibly repurchasing a house that he previously sold in Somerset County five years ago. The witness admitted, however, that this purchase has not yet materialized. Tr. at 106; R. Exc. at 4. Due to the tentative nature of the witness’ planned moves, his testimony cannot be considered to weigh heavily on the issue of need for service to Washington County.

 The Applicant also argues that the ALJ erred in finding that granting the Application, with respect to Washington County, would impair the Protestants’ operations to such an extent that the public interest would be affected. The Applicant begins this argument by objecting to Finding of Fact No. 39, found on page 13 of the Initial Decision, insofar as it states that the Protestants did not waive the negative impact upon their operations as a reason for the Protests. Exc. at 5-6. Specifically, the Applicant contends that not one of the Protestants 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 that the grant of the Application would be contrary to the public interest. *Id.*

 In response, the Protestants aver that the Applicant does not reference anywhere in the record where the Protestants waive the negative impact argument. R. Exc. at 6-7. Moreover, contend the Protestants, the Applicant cannot reference any such place because the Protestants did not waive the relevant argument. *Id.*

 On review, we conclude that this Exception lacks merit. As noted by the Protestants, the Applicant points to no location in the record where the Protestants stated that they were waiving the negative impact argument.

The Applicant objects to Finding of Fact No. 38, found on page 12 of the Initial Decision, which is as follows:

38. 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).

The Applicant contends that this Finding of Fact is not supported by the testimony of record. Exc. at 4-5. The Applicant further asserts that the Protestants did not submit 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. *Id.*

 The Applicant avers that Mr. Timothy Moore, President and sole owner of Protestants All Ways World Wide Moving, Inc., and McKean and Burt, Inc., testified as follows: (1) that his companies provide intrastate household goods transportation in only a portion of Washington County, *i.e.*, within fifteen miles of the City of Washington;
(2) that his companies have twelve competitors serving Washington County; (3) that his companies’ facilities are debt-free; and (4) that his companies’ twenty pieces of equipment are debt-free and new, with an average age of Year 2010. Tr. at 311-325, 331‑345; Exc. at 5. The Applicant contends that this testimony reveals a successful operation and that, accordingly, a grant of operating authority for Washington County to the Applicant would not be contrary to the public interest. *Id.*

 Additionally, the Applicant objects to the ALJ’s discussion of the public interest, found on page 23 of the Initial Decision, contending that that discussion erroneously states that there are fewer household goods carriers in Allegheny County than actually exist. Exc. at 6.

 In response, the Protestants contend that the Applicant is attempting to minimize the testimony of Mr. Moore. In fact, the Protestants argue, Mr. Moore provided substantial testimony concerning the adverse impact that would result to his companies if the Applicant is granted authority to serve Washington County. Specifically, the Protestants point to Finding of Fact No. 34, found on page 11 of the Initial Decision, which states, in pertinent part, as follows:

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).

R. Exc. at 5-6.

 On review, we conclude that the pertinent Exceptions lack merit. We concur with the Protestants that, on this issue, the ALJ correctly balanced the harm that would result to the Protestants who already serve Washington County with the limited testimony on the need for additional service to Washington County. After analysis, the ALJ concluded as follows:

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.

I.D. at 23.

As to the Applicant’s contention that there are actually more than thirty-five household goods carriers in Allegheny County, we note that the Applicant provided no exhibit or testimony to prove this allegation, and that it thus constitutes a bald assertion. R. Exc. at 7. As such, the issue of the actual number of household goods carriers in Allegheny County is beyond the scope of the record in this proceeding.

For the above-recounted reasons, we concur with the ALJ that it would be contrary to the public interest to grant the Applicant authority to serve Washington County.

 In its final Exception, the Applicant objects to Conclusion of Law No. 12, found on page 25 of the Initial Decision, which is as follows:

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.

I.D. at 25.

 Referring to its prior Exceptions, the Applicant contends that the evidentiary record and the applicable law and regulations establish that the proposed service by the Applicant to Washington County would not endanger or impair the Protestants’ operations in that County to the extent that the public interest would be affected. Exc. at 10-11. The Applicant states that prior Commission cases do not “guarantee any carrier freedom from competition,” and that “no existing carrier has an absolute right to be free from competition.” *Id.*

 In response, the Protestants refer to 52 Pa. Code § 41.14(c), *supra*, for the proposition that an ALJ, and the Commission, must weigh the competing interests of public need for the proposed service with the possible endangerment or impairment of the operations of existing carriers in order to properly apply that Section of the Commission’s Regulations. R. Exc. at 9-10. The Protestants aver that the ALJ in this case has correctly determined that a grant of authority to the Applicant would endanger the operations of existing carriers serving Washington County to the extent that such a grant of authority would not be in the public interest. *Id.* at 10.

 On review of the Applicant’s final Exception, we conclude that it lacks merit. We refer to the Commission Regulation at Section 41.14(c), quoted above. The Applicant attempts to minimize the harm to the Protestants that would occur if the Application, insofar as it pertains to Washington County, were to be granted. However, on review, we conclude that the ALJ herein has correctly weighed the competing interests of public need for the proposed service with the possible endangerment or impairment of the operations of existing carriers. Further, she has correctly concluded that, in this case, the grant of the Application as it pertains to Washington County would be contrary to the public interest, pursuant to Section 41.14(c), *supra*. I.D. at 22-23, 25.

 Accordingly, the Applicant’s Exceptions to the Initial Decision will be denied.

## Conclusion

We have reviewed the record as developed in this proceeding, including the ALJ’s Initial Decision and the Applicant’s Exceptions, as well as the Protestants’ Reply Exceptions. Premised upon our review of the record evidence, we shall: (1) deny the Applicant’s Exceptions; (2) approve the Application, in part, and deny it, in part; and (3) adopt the ALJ’s Initial Decision as the action of the Commission; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed on July 3, 2012, by Canterbury International, Inc. t/a Two Men and a Truck to the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, are denied.

2. That the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued on June 13, 2012, herein is adopted as the action of the Commission.

3. That the Application of Canterbury International, Inc., t/a Two Men and a Truck, at Docket No. A-2011-2251336, is hereby approved, in part, for the counties of Beaver, Butler, Westmoreland and Fayette.

4. That the Application of Canterbury International, Inc., t/a Two Men and a Truck, at Docket No. A-2011-2251336, is hereby denied, in part, for the county of Washington.

5. That the Certificate of Public Convenience 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.

6. 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.

7. 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.

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



 **BY THE COMMISSION,**

Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: September 27, 2012

ORDER ENTERED: September 27, 2012

1. As will be further explained below, the Protestants comprise many, but not all, of the Parties who originally protested the instant Application. [↑](#footnote-ref-1)