**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Appalachian Movers, LLC :

For the right to begin transport, as a :

common carrier, by motor vehicle, : A-2014-2418497

household goods in use, between points in :

Centre County. :

**INITIAL DECISION DISMISSING PROTEST AND REFERRING APPLICATION TO THE BUREAU OF TECHNICAL UTILITY SERVICES FOR DISPOSITION**

Before

Dennis J. Buckley

Administrative Law Judge

This Initial Decision dismisses the Protest of Kennedy Transfer, Inc., for failure to prosecute and, subject to the filing of Exceptions and Reply Exceptions, transfers the Application of Appalachian Movers, LLC (Appalachian or Applicant) to the Commission’s Bureau of Technical Utility Services (TUS) for disposition.

HISTORY

On April 4, 2014, Appalachian Movers, LLC (Appalachian or Applicant) filed an Application with the Commission for the right to begin transport, as a common carrier, by motor vehicle, household goods in use, between points in Centre County, Pennsylvania. Notice of the Application was duly published in the *Pennsylvania Bulletin*, with protests due to the Commission (copy to be served on the Applicant), on or before June 23, 2014.

Timely protests were filed to the Application by Keystone Relocation, LLC, and by Kennedy Transfer, Inc.

Hoy Transfer, Inc., filed an untimely protest on August 13, 2014. That protest, in the form of a Petition to Intervene, was opposed by the Applicant and denied by Order issued October 16, 2014.

Keystone Relocation, LLC, withdrew its protest on October 22, 2014.

A hearing in this matter was scheduled for October 23, 2014. That hearing convened as scheduled. The Applicant was present, represented by counsel, and prepared to prosecute its Application. However, the sole remaining Protestant, Kennedy Transfer, Inc., did not appear.

On October 24, 2014, I issued an Interim Order Referring the Application to TUS for Disposition.

FINDINGS OF FACT

1. On April 4, 2014, Appalachian Movers, LLC filed an Application with the Commission for the right to begin transport, as a common carrier, by motor vehicle, household goods in use, between points in Centre County, Pennsylvania.

2. Notice of the Application was duly published in the *Pennsylvania Bulletin*, with protests due to the Commission on or before June 23, 2014.

3. Timely protests were filed to the Application by Keystone Relocation, LLC, and by Kennedy Transfer, Inc.

4. Hoy Transfer, Inc., filed an untimely protest on August 13, 2014. That protest, in the form of a Petition to Intervene, was opposed by the Applicant and denied by Order issued October 16, 2014.

5. Keystone Relocation, LLC, withdrew its protest to the Application on October 22, 2014.

6. A hearing in this matter was held on October 23, 2014. The Applicant was present, represented by counsel, and prepared to prosecute its Application. However, the sole remaining Protestant, Kennedy Transfer, Inc., did not appear.

DISCUSSION

Section 332(a) of the Public Utility 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, Applicant has applied to the Commission for operating authority. Thus it is clear that as the Applicant is seeking affirmative relief from the Commission, the Applicant has the burden of proof by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). 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. 52 Pa.Code § 41.14 (b).

A hearing in this matter was held on October 23, 2014. The Applicant was present, represented by counsel, and prepared to prosecute its Application. However, the sole remaining Protestant, Kennedy Transfer, Inc., did not appear.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm’n.*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to appear and be heard.  
  
 The Commission sent notice of the hearing in this case on August 19, 2014 by regular first-class mail to Kennedy Transfer, Inc. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. In addition, I issued a prehearing order dated October 17, 2014 that directed the parties to notify me in writing to request a change in the hearing date. The prehearing order warned the parties that if they failed to participate in the hearing, the hearing would proceed without them and that a decision could be entered against them. This order, which was also mailed to Kennedy Transfer, Inc., was never returned. Accordingly, one must presume this mail, which was sent in the ordinary course of business, was received by the addressee. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 444 A.2d 658 (Pa. Super. 1982).   
  
 Kennedy Transfer, Inc. did not appear for the scheduled hearing and it did not take any steps to notify me that it would be delayed. Under these circumstances, it appears that Kennedy Transfer, Inc. had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Kennedy Transfer, Inc. have been fully protected. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa.Code § 5.245(a).

As stated above, on October 24, 2014, I issued an Interim Order Referring the Application to TUS for Disposition. That Order, however, was deemed not legally sufficient to afford the remaining Protestant, Kennedy Transfer, Inc., a due process opportunity to address the dismissal of its Protest. Therefore, the Order of October 24, 2014, must be rescinded, and this Initial Decision issued to afford an opportunity for Exceptions and Reply Exceptions consistent with the Commission’s procedural rules at 52 Pa.Code § 5.533. If no Exceptions or Reply Exceptions are filed, then this matter is to be transferred to TUS.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to, and the subject matter of, this proceeding.

2. The due process rights of Kennedy Transfer, Inc., have been fully protected in this proceeding.

3. By failing to appear and proffer any evidence to support its protest, Kennedy Transfer, LLC has failed to meet its burden of proving that it is entitled to the relief that it seeks from the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Order of October 24, 2014 at Docket No. A-2014-2418497 is rescinded.

2. That the Protest of Kennedy Transfer, Inc., is dismissed for failure to prosecute.

3. That if Exceptions or Reply Exceptions are not filed to this Initial Decision, then the Application of Appalachian Movers, LLC, at Docket No. A-2014-2418497, will be referred to the Commission’s Bureau of Technical Utility Services for disposition.

4. That a copy of this Initial Decision is to be served on the Commission’s Bureau of Technical Utility Services.

Date: November 20, 2014 \_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dennis J. Buckley

Administrative Law Judge