



**9. (b) Continued.**

and Storage, Inc.; McKean & Burt, Inc., t/d/b/a All Ways Moving & Storage; Timothy M. Moore, t/d/b/a Moore Movers; B. H. Strumpf Co., Inc; Vesely Bros. Moving & Storage, Inc.; Century III Moving Systems, Inc., t/d/b/a Clairton Transfer Company and Pleasant Hills Van & Storage; and Weleski Transfer, Inc.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed draft Opinion and Order which denies the Exceptions, and adopts the ALJ's Initial Decision to the extent that it is consistent with the Opinion and Order.

<b>1. REPORT DATE:</b> December 11, 2000	<b>2. BUREAU AGENDA NO.</b> DEC-2000-OSA-0310*
<b>3. BUREAU:</b> Office of Special Assistants	<div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">DOCKETED</div> <div style="font-size: 1.2em; font-weight: bold; margin-top: 5px;">JAN 18 2001</div>
<b>4. SECTION(S):</b>	
<b>6. APPROVED BY:</b>  Director: Cheryl W. Davis 7-1827 Supervisor:	
<b>7. PERSONS IN CHARGE:</b> David Munsch 7-1660	
<b>8. DOCKET NO.:</b> A-00108945F0001, AM-A	

- 9. (a) CAPTION (abbreviate if more than 4 lines)**  
**(b) Short summary of history & facts, documents & briefs**  
**(c) Recommendation**

(a) Application of Gardner Moving Company for amendment to its common carrier certificate, so as to permit the transportation, as a common carrier by motor vehicle, of household goods in use between points within an airline radius of seventy-five (75) statute miles of the Allegheny County Courthouse, located in the City of Pittsburgh, Allegheny County

(b) On November 6, 1998, Gardner Moving Company (Applicant) filed an Application for the authority captioned above. Timely Protests were filed. On August 3, 2000, the Initial Decision of Administrative Law Judge (ALJ) John J. Corbett, Jr. was issued, wherein the ALJ recommended dismissing the Application. On August 18, 2000, the Applicant filed Exceptions to the Initial Decision. Replies to the Exceptions (R.Exc.) were filed jointly by the following Protestants on August 25, 2000: Debo Moving and Storage, Inc.; and The Snyder Brothers Moving, Inc., t/a George Transportation Company. Additional Replies to the Exceptions were also filed jointly on September 1, 2000, by the following Protestants: Anderson Transfer, Inc.; Fife Moving & Storage Co.; Best Moving & Storage Co.; Forest Hills Transfer

(Continued on next page)

Order Docket No. 217073v1

Calendar Doc. No. 21412v1

**10. MOTION BY: Commissioner Chm. Quain**  
  
**SECONDED: Commissioner Bloom**

**Commissioner Brownell - Yes**  
**Commissioner Wilson - Yes**  
**Commissioner Fitzpatrick - Yes**

**CONTENT OF MOTION:** Staff recommendation adopted.

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and Storage, Inc.; McKean & Burt, Inc., t/d/b/a All Ways Moving & Storage; Timothy M. Moore, t/d/b/a Moore Movers; B. H. Strumpf Co., Inc; Vesely Bros. Moving & Storage, Inc.; Century III Moving Systems, Inc., t/d/b/a Clairton Transfer Company and Pleasant Hills Van & Storage; and Weleski Transfer, Inc.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed draft Opinion and Order which denies the Exceptions, and adopts the ALJ's Initial Decision to the extent that it is consistent with the Opinion and Order.



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

January 12, 2001

A-00108945  
F0001 Am-A

MARK C STEPHENSON ESQUIRE  
COZEN AND O'CONNOR  
1900 MARKET STREET  
PHILADELPHIA PA 19103

Application of Gardner Moving Company,  
a corporation of the Commonwealth of Pennsylvania. . .

DOCUMENT  
FOLDER

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on  
January 11, 2001 has adopted an Opinion and Order in the above entitled  
proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

**DOCKETED**

JAN 18 2001

*James J. McNulty*  
James J. McNulty,  
Secretary

encls  
cert. mail  
law

JOHN A PILLAR ESQUIRE  
PILLAR MULROY & FERBER  
1106 FRICK BLDG  
PITTSBURGH PA 15219

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2310 GRANT BLDG  
PITTSBURGH PA 15219

END  
EX

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held January 11, 2001

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
Nora Mead Brownell  
Aaron Wilson, Jr.  
Terrance J. Fitzpatrick

DOCUMENT  
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Application of Gardner Moving Company, a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate...so as to permit the transportation, as a common carrier by motor vehicle, of household goods in use between points within an airline radius of seventy-five (75) statute miles of the Allegheny County Courthouse, located in the City of Pittsburgh, Allegheny County

A-00108945  
F0001, Am-A

DOCKETED

JAN 18 2001

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration and disposition are the Exceptions filed on August 18, 2000, by Gardner Moving Company (Applicant) to the Initial Decision of Administrative Law Judge (ALJ) John H. Corbett, Jr., issued on August 3, 2000, in the above-captioned proceeding. Replies to the Exceptions were filed jointly by

the following Protestants (Joint Protestants' Group I) on August 25, 2000: Debo Moving and Storage, Inc.; and The Snyder Brothers Moving, Inc., t/a George Transportation Company. Additional Replies to the Exceptions were filed jointly on September 1, 2000, by the following Protestants (Joint Protestants' Group II): Anderson Transfer, Inc.; Fife Moving & Storage Co.; Best Moving & Storage Co.; Forest Hills Transfer and Storage, Inc.; McKean & Burt, Inc., t/d/b/a All Ways Moving & Storage; Timothy M. Moore, t/d/b/a Moore Movers; B. H. Strumpf Co., Inc.; Vesely Bros. Moving & Storage, Inc.; Century III Moving Systems, Inc., t/d/b/a Clairton Transfer Company and Pleasant Hills Van & Storage; and Weleski Transfer, Inc.

### **History of the Proceeding**

By Application filed on November 6, 1998, the Applicant sought approval for the authority captioned above. Notice of this Application was published in the *Pennsylvania Bulletin* on November 28, 1998. Thirteen (13)<sup>1</sup> certificated carriers filed timely Protests, including the twelve (12) identified above as having filed Replies to the Exceptions. The thirteenth was McNaughton Brothers, Inc., which withdrew its Protest on the record at the hearing held on April 6, 2000. (I.D., p. 1; Tr., p. 280).

The hearings which were originally scheduled for May 19, 1999, September 21-22, 1999, October 18-19, 1999, November 18-19, 1999, January 19-20, 2000, and March 8-9, 2000 were postponed at the request of the Applicant's counsel due to scheduling conflicts. The ALJ conducted hearings in Pittsburgh on August 12, 1999, and April 6-7, 2000. All Parties were represented by counsel.

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<sup>1</sup> At page 1 of the Initial Decision, the ALJ remarks that there are twelve (12) certificated carriers which filed Protests. By our count, however, there were thirteen (13).

Upon the close of the Applicant's case, the Protestants made an oral Motion to Dismiss the Application because the Applicant allegedly failed to present a *prima facie* case. The record in this proceeding consists of 397 pages of Transcript, the Applicant's five (5) Exhibits, and eight (8) Exhibits presented by the Protestants. All Parties filed Main and Reply Briefs. The record closed on June 20, 2000. In the Initial Decision, the ALJ recommended granting the Protestants' Motion to Dismiss this Application. (I.D., pp. 38-39).

### Discussion

As a preliminary matter, we note that any issue or Exception which we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. (*Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (1993); also *see*, generally, *University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

We further note that the ALJ made 160 specific Findings of Fact and two (2) Conclusions of Law (I.D., pp. 2-26 and 38, respectively). We adopt those herein by reference, unless modified or reversed, expressly or by necessary implication, by this Opinion and Order.

Also, before discussing the Exceptions, we will review the requirements of law regarding the granting of an Application to provide service as a common carrier



within Pennsylvania. As the proponent of a rule or order of this Commission, the Applicant bears the burden of proof. (66 Pa. C.S. §332(a)). The Pennsylvania Supreme Court has held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. (*Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (Pa. Cmwlth. 1950)). The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other side. If a party has satisfied its burden of proof, it must then be determined whether the opposing party has submitted evidence of "co-equal" value or weight to refute the first party's evidence. (*Morrissey v. Commonwealth of Pennsylvania, Department of Highways*, 424 Pa. 87, 225 A.2d 895 (1986)).

Furthermore, any order of this Commission granting an Application, in whole or in part, must be based on substantial evidence. (*Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission*, 337 A.2d 922, 925 (Pa. Cmwlth. 1975)). The term "substantial evidence" has been defined by the Pennsylvania Courts as such relevant evidence as a reasonable mind might 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. (*Murphy v. Department of Public Welfare, White Haven Center*, 480 A.2d 382, 386 (Pa. Cmwlth. 1994); *Erie Resistor Corporation v. Unemployment Compensation Board of Review*, 194 Pa. Super. 278, 166 A.2d 96, 97 (1961)).

Section 1101 of the Code, 66 Pa. C.S. §1101, states that it shall be lawful to provide service as a public utility only after applying for and obtaining a certificate of public convenience from this Commission. Included in the definition of a "public utility" is any person or corporation transporting persons or property as a common carrier. (66 Pa. C.S. §102). The Code further states that:

A certificate of public convenience shall be granted by order of the commission, *only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.*

(66 Pa. C.S. §1103(a), emphasis added).

In applying these requirements to motor carrier Applications, we adopted Section 41.14 of our Regulations, which states:

- (a) An applicant seeking motor common carrier authority has the burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.
- (b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.
- (c) The Commission will grant motor 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 such an extent that, on balance, the granting of authority would be contrary to the public interest.

We further elaborated upon the proper application of these provisions in *Application of Blue Bird Coach Lines, Inc. (Blue Bird)*, 72 Pa. PUC 262 (1990), wherein we stated:

When, through relevant, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant's proposed service will satisfy the supporting witnesses' asserted transportation demand/need, the 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." *E.g., Seaboard Tank Lines, Inc.*, 93 Pa. Commonwealth Ct. at 613, 502 A.2d at 768; *Re Lenzner Coach Lines, Inc.*, 63 Pa. P.U.C. 217 (1987). *See also Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission (Morgan Drive Away, Inc. II)* 16 Pa. Commonwealth Ct. 293, 328 A.2d 194 (1974). This interpretation of subsection 41.14(a) is consonant with our avowed reason for promulgating the transportation regulatory policy statement at 52 Pa. Code §41.14, namely, 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.

*(Blue Bird, supra, p. 274).*

We further stated, based on the long-standing Commission and Court Decisions there noted, that the supporting witnesses must identify the Pennsylvania points of origin and destinations between which transportation is required. The particular circumstances of a case will determine what constitutes sufficient evidence of a public demand or need regarding the proposed service. The number of witnesses which will constitute a cross-section of the public will necessarily vary with the circumstances of each case, such as the type of service, size of proposed operating territory and the population density therein. The broader the operating authority sought, and the more heavily populated the Application territory, the more witnesses will be required to

demonstrate public demand or need. The converse is also true. (*Blue Bird, supra*, pp. 274-275).

In our Decision at *Re Perry Hassman*, 55 Pa. P.U.C. 661, 662-663, we stated that fitness consists of three (3) elements: (1) an applicant must have sufficient technical and operating knowledge, staff and facilities to provide the proposed service; (2) an applicant must have sufficient financial ability to provide reliable and safe service; and (3) an applicant must exhibit a propensity to operate safely and legally. With regard to the third item, a lack of fitness is demonstrated by persistent disregard for, flouting or defiance of the Code or the Orders and Regulations of this Commission.

Regarding technical fitness, we stated in our Decision at *Application of Adgebole Ige, t/a Globe Limousine Service (Globe Limousine)*, 75 Pa. PUC 45 (1991):

*An applicant must have the technical capacity to meet the need for the proposed service in a satisfactory fashion. An applicant must possess sufficient staff and facilities or operating skills to make the proposed service feasible, profitable, and a distinct service to the public.*

Turning our attention to the Applicant's Exceptions, we note that, in its first Exception, the Applicant argues that the ALJ erred in failing to find that the Applicant will provide household goods moving services at lower rates not presently available. The Applicant contends that it demonstrated on the record that it will charge no minimum amount for labor in its moving services, referring to page 22 of the Transcript. The Applicant further asserts that other companies in the region do charge minimum labor rates, with some as high as a four (4)-hour minimum labor charge. The Applicant submits that the ALJ confused the one (1)-hour travel minimum with the four (4)-hour

labor minimum that the Applicant's competitors charge. Accordingly, the Applicant requests that we determine that the proposed service will serve a useful public purpose by providing service without a minimum charge, as the existing carriers are charging. (Exc., pp. 2-4).

In their Reply Exceptions, Joint Protestants' Group I argue that the Applicant erroneously claims in its Exceptions that it will offer lower rates based on the fact that it will charge no minimum. Joint Protestants' Group I contend that this is not an accurate statement of the evidence of record. In this regard they contend that the Applicant presented evidence that it charges a minimum rate of one (1) hour travel time, regardless of the amount of time actually spent in completing the transportation, referring to pages 22, 44-46, and 60 of the Transcript. Joint Protestants' Group I assert that even if one concludes that the Applicant presented evidence of lower rates, the ALJ correctly determined that this does not demonstrate a "useful public purpose" as required by *Blue Bird, supra*. (Group I R.Exc., pp. 2-4).

In their Reply Exceptions, the Joint Protestants' in Group II argue that the Applicant failed to present any evidence whatsoever regarding what its rates would be in the Application area if this Application were granted. Joint Protestants' Group II further contend that the Applicant neither presented evidence regarding what its current rates are in Allegheny County, where the Applicant presently is authorized to provides service, nor did the Applicant present a comparison of its rates in Allegheny County with the rates of other certificated carriers. Joint Protestants' Group II submit that the Applicant misrepresented the facts in this proceeding by stating that the Applicant has no minimum charge, when in fact the Applicant charges a minimum of one (1) hour travel time. Joint Protestants' Group II submit that there is no factual evidence of record to support the

Applicant's contention that any other carrier has more than a one (1) hour minimum in its tariff, with the exceptions of Debo, which has a two (2) hour minimum, and Anderson, which has a one (1) hour minimum charge for weekdays and a four (4) hour minimum for weekend moves. Accordingly, Joint Protestants' Group II assert that this Exception should be denied. (Group II R.Exc., pp. 7-8).

We note that in his discussion of this issue, the ALJ determined that the Applicant's arguments regarding the minimum rate issue are "factually misleading and legally incorrect." (I.D., p. 36). The ALJ stated that:

In fact, the Applicant charges a shipper a minimum rate of one hour "travel time" for any move, regardless of the amount of time actually expended completing the transportation (N.T. 22, 44-46, 60). Protestants All Ways and Anderson also claim to have one-hour minimum rates (N.T. 302-303, 337-338, 340-343). Thus, a one-hour minimum rate is not unique to the Applicant. Assuming, *arguendo*, that the Applicant is the only carrier to offer a one-hour minimum rate, this fact alone does not establish that a public demand/need exists for the proposed transportation service.

(I.D., p. 38).

The ALJ observed that this Commission's Decision in *Re: Richard L. Kinard, Inc.*, 58 Pa. P.U.C. 548 (1984) discussed "alternatives to inadequacy" which included lower rates. The ALJ noted, however, that that Decision differentiated between the "public demand/need" for the proposed service, and the inadequacy of the existing service. The ALJ remarked that the "alternatives to inadequacy" were considered in lieu of the inadequacy of existing service. The ALJ asserted that, in *Blue Bird, supra*, at

page 273, this Commission unequivocally rejected attempts to substitute "inadequacy of service" for evidence of public demand or need.

Our review of the record in this proceeding reveals no evidence of what the Applicant's rates will be in the Application territory. We note that there is no evidence to establish that the Applicant's rates will be compensatory, and that they will be lower than the rates of the existing carriers. Furthermore, the Applicant's arguments that lower rates reflect a public demand or need are erroneous and, therefore, misplaced. As noted by the ALJ, in *Blue Bird*, we clearly rejected the use of service inadequacy evidence to establish public demand or need.

Regarding the broader issue of public demand or need, we note that the Application territory consists of a 75-mile radius of the Allegheny County Courthouse. As noted in Finding of Fact No. 9:

9. This 75-mile radius encompasses all or parts of the counties of Mercer, Venango, Clarion, Jefferson, Lawrence, Butler, Armstrong, Indiana, Clearfield, Beaver, Allegheny, Westmoreland, Cambria, Washington, Greene, Fayette and Somerset (N.T. 50-51).

(I.D., p. 3).

To demonstrate public demand or need in this territory, the Applicant presented the testimony of two (2) public witnesses. Their testimony has been summarized by the ALJ in Finding of Fact Nos. 41-58 which are presented below.

41. Gina Lison resides at 104 Meadow View Court, Venetia, in Peters Township, Washington County and

provides a verified statement in support of the application (N.T. 78, 89, 92-94; Applicant's Exh. 2).

42. Ms. Lison hired the Applicant to move household goods from West Mifflin in Allegheny County to Washington County nearly five years ago. This move required two trucks and 12 hours. She was very satisfied with the Applicant's service (N.T. 79-80, 90).
43. Ms. Lison obtained an estimate from South Hills Movers for this move (N.T. 90).
44. Within the past year, the Applicant also performed two short moves for Ms. Lison's mother-in-law upon Ms. Lison's request. These moves were from West Mifflin to Whitehall; both points are within Allegheny County (N.T. 80, 86, 91-92).
45. Ms. Lison claims she would not have hired a carrier that charges a four or five hour minimum rate to move her mother-in-law's household goods. Instead, family members would have assisted in these moves (N.T. 87-88).
46. Ms. Lison did not call any carriers other than the Applicant to learn what rates they would have charged for these moves. Other than calls to the Applicant and South Hills Movers, she has not telephoned any other carriers to learn what their rates were within the last four years (N.T. 88, 94-95).
47. Ms. Lison anticipates hiring a carrier to move furniture from her home in Washington County to the home of a relative, when her basement is remodeled. She intends to move this furniture within the next six months (N.T. 88, 97).
48. If the Applicant is unavailable to provide this transportation, Ms. Lison does not know any other carrier who could make this move (N.T. 98).



49. Approximately two weeks after the initial hearing on August 12, 1999, an individual claiming to represent the Protestant Anderson called Ms. Lison to inform her that Anderson was available to transport her furniture and it was no longer charging a four-hour minimum rate. It now offered a flat rate (N.T. 141-142).
50. Patricia J. Honeygowsky resides at 1546 Meerschaum Lane, Coraopolis, Kennedy Township, Allegheny County, Pennsylvania (N.T. 120).
51. In 1997, the Applicant transported household goods for Ms. Honeygowsky from Green Tree in Allegheny County to Chippewa Township in Beaver County (N.T. 120-121).
52. Ms. Honeygowsky relates that move went very well and the quality of service was very good. None of her property was damaged (N.T. 121).
53. In October 1999, Ms. Honeygowsky contacted the Applicant again to transport household goods from Chippewa Township in Beaver County to Kennedy Township in Allegheny County. The Applicant informed her that it was not authorized to provide that transportation service (N.T. 121-122).
54. Ms. Honeygowsky then called the Protestant Debo to provide this transportation (N.T. 122-123).
55. For this move, Debo used one truck and three movers (N.T. 130).
56. Ms. Honeygowsky claims Debo damaged four pieces of her furniture during this move. She reported this incident on a survey she filled out for the shipper. She responded favorably to the manner and dress of the movers, and the cleanliness of the truck. But, she would not recommend that anyone use Debo's

transportation service (N.T. 123-124, 128-137; Applicant's Exh. 5).

57. Due to language in the bill of lading granting a lower rate (due to less insurance cost) in exchange for limited liability, Ms. Honeygowsky did not file a claim for property damage with Debo. Her friend repaired the damage (N.T. 131-132).
58. The Applicant has a similar provision for limited liability and does not question the procedure Debo employed with Ms. Honeygowsky (N.T. 150-152).

(I.D., pp. 8-10).

In his review, evaluation and analysis of the foregoing evidence, the ALJ stated that:

Moreover, these two public witnesses do not represent a "cross-section of the public on the issue of public demand/ need for the [A]pplicant's proposed service." *Id.* at 274. The application territory consists of 75 miles surrounding Allegheny County, which encompasses all of southwestern Pennsylvania as far west as the Ohio line, as far south as the Maryland border, as far north as Meadville, and as far east as Bedford. The Applicant seeks to transport household goods between all points within this 75-mile radius. Even though one must exclude Allegheny County from consideration, because the Applicant can already serve that County, the remaining territory comprises parts or all of 17 counties with significant population, including Westmoreland, Washington, Beaver and Butler counties (N.T. 50-51). With the exception of Ms. Lison, who testified about a potential move of a small amount of furniture from Washington County, no witness testified as to a demand or need for service from Beaver, Butler or Westmoreland counties. The record is devoid of any evidence upon which one can find that there is a public demand/need for the transportation service throughout the broad territory proposed in this application.

(I.D., p. 32). We agree with the ALJ that the record as developed is devoid of any evidence upon which one can find that there is a public demand/need for the proposed transportation service throughout the broad territory proposed in the subject Application. The public witness testimony is insufficient to establish a public demand or need within the Application territory. It is too vague and speculative regarding dates and locations. We further conclude that the testimony of these two (2) witnesses does not represent a cross-section of the public within any area of the Application territory, as required by *Blue Bird, supra*.

The Applicant also attempted to satisfy its burden of proof by offering request-for-service testimony. Regarding this testimony, the ALJ observed:

The Applicant contends it “regularly receives requests for moving services from its prior customers, seeking to move property from Butler, Washington or Westmoreland counties elsewhere in the region” (Applicant’s M.B. at 5; N.T. 17-19, 24-26, 31, 43, 46-47, 63-64). Applicant also claims local realtors refer clients to it, even when they know the Applicant cannot accept the work due to limitations in its current operating authority (Applicant’s M.B. at 12; N.T. 21, 41-43, 54-55, 75-77). However, no local realtors testified in support of this application. The only record support for these assertions come from the testimony of the Applicant’s two operating witnesses.

An applicant may offer evidence of requests it receives relevant to the existence of public necessity for the proposed service. 52 Pa. Code §3.382. The credibility and demeanor of a witness offering such evidence will be considered in evaluating the evidence. The weight, which will be attributed to that evidence, will depend upon the extent to which the alleged requests are substantiated by such evidence as the date

of the request, the name, address and phone number of the person requesting the service, the nature of the service requested, the origin and destination of the requested transportation, and the disposition of the request (whether the applicant provided the service or referred the shipper to another carrier). *Id.*

A careful review of the record reveals the request-for-service testimony of the Applicant's two operating witnesses was extremely vague and general in nature, utterly devoid of any helpful supporting details. The Applicant provided no documentary support for this testimony. The Applicant admits it does not keep a log of customers requesting service (N.T. 73-74). Therefore, no substantial evidence exists in this record to support an inference that the requests the Applicant receives for service demonstrate a demand/need for the proposed service throughout the application territory.

(I.D., pp. 32-33). Our review of the ALJ's recommendation regarding this request-for-service testimony leads us to conclude that it is an accurate reflection of the record and is consistent with the law and our regulations regarding request-for-service testimony. The Applicant has not provided any of the information required by Section 3.382, of our Regulations, 52 Pa. Code §3.382. It is within the purview of the presiding ALJ to weigh the evidence and to determine what weight should be accorded the testimony of a witness. *Danovitz v. Patnoy*, 161 A.2d 146 (9182). Having determined that this testimony should be given very little weight, the Applicant's first Exception is denied.

In its second Exception, the Applicant argues that the ALJ erred in failing to find that the Applicant's high quality moving service is unique and, coupled with its willingness to provide the most cost effective rates, is forcing the Protestants to render a higher level of service. (Exc., pp. 4-5).

In response, Joint Protestants' Group 1 argue that the Applicant has overlooked the fact that neither public witness presented any evidence of present or future need for the proposed service. (Group I R.Exc., pp.4-5).

In its response, Joint Protestants Group II contend that the Applicant's two (2) public witnesses had no basis for comparing the Applicant's service to that of the Protestants. (Group II R.Exc., p. 9).

Regarding the service excellence issue, the ALJ observed:

Next, the Applicant maintains it renders a remarkable level of service performance that has allowed it to develop a very loyal niche of customers demanding its high-quality transportation service (Applicant's M.B. at 7). To support this assertion, the Applicant points to the testimony of Ms. Lison and Ms. Honeygowsky, who both testified to the remarkable care the Applicant exhibited in transporting their household furniture (N.T. 79-80, 90, 121). The Applicant also relates the stories of two realtors, who were satisfied with its service (N.T. 20-21). Consequently, one of the realtors continues to refer clients to the Applicant, based upon its reputation for good service.

Even if one accepts this testimony in a light most favorable to the Applicant for the purpose of deciding the motion to dismiss this application, this testimony lacks probative value on the issue of whether a public demand/need exists for the proposed service. Nothing in this record suggests the Applicant is unable to respond to its "loyal niche of customers," who demand service under its existing authority. Nothing in this record establishes a public demand/need exists for the proposed service that the Applicant cannot presently provide.

(I.D., p. 35). We agree with the ALJ's conclusion that the Applicant has failed to provide probative and competent evidence on the record to demonstrate a public demand or need for the proposed service. Even in the most favorable light, the evidence presented does not establish a public demand or need consistent with the requirements of *Blue Bird, supra*. Accordingly, this Exception is denied.

### Conclusion

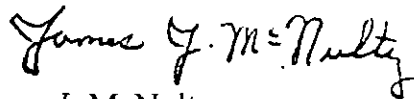
For the reasons presented above, we determine that the Applicant's Exceptions are not meritorious and, as such, they are denied, consistent with our discussion above; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions filed on August 18, 2000, by Gardner Moving Company to the Initial Decision of Administrative Law Judge John H. Corbett, Jr., issued on August 3, 2000, at Docket No. A-00108945, F0001, Am-A, are denied.
2. That the Initial Decision of Administrative Law Judge John H. Corbett, Jr. is adopted, consistent with this Opinion and Order.
3. That the Motion of the Protestants to Dismiss the Application of Gardner Moving Company at Docket No. A-00108945, F0001, Am-A, is granted.

4. That the Application of Gardner Moving Company, at Docket No. A-00108945, F0001, Am-A, is dismissed.

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: January 11, 2001

ORDER ENTERED: **JAN 12 2001**