

APPEARANCE SHEET

ALJ HEARING REPORT

Docket No. A-00108945F0001Am-A

Case Name Application of Gardner Moving Company

Location Pittsburgh

Date May 19, 1999

ALJ John H. Corbett, Jr.

Reporting Firm Commonwealth Reporting Company

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held YES ___ NO

Hearing held YES ___ NO

Testimony taken YES ___ NO

Transcript due YES ___ NO

Hearing concluded YES ___ NO

Further hearing needed YES NO ___

Estimated add'l days 17

RECORD CLOSED YES ___ NO

DATE _____

Briefs to be Filed YES ___ NO

DATE _____

BENCH DECISION YES ___ NO

REMARKS: *Hearing postponed to 8-12-99 by [Signature]*

RECEIVED
OFFICE OF C.A.L.J.
99 AUG 16 PM 3:46
PA PUC

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS			APPEARING FOR
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

REPORTER



**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office Of Administrative Law Judge

P.O. Box 3265, Harrisburg, PA 17105-3265

May 19, 1999

IN REPLY PLEASE
REFER TO OUR FILE

**DOCUMENT
FOLDER**

In Re: **A-00108945F0001AMA**

(See letter dated 04/28/99)

Application of Gardner Moving Company

For amendment to its common carrier certificate, SO AS TO PERMIT the transportation 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.

Hearing Change Notice

This is to inform you that due to a scheduling conflict, and at the request of Mark C. Stephenson, Esquire, the Initial Hearing on the above-captioned case now scheduled to be held on Wednesday, May 19, 1999 at 10:00 a.m. in Pittsburgh, Pennsylvania has been canceled and has been rescheduled as follows:

Type: **Initial**

Date: **Thursday, August 12, 1999**

Time: **10:00 a.m.**

Location: **11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania**

Presiding: **Administrative Law Judge John H. Corbett, Jr.
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692**

055180

RECEIVED
SECRETARY'S BUREAU
99 MAY 21 AM 8:24

DOCKETED

MAY 21 1999

SRB

Please change your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing impaired: 1-800-654-5988.

pc: Judge Corbett
Norma Lewis
Stephen Springer, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

10

1. REPORT DATE:
May 4, 1999

2. BUREAU AGENDA NO.:
MAY-1999-TS-MC-82
0563

3. BUREAU:
Transportation and Safety

4. SECTION (S) M. C. S. & E.

5. PUBLIC MEETING DATE:
May 21, 1999

6. APPROVED BY:
Director: Mahan: 7-2496
Supervisor: Hoshour: 3-5933

RECEIVED
SECRETARY'S BUREAU
MAY 26 AM 9:15

7. PERSONS IN CHARGE:
Hawk: 3-1763

8. DOCKET NO.:
A- 00108945

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

DOCUMENT
FOLDER

(a) Motor Carrier rate increase of more than 1% for carriers with less than \$500,000 gross annual intrastate revenues.

TRISTATE HOUSEHOLD GOODS TARIFF CONFERENCE, INC., ON
BEHALF OF GARDNER MOVING COMPANY
PITTSBURGH, ALLEGHENY COUNTY

(b) Proposed rate increases are to offset increases in motor carrier's general operating expenses.

(c) The staff recommends that the Commission approve the acceptance of the tariff under the prescribed rules.

10. MOTION BY: Commissioner Chm. Quain

Commissioner Rolka - Yes
Commissioner Brownell - Yes
Commissioner Wilson - Yes

SECONDED: Commissioner Bloom

SRB

CONTENTS OF MOTION: Staff recommendation adopted.

ALJ APPEARANCE SHEET

Hearing Report

Docket No.	A-00108945F0001AmA	Check Those Blocks Which Apply:			
Case Name	Application of Gardner Moving Company	Prehearing Held	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
Location	Pittsburgh	Hearing Held	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
Date	August 12, 1999	Testimony Taken	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
ALJ	John H. Corbett, Jr.	Transcript Due	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
Reporting Firm	Commonwealth Reporting	Hearing Concluded	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
		Further Hearing Needed	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
		Estimated Add'l Days	9		
		RECORD CLOSED	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
		DATE			
		Briefs to be Filed	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
		DATE			
		Bench Decision	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
		REMARKS:			

RECEIVED
OFFICE OF C.A.L.J.
99 AUG 17 PM 2:41
PA PUC

Names, Addresses and Telephone Numbers of Parties or Counsel of Record
PLEASE PRINT CLEARLY

Incomplete Information may Result in Delay of Processing

Name and Telephone Number	Address	Appearing for
COZEN and O'CONNOR BY MARK C. STEPHENSON Telephone No. 215-665-2176	1900 MARKET STREET City Philadelphia PA Zip 19103	Gardner Moving Company
Vuono & Gray By William A. Gray Telephone No. 412-471-1800	2310 Grant Bldg City Pgh PA Zip 15219	Anderson Transfer, Inc McKean & Burt, Inc d/b/a All Ways Moving & Storage Timothy M. Moore d/b/a Moore Moving Vesely Bros. Moving & Storage, Inc. Century III Moving Systems, Inc d/b/a Clinton Transfer Company Please send all to Van & Storage (Continued on back)
John A. Pillar Pillar Mulroy & Ferber Telephone No.	1106 Frick Bldg City Pittsburgh Pa Zip 15219	Debo Moving & Storage Inc. The Snyder Brothers Moving, Inc 210 George Transportation Company

Check this box if additional parties or counsel of record appear on back of form.

Annelle Scimuzzi
Reporter

Name, Title and Telephone Number	Address			Appearing for
<i>William A Gray</i>				<i>Woloski Transfer, Inc. Forest Hills Transfer and Storage, Inc. McNoughton Bros. Inc. Fife Moving & Storage, Inc. Best Moving & Storage Co. B. H. Stumpf Co., Inc.</i>
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

August 17, 1999

070961

In Re: A-00108945F0001AMA
99 AUG 18 AM 8:14

(See letter dated 05/19/99)

RECEIVED
SECRETARY'S BUREAU

Application of Gardner Moving Company

For amendment to its common carrier certificate, SO AS TO PERMIT the transportation 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.

DOCKETED

Hearing Notice

AUG 18 1999

This is to inform you that hearings on the above-captioned case and have been scheduled as follows:

DOCUMENT
FOLDER

Type: **Further Hearings**
Date: **Tuesday-Wednesday, September 21 and 22, 1999**
Time: **10:00 a.m.**
Location: **11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania**
Presiding: **Administrative Law Judge John H. Corbett, Jr.
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692**

SRB

Please mark **U**r records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing impaired: 1-800-654-5988.

pc: Judge Corbett
Norma Lewis
Stephen L. Springer, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

SRB



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

DOCUMENT
FOLDER

September 15, 1999

(See letter dated 08/17/99)

DOCKETED
SEP 16 1999

In Re: A-00108945F0001AMA

Application of Gardner Moving Company

For amendment to its common carrier certificate, SO AS TO PERMIT the transportation 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.

Hearing Change Notice

This is to inform you that due to a scheduling conflict and at the request of Mark C. Stephenson, Esquire, the Further Hearings on the above-captioned case now scheduled to be held on Tuesday-Wednesday, September 21 and 22, 1999 at 10:00 a.m. in Pittsburgh, Pennsylvania have been canceled and have been rescheduled as follows:

Type: Further Hearings

Date: Monday-Tuesday, October 18 and 19, 1999

Time: 10:00 a.m.

Location: 11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania

Presiding: Administrative Law Judge John H. Corbett, Jr.
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692

EEF

Please change our records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing impaired: 1-800-654-5988.

pc: Judge Corbett
Norma Lewis
Stephen L. Springer, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

**APPEARANCE SHEET
ALJ HEARING REPORT**

Docket No. A-00108945F0001AMA

Case Name Application of
Gardner Moving Company

Location Pittsburgh

Date September 21-22, 1999

ALJ Corbett

Reporting Firm Commonwealth Reporting Company

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held YES ___ NO

Hearing held YES ___ NO

Testimony taken YES ___ NO

Transcript due YES ___ NO

Hearing concluded YES ___ NO

Further hearing needed YES NO ___

Estimated add'l days 2+

RECORD CLOSED YES ___ NO

DATE _____

Briefs to be Filed YES ___ NO

DATE _____

BENCH DECISION YES ___ NO

REMARKS: *Hearings postponed at request of Applicant's Counsel until Oct 18-19, 1999.*

RECEIVED
OFFICE OF C.A.L.J.
00 MAR -6 PM 1:49
PA PUC

DOCUMENT
FOLDER

200781

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS			APPEARING FOR
Telephone No.	City	State	Zip	RECEIVED SECRETARY'S BUREAU 00 MAR 10 AM 10:41
EEF	City	State	Zip	
Telephone No.	City	State	Zip	

CHECK THIS BOX IF ADDITIONAL PARTIES
OR COUNSEL OF RECORD APPEAR ON BACK.

REPORTER



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge

P.O. Box 3265, Harrisburg, PA 17105-3265

October 6, 1999

IN REPLY PLEASE
REFER TO OUR FILE

DOCUMENT
FOLDER

In Re: **A-00108945F0001AMA**

(See letter dated 09/15/99)

Application of Gardner Moving Company

For amendment to its common carrier certificate, SO AS TO PERMIT the transportation 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.

Hearing Change Notice

This is to inform you that due to a scheduling conflict the Further Hearings on the above-captioned case now scheduled to be held on Monday-Tuesday, October 18, and 19, 1999 at 10:00 a.m. in Pittsburgh, Pennsylvania have been canceled and have been rescheduled as follows:

Type: Further Hearings

Date: Thursday-Friday, November 18 and 19, 1999

Time: 10:00 a.m.

Location: 11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania

Presiding: Administrative Law Judge John H. Corbett, Jr.
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692

DOCKETED
OCT 08 1999

RECEIVED
SECRETARY'S BUREAU

99 OCT -8 AM 9:40

080080

SRB

Please change your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing impaired: 1-800-654-5988.

pc: Judge Corbett
Norma Lewis
Stephen L. Springer, Scheduling Officer
Beth Plantz
Docket Section
Calendar File



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

November 16, 1999

In Re: **A-00108945F0001AMA**

(See letter dated 10/06/99)

Application of Gardner Moving Company

For amendment to its common carrier certificate, SO AS TO PERMIT the transportation 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.

Hearing Change Notice

This is to inform you that due to a scheduling conflict the Further Hearings on the above-captioned case now scheduled to be held on Thursday-Friday, November 18 and 19, 1999 at 10:00 a.m. in Pittsburgh, Pennsylvania have been canceled and have been rescheduled as follows:

Type: Further Hearings

Date: Wednesday-Thursday, January 19-20, 2000

Time: 10:00 a.m.

Location: 11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania

Presiding: Administrative Law Judge John H. Corbett, Jr.
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692

DOCKETED
NOV 17 1999

DOCUMENT
FOLDER

SRB

Please change your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing impaired: 1-800-654-5988.

pc: Judge Corbett
Norma Lewis
Stephen L. Springer, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

ALJ APPEARANCE SHEET

Hearing Report

Docket No.	A-00108945F0001AMA	Check Those Blocks Which Apply:			
		Prehearing Held	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
Case Name	Application of	Hearing Held	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
	Gardner Moving Company	Testimony Taken	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
		Transcript Due	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
		Hearing Concluded	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
Location	Pittsburgh	Further Hearing Needed	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
Date	November 18-19, 1999	Estimated Add'l Days	2+		
ALJ	John H. Corbett, Jr.	RECORD CLOSED	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
Reporting Firm	Commonwealth Reporting	DATE			
		Briefs to be Filed	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
		DATE			
		Bench Decision	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
		REMARKS:	<i>Hearing postponed at request of Applicant's Counsel until Jan. 19-20, 2000.</i>		

RECEIVED
OFFICE OF C.A.L.J.

00 MAR -6 PM 1:49

PA BUC
DOCUMENT
FOLDER

Hearing postponed at request of Applicant's Counsel until Jan. 19-20, 2000.

200742

Names, Addresses and Telephone Numbers of Parties or Counsel of Record
PLEASE PRINT CLEARLY

Incomplete Information may Result in Delay of Processing

Name and Telephone Number	Address			Appearing for
Telephone No.	City	State	Zip	RECEIVED SECRETARY'S BUREAU 00 MAR 10 AM 10:41
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	

Check this box if additional parties or counsel of record appear on back of form.

EEF

Reporter

COZEN AND O'CONNOR

A PROFESSIONAL CORPORATION

THE ATRIUM

1900 MARKET STREET

PHILADELPHIA, PA 19103

(215) 665-2000

(800) 523-2900

FACSIMILE

(215) 665-2013

www.cozen.com

ATLANTA, GA

CHARLOTTE, NC

DALLAS, TX

LONDON, UK

LOS ANGELES, CA

NEW YORK, NY

NEWARK, NJ

SAN DIEGO, CA

SEATTLE, WA

WEST CONSHOHOCKEN, PA

WESTMONT, NJ

WILMINGTON, DE

DOCUMENT FOLDER

MARK C. STEPHENSON
DIRECT DIAL (215) 665-2175
DIRECT FAX (215) 665-2013
E-MAIL: MSTEPHENSON@COZEN.COM

DOCKETED

JAN 18 2000

January 10, 1999 ²⁰⁰⁰

Honorable John Corbett, Jr.
300 Liberty Avenue
1103 Pittsburgh State Office Building
Pittsburgh, PA 15222

DOCKETED

JAN 20 2000

093896

Re: Gardner Moving Company
Docket No. A-00108945, F.1, Am-A

Dear Judge Corbett:

Previously, I had advised you and opposing counsel that I had an extended trial this month. I hoped that this matter might settle or otherwise not conflict with next week's hearing in this application. This has not proved to be the case. I will be unavailable and am required to appear for trial in Camden County Superior Court next week for a matter that will last for at least three to four weeks. In light of this scheduling conflict, I respectfully request that the matter be rescheduled. I have copied scheduling personnel in Harrisburg in order to obtain a new date. I apologize for this inconvenience. Thank your consideration of this request.

SECRET
00 JAN 19 11 09 31
PA OFFICE
JUDGE AU

Very truly yours,

COZEN AND O'CONNOR

BY: MARK C. STEPHENSON

SRB

CC: John A. Pillar, Esq.
William A. Gray, Esq.
Office of Administrative Law Judge ✓
Jos. Gardner

00 JAN 19 11 12:20
PA PUC

Judge John Corbett, Jr.
January 10, 1999
Page 2

(By fax and U.S. Mail)



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

January 14, 2000

In Re: **A-00108945F0001AMA**

(See letter dated 11/16/99)

Application of Gardner Moving Company

For amendment to its common carrier certificate, SO AS TO PERMIT the transportation 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.

Hearing Change Notice

This is to inform you that due to a scheduling conflict and at the request of Mark C. Stephenson, Esquire, the Further Hearings on the above-captioned case now scheduled to be held on Wednesday-Thursday, January 19-20, 2000 at 10:00 a.m. in Pittsburgh, Pennsylvania have been canceled and have been rescheduled as follows:

Type: **Further Hearings**
Date: **Wednesday-Thursday, March 8-9, 2000**
Time: **10:00 a.m.**

THERE WILL BE NO FURTHER CONTINUANCES OF THESE HEARINGS

Location: **11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania**

DOCUMENT
FOLDER

SRB
DOCKETED
JAN 19 2000

Presiding: Administrative Law Judge John H. Corbett, Jr.
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692

Please change your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Corbett
Norma Lewis
Steve Springer, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

APPEARANCE SHEET

ALJ HEARING REPORT

Docket No. A-00108945F0001AmA

Case Name Application of
Gardner Moving Company

Location Pittsburgh

Date January 19 and 20, 2000

ALJ Corbett

Reporting Firm Commonwealth

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held YES ___ NO

Hearing held YES ___ NO

Testimony taken YES ___ NO

Transcript due YES ___ NO

Hearing concluded YES ___ NO

Further hearing needed YES NO

Estimated add'l days 2

RECORD CLOSED YES ___ NO

DATE _____

Briefs to be filed YES ___ NO

DATE _____

BENCH DECISION YES ___ NO

DOCUMENT FOLDER

REMARKS: *Hearings cancelled & rescheduled at request of applicants counsel.*

RECEIVED
OFFICE OF C.A.L.J.

00 JAN 20 AM 10:40

PA PUC

000 JAN 25 AM 9:10

RECEIVED
SECRETARY'S BUREAU

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS			APPEARING FOR
Telephone No. _____	City _____	State _____	Zip _____	
Telephone No. _____	City _____	State _____	Zip _____	
Telephone No. _____	City _____	State _____	Zip _____	

CHECK THIS BOX IF ADDITIONAL PARTIES
OR COUNSEL OF RECORD APPEAR ON BACK.

REPORTER
APPEARANCE SHEET

SRB



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

IN REPLY PLEASE
REFER TO OUR FILE

February 2, 2000

A-00108945
HHG-99-040

GARDNER MOVING COMPANY
3236 BEACON HILL AVE
PITTSBURGH PA 15216

DOCKETED
MAY 07 2000

Gentlemen:

During the month of November 1999, Enforcement Officer John Addison conducted a household goods review of your business operations for the months of October 1999 through November 1999.

DOCUMENT
FOLDER

The following two (2) moves reflect charges exceeding the estimate by more than 10%:

- (a) Claudia Huggins, October 23, 1999
- (b) Kathy Root, October 28, 1999.

A common carrier of household goods in use shall file with the Pennsylvania Public Utility Commission, Bureau of Transportation and Safety, Motor Carrier Services and Enforcement Division, Harrisburg, Pennsylvania, a quarterly report containing instances wherein charges exceeded the estimate by more than 10% with the explanation of the reasons for the variances in accordance with 52 Pa. Code §31.124. As of the date of this letter, no such report has been received by the Pennsylvania Public Utility Commission.

The following move reflects a violation of 66 Pa. C.S. §1303, by charging a greater rate than that specified in your household goods tariff on file with this Commission:

- (a) In the household goods move made for Jan Levin on November 5, 1999, you charged \$1,972.00, as opposed to the correct charge of \$1,969.50, resulting in an approximate overcharge of \$2.50.

Continued operations, as described above, may subject you to penalties which may include the assessment of fines up to \$1,000 per violation.

If you have any questions concerning this matter, please do not hesitate to contact me at the above address or call me at (717) 787-2616.

Alternative formats of this material are available, for persons with disabilities, by contacting the Technical Unit at (717) 783-5945.

Very truly yours,
SECRETARY'S BUREAU
RECEIVED

MAY - 1 AM 11:47

Dwight Beard
Motor Carrier Services
and Enforcement Division
Bureau of Transportation and Safety

191608

EEF

DWB:dk

pc: Pittsburgh District Office/Addison/PGH-251-99HHM



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
1103 PITTSBURGH STATE OFFICE BUILDING
300 LIBERTY AVENUE
PITTSBURGH, PENNSYLVANIA 15222-1210

Telephone: (412) 565-3550
FAX: (412) 565-5692

IN REPLY PLEASE
REFER TO OUR FILE

200090
March 1, 2000

00 MAR -7 AM 7:56

RECEIVED
SECRETARY'S BUREAU

Mark C. Stephenson, Esquire
Cozen and O'Connor
The Atrium
1900 Market Street
Philadelphia, PA 19103

DOCKETED
MAR 10 2000

Re: Application of Gardner Moving Company
Docket No. A-00108945F0001AmA

DOCUMENT
FOLDER

Dear Mr. Stephenson:

I have received yet another request from you by letter dated February 29, 2000 for a continuance of further hearings in this application proceeding. Five times now I have received such requests, since the initial hearing in this case on August 12, 1999. While on each occasion the request for a continuance appeared legitimate on its face, the extraordinary delay in litigating this application can no longer continue.

Your request for a continuance of the further hearings in this matter scheduled for March 8 & 9, 2000 due to an unspecified medical problem will be granted. However, no further continuances will be granted for any reason whatsoever, unless you have a grave medical condition or medical emergency that prevents you from attending the hearings and representing your client. In such event, you must supply me at least one week before the hearings with a detailed medical certificate explaining your condition and the need for a postponement that is signed by your attending physician. Otherwise, the hearings will proceed as scheduled.

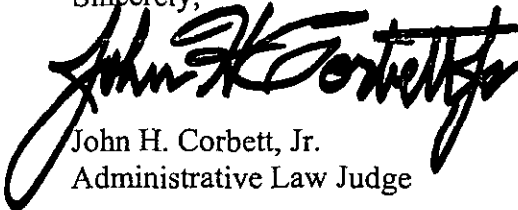
If you are unable to attend these hearings and do not supply the required medical certificate, you or Gardner Moving Company will be responsible for acquiring substitute legal counsel to represent the Applicant at all further hearings in this case. In no event will the Applicant, as a corporation, be permitted to represent itself. See, 52 Pa. Code §§1.21 & 1.22.

EEF

To: Mark C. Stephenson, Esquire
From: ALJ John H. Corbett, Jr.
Page: 2
Date: March 1, 2000

Thank you for your time and attention to this matter. I also wish to thank you for the courtesy of a telephone call today to personally explain the reason for your request for a continuance of these hearings. I wish you well and look forward to seeing you at the next round of hearings.

Sincerely,



John H. Corbett, Jr.
Administrative Law Judge

pc: William A. Gray, Esquire
John A. Pillar, Esquire
Robert A. Christianson, CALJ
Steven L. Springer, OALJ Scheduling Staff
File Room



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge

P.O. Box 3265, Harrisburg, PA 17105-3265

March 6, 2000

IN REPLY PLEASE
REFER TO OUR FILE

DOCUMENT
FOLDER

In Re: **A-00108945F0001AMA**

(See letter dated 01/14/2000)

Application of Gardner Moving Company

For amendment to its common carrier certificate, SO AS TO PERMIT the transportation 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.

Hearing Change Notice

This is to inform you that due to a scheduling conflict and at the request of Mark C. Stephenson, Esquire, the Further Hearings on the above-captioned case now scheduled to be held on Wednesday-Thursday, March 8-9, 2000 at 10:00 a.m. in Pittsburgh, Pennsylvania have been canceled and have been rescheduled as follows:

Type: Further Hearings
Date: Thursday-Friday April 6-7, 2000
Time: 10:00 a.m.

DOCKETED
MAR 08 2000

THERE WILL BE NO FURTHER CONTINUANCES OF THESE HEARINGS

Location: 11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania

EEF

Presiding: **Administrative Law Judge John H. Corbett, Jr.**
110 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692

Please change your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Corbett
Steve Springer, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

APPEARANCE SHEET

ALJ HEARING REPORT

Docket No. A-00108945F0001AMA

Case Name Application of
Gardner Moving Company

Location Pittsburgh

Date March 8 and 9, 2000

ALJ Corbett

Reporting Firm Commonwealth

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held YES ___ NO

Hearing held YES ___ NO

Testimony taken YES ___ NO

Transcript due YES ___ NO

Hearing concluded YES ___ NO

Further hearing needed YES NO ___

Estimated add'l days 2+

RECORD CLOSED YES ___ NO

DATE _____

Briefs to be Filed YES ___ NO

DATE _____

BENCH DECISION YES ___ NO

RECEIVED
OFFICE OF C.A.L.J.
00 MAR -6 PM 1:49
PA PUC

DOCUMENT
FOLDER

REMARKS: *Hearings postponed at request of Applicant's Counsel.*

200743

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS			APPEARING FOR
Telephone No.	City	State	Zip	SECRETARY'S BUREAU RECEIVED 00 MAR 10 AM 10:41
Telephone No.	City	State	Zip	
Telephone No.	City	State	Zip	

CHECK THIS BOX IF ADDITIONAL PARTIES
OR COUNSEL OF RECORD APPEAR ON BACK.

REPORTER

EEF

ALJ APPEARANCE SHEET

Hearing Report

Docket No.	A-00108945F0001AmA	Check Those Blocks Which Apply:			
		Prehearing Held	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
Case Name	Application of	Hearing Held	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
	Gardner Moving Company	Testimony Taken	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
		Transcript Due	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
		Hearing Concluded	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
Location	Pittsburgh	Further Hearing Needed	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
Date	April 6 & 7, 2000	Estimated Add'l Days	<i>undecided</i>		
ALJ	John H. Corbett, Jr.	RECORD CLOSED	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
Reporting Firm	Commonwealth Reporting	DATE			
		Briefs to be Filed	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> NO
		DATE			
		Bench Decision	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/> NO
		REMARKS: <i>Examined transcript. Pt. 5 of transcript additional hearing & no hearing needed, briefing returned to Dept.</i>			

RECEIVED OFFICE OF THE ALJ APR 11 PM 2:26

DOCUMENT FOLDER

DOCKETED

APR 13 2000

Names, Addresses and Telephone Numbers of Parties or Counsel of Record
PLEASE PRINT CLEARLY

Incomplete Information may Result in Delay of Processing

Name and Telephone Number	Address	Appearing for
Telephone No.	City State Zip	
<i>Uwona & Gray By: William A. Gray Telephone No. 412-471-1800</i>	<i>2310 Grant Bldg Pittsburgh PA 15219</i>	<i>Anderson Transfer, Inc. McKean & Burt, Inc. tid/bk Allways Moving & Storage Timothy M. Moore tid/bk Moore Movers Yesely Bros. Moving & Storage, Inc Century III Moving Systems, Inc. tid/bk Chilton Transfer Company of Pleasant Hills Van & Storage Walostki Transfer, Inc. Forest Hills Transfer & Storage, Inc McNaughton Bros. Inc. Fife Moving & Storage Co. Best Moving & Storage Co. D.H. Stump Co. Inc.</i>
Telephone No.	City State Zip	

Check this box if additional parties or counsel of record appear on back of form.

Barbara A. ...
Reporter

SRB

Name, Title and Telephone Number	Address			Appearing for
<p>John A. Pillan 1106 Frick Bldg RGA GA 15219</p>	<p>1106 Frick Bldg</p>			<p>Debo Moving & Storage, Inc. The Snyder Brothers Moving, Inc 71a George Transportation Company</p>
<p>Telephone No.</p>	<p>City Rgh</p>	<p>State Ga</p>	<p>Zip 15219</p>	
<p>Mark Stephens 1900 Market Street Phila PA 19103</p>	<p>1900 Market ST</p>			<p>Gardner Moving Company</p>
<p>Telephone No.</p>	<p>City Phila</p>	<p>State Pa</p>	<p>Zip 19103</p>	
<p>Telephone No.</p>	<p>City</p>	<p>State</p>	<p>Zip</p>	
<p>Telephone No.</p>	<p>City</p>	<p>State</p>	<p>Zip</p>	
<p>Telephone No.</p>	<p>City</p>	<p>State</p>	<p>Zip</p>	
<p>Telephone No.</p>	<p>City</p>	<p>State</p>	<p>Zip</p>	
<p>Telephone No.</p>	<p>City</p>	<p>State</p>	<p>Zip</p>	
<p>Telephone No.</p>	<p>City</p>	<p>State</p>	<p>Zip</p>	



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
1103 PITTSBURGH STATE OFFICE BUILDING
300 LIBERTY AVENUE
PITTSBURGH, PENNSYLVANIA 15222-1210

Telephone: 412 565-3550
Fax: 412 565-5692

IN REPLY PLEASE
REFER TO OUR FILE

May 4, 2000

NEW FILING

TO ALL PARTIES OF RECORD

DOCKETED

MAY 10 2000

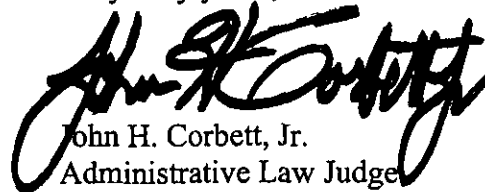
Re: Application of
Gardner Moving Company
Docket No. A-00108945F0001AMA

The transcript of testimony taken in the above-entitled proceeding indicates that the parties will file briefs.

In accordance with the Commission's Rules of Practice, main briefs shall be filed on or before June 5, 2000; reply briefs, if any, shall be filed on or before June 20, 2000. If briefs are not received within the allotted time, they shall not be accepted for filing, except by special permission of the presiding officer. Your main briefs should be concise and must comply with 52 Pa. Code §5.501.

An original and nine (9) copies of each main and reply brief must be filed with the Commission in accordance with 52 Pa. Code §1.4 and in care of the New Filing Section, Room B-18, North Office Building, Harrisburg, PA 17105-3265. Also, one hard copy of the brief, together with one copy on computer diskette, in Word format, must be served on the presiding Administrative Law Judge and two copies on each party of record.

Very truly yours,


John H. Corbett, Jr.
Administrative Law Judge

EEF

DOCUMENT
FOLDER

JHC:som

cc: Norma R. Lewis, Scheduling Unit Supervisor
Elizabeth L. Plantz, Office Support Staff ✓
File Room

SERVICE LIST: A-00108945F0001AMA

Mark C. Stephenson, Esq.
Cozen & O'Connor
1900 Market Street
Philadelphia, PA 19103

William A. Gray, Esq.
Vuono & Gray
2310 Grant Building
Pittsburgh, PA 15219

John A. Pillar, Esq.
1106 Frick Building
Pittsburgh, PA 15219



PILLAR · MULROY & FERBER

June 2, 2000

Re: Gardner Moving Company
Docket A-00108945, F.1, Am-A
File No. 2894

Hon. James J. McNulty, Secretary
c/o New Filing Section
North Office Building, Room B-18
Harrisburg, PA 17105-3265

Dear Sir:

00 JUN 15 10:30
RECEIVED
SECRETARY'S BUREAU

We enclose for filing the original and nine copies of **Brief in Support of Motion to Dismiss or Denial of Application** in connection with the above docketed proceeding.

Please acknowledge receipt of the enclosures on the duplicate of this letter of transmittal and return it in the stamped, self-addressed envelope provided.

Very truly yours,

John A. Pillar
JOHN A. PILLAR

DOCUMENT
FOLDER

51409

sw

Enclosures

cc: Hon. John J. Corbett, Jr. (w/encl.)
Mark C. Stephenson, Esq. (w/encl.)
William A. Gray, Esq. (w/encl.)
Debo Moving and Storage, Inc. (w/encl.)
George Transportation Company (w/encl.)

50

U. S. POSTAL SERVICE CERTIFICATE OF MAILING ENCLOSED

PROFESSIONAL CORPORATION · ATTORNEYS
1106 FRICK BUILDING · PITTSBURGH, PA 15219
(412) 471-3300 · FAX: (412) 471-6068

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of
GARDNER MOVING COMPANY

Docket No. A-00108945, F.1, Am-A

RECEIVED

BRIEF IN SUPPORT OF MOTION TO DISMISS
OR DENIAL OF APPLICATION JUN 02 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

JOHN A. PILLAR, ESQ.

Attorney for
DEBO MOVING AND STORAGE, INC.,
THE SNYDER BROTHERS MOVING
INC., t/a GEORGE TRANSPORTATION
COMPANY,
Protestants

DOCKETED
JUN 05 2000

DOCUMENT
FOLDER

Pillar, Mulroy & Ferber, P. C.
1106 Frick Building
Pittsburgh, PA 15219

Due Date: June 5, 2000

TABLE OF CONTENTS

I. INTRODUCTORY STATEMENT 1

II. ARGUMENT IN SUPPORT OF MOTION TO DISMISS..... 2

III. ARGUMENT IN SUPPORT OF DENIAL OF APPLICATION..... 8

IV. CONCLUSION 10

CERTIFICATE OF SERVICE..... 11

TABLE OF CASES

Application of White Line Taxi & Transfer Company, Inc.,
Docket A-00000990, F.4, Am-A (Order entered
February 2, 1993).....6

Re: Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262 (1990)..... 3,4,5,8,9

STATUTES

Public Utility Code, 66 Pa. C.S. §1103(a).....2

52 Pa. Code §41.143

52 Pa. Code §3.3825

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of
GARDNER MOVING COMPANY

Docket No. A-00108945, F.1, Am-A

I. INTRODUCTORY STATEMENT

Gardner Moving Company (hereinafter Gardner or Applicant) filed an application with the Pennsylvania Public Utility Commission (hereinafter PUC) on or about November 4, 1998. By this application, Gardner seeks to expand its authority so as to permit the transportation 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. Numerous protests were filed to this application, including the protests of Debo Moving and Storage, Inc. (Debo) and The Snyder Brothers Moving, Inc., t/a George Transportation Company (George).

A hearing was held on August 12, 1999. Following a series of continuances requested by the Applicant, further hearings were not held until April 6 and 7, 2000. Prior to the presentation of testimony by the witnesses for George and Debo, their counsel made a motion on the record to dismiss the application on the

grounds that Applicant has not met its threshold burden of proof. The Administrative Law Judge agreed to take this motion under advisement and directed the protestants to present testimony in opposition to the application. At the conclusion of the hearings, protestants renewed their motion to dismiss and the Administrative Law Judge indicated that the motion would be considered at the time briefs were filed by the parties.

Accordingly, this brief is directed both to the motion to dismiss and to denial of the application.

II. ARGUMENT IN SUPPORT OF MOTION TO DISMISS

Although dismissal of the application and denial achieve the same result, the Administrative Law Judge may determine that the application should be dismissed based upon a review of the Applicant's evidence only, since the protestants' motion would require the Administrative Law Judge to consider all of the Applicant's evidence in a light most favorable to the Applicant. Notwithstanding this criterion for determining the merits of the motion to dismiss, protestants submit that Gardner has failed to present more than a mere scintilla of evidence of need or demand for the proposed service.

The statutory basis for granting a certificate to operate as a motor common carrier is set forth in the Public Utility Code 66 Pa. C.S. §1103(a) which provides:

- (a) 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.

The statute is implemented through regulations adopted by the Commission in 1982 governing the evidentiary criteria which will be used to decide motor common carrier applications. The regulations are found at 52 Pa. Code §41.14. Under these regulations, the applicant has a two-fold burden of proof: the applicant must prove (1) that the authority sought will serve a useful public purpose, responsive to a public demand or need; and (2) the applicant has the technical and financial ability to provide the proposed service. In this case, the Applicant has utterly failed to meet the first part of the two-fold burden of proof and, therefore, the application must be dismissed.

The first part of the two-fold burden of proof dealing with the evidentiary criteria to establish a public demand or need was addressed with great specificity in Re: Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262 (1990). The Commission in Blue Bird established the following elements of the witnesses' evidence that would be necessary to support the applicant's burden of proof (72 Pa. P.U.C. at 274):

The witnesses supporting a motor common carrier application must be legally competent and credible (citing cases), and their testimony must be probative and relevant to the application proceeding (citing cases). The supporting witnesses must articulate a demand/need for the type of service embodied in the application (citing cases). 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. E.g., Re: Nothstein Bros., Inc. 64 Pa. P.U.C. 411 (1987); Re: Purolator Courier Corp., 50 Pa. P.U.C. 308 (1976).

In this case, Gardner presented two public witnesses. In Blue Bird, the Commission held that the particular circumstances of a case determine what

constitutes sufficient evidence of a public demand/need for the applicant's proposed service. The Commission went on to hold (72 Pa. P.U.C. 274-275):

Therefore, the number of witnesses which will comprise a cross section of the public on the issue of public demand/need for an applicant's proposed service will necessarily vary with the circumstances of the case such as the breadth of the applicant's intended operating territory, the population density in the intended operating territory, and the scope of the requested operating authority.

To consider whether this application should be dismissed, based on the Commission's holding in Blue Bird and other cases cited herein, the Administrative Law Judge must first look at the actual testimony of the two witnesses who were called as "demand/need" witnesses. The witnesses were Gina Lison and Patricia Honeygosky. The record will clearly show that Mrs. Honeygosky was called to testify only with regard to transportation previously performed for her from Beaver County to Allegheny County. Mrs. Honeygosky admitted that she has no present or reasonably foreseeable future need for Applicant's service. Most importantly, if she would move in the future from her present residence, Gardner presently holds the requisite authority to provide such service since Gardner is presently authorized to transport household goods in use between points in Allegheny County, and from points in Allegheny County to points in Pennsylvania, with minor limitations.

Gina Lison, who testified at the hearing in August, 1999, mentioned only the possibility that within the next six months she might move a few pieces of furniture from the basement of her residence in Venetia, Washington County, to her mother's apartment in Allegheny County. Witness Lison mentioned no other actual or potential need for the services of a moving company. It should be noted that

Gina Lison testified again at the hearing on April 6, 2000, more than six months after she previously testified, and she made no further mention of a need for the transportation of the items of furniture in her basement which she referred to in her testimony in August, 1999.

This was the sum and substance of the Applicant's evidence of need or demand. Although the two operating witnesses for the Applicant both testified generally that they receive requests for service, this testimony did not meet the criteria set forth in 52 Pa. Code §3.382, dealing with service request evidence in that the Applicant's operating witness did not provide the dates of the requests, the name, address and telephone number of the persons requesting the service, the nature of the service requested on each occasion, and the disposition of the request. The so-called request evidence, therefore, does not provide a basis for approval of this application.

In connection with the second aspect of the public witness testimony, namely whether the evidence of the two so-called public witnesses represents a "cross section of the public on the issue of public demand/need for the applicant's proposed service" (see Blue Bird *supra* at 274), protestants submit that even if both witnesses are considered as "demand/need" witnesses, they do not represent a reasonable cross section of the public. The application area consists of 75 miles surrounding Allegheny County which takes in 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 if Allegheny County is

excluded from consideration, since the Applicant can already serve Allegheny County, the remaining territory comprises numerous counties with significant population, including Westmoreland, Washington, Beaver and Butler Counties, from which the Applicant would propose to provide household goods transportation service. With the exception of witness Lison, who testified as to a potential move of a small amount of furniture from Washington County, no witness testified as to a need or demand for service from Beaver, Butler or Westmoreland Counties; in fact, no other witnesses testified at all as to need or demand for present or future household goods transportation service.

In Application of White Line Taxi & Transfer Company, Inc., Docket A-00000990, F.4, Am-A (Order entered February 2, 1993), the Commission upheld the Initial Decision of Administrative Law Judge Corbett, in which he denied an application under very similar facts. Although the White Line application involved the transportation of passengers, the case stands as sound precedent in support of the motion to dismiss. The Administrative Law Judge concluded that the testimony of three witnesses did not produce the "slightest scintilla" (Initial Decision of Judge Corbett, at page 47) of evidence to prove public demand/need. The full Commission upheld Judge Corbett's decision and concluded (page 11 of Decision):

Our review of the record indicates that the applicant herein, presented three witnesses in support of the subject application. However, no testimony was presented indicating the number of requests for transportation to destination points outside of Fayette County. The record as developed is devoid of any testimony which may be construed as a demand/need for the proposed service in the application territory. Accordingly, we conclude that the record fails to

present any evidence upon which one can find that there is a public demand/need for paratransit service from points in Fayette County to points in Allegheny, Westmoreland, Greene, Washington, Somerset and Beaver Counties.

The sole public need/demand witness *in this case* failed to present or identify more than a mere scintilla of evidence of need/demand for service from Applicant. The witness offered no evidence that the services of Gardner would ever be used, except possibly for the transportation of some furniture from the basement of witness Lison's home in Washington County to a point in Allegheny County. This testimony does not amount to evidence of need or demand by a reasonable cross section of the public that would be supportive of the application here involved.

Gardner made no effort or attempt in this case to modify the scope of its application to conform to the evidence, however meager, it offered in this case. Protestants submit that there is no need to review the testimony of the protestants in this case, and on the basis of the Applicant's evidence alone, this application should be dismissed.

Gardner attempted to bootstrap its case by presenting testimony through its operating witnesses that Gardner offers lower rates for transportation of small shipments because its tariff has no minimum charge. This evidence fails to provide any additional or alternative basis for approval of this application since there is no guarantee that Applicant will not place a minimum charge in any tariff it files in the future, particularly if this application is granted to any extent. Even if Applicant has no minimum charge, it failed to present evidence that transportation performed without a minimum charge is needed or that it would be compensatory. *Mere*

reliance on the absence of a minimum charge in its present tariff is not supportive of an alleged need or demand for future service.

III. ARGUMENT IN SUPPORT OF DENIAL OF APPLICATION

Taking into consideration the testimony presented by the protestants, the evidence of record overwhelmingly supports denial of this application. Protestants Debo and George incorporate in this section the argument made in the prior section of this brief in support of its motion to dismiss. The same factors and criteria apply in considering the application based on the entire record.

Both Debo and George provide service in connection with the transportation of household goods in the application area. Debo, for example, provides extensive service in Beaver County, and from points in Beaver County to points in Pennsylvania. It also services the area in and around Cranberry Township in Butler County. George provides household goods transportation service within Butler County, and from points in Butler County to points in Pennsylvania. It also services other areas within a 75 mile radius of Pittsburgh. The evidence presented by the protestants clearly rebuts any inference that may have been raised by the filing of this application, of a need or demand for additional service by the Applicant.

As mentioned in the preceding section of this brief, Applicant appears to contend that by offering a service that is not subject to a minimum charge, it offers a service that is distinctive and that this fact supports approval of its proposed service. Protestants submit that the Commission in Blue Bird, emphatically rejected

efforts to prove actual need for transportation by the so-called "alternatives to inadequacy." In Blue Bird, the Commission held (72 Pa. P.U.C. at 273):

During the intervening years since our decision in Re: Richard L. Kinard, Inc., we have had many opportunities to confront difficulties in construing subsection 41.14(a) *vis-a-vis* Re: Richard L. Kinard, Inc. Chief among the interpretation problems has been a tendency among motor carriers, legal counsel representing motor carriers, and occasionally staff in various capacities through the Commission to substitute proof of one of the nine "alternatives to inadequacy" for proof of a supporting witness' actual need for transportation between identified points in Pennsylvania that are within the scope of the applicant's proposed operating territory. We unequivocally reject that attempted substitution and affirm that, without proof in the record of a public demand/need for an applicant's proposed service between specified, intrastate points, an application for motor common carrier authority cannot be validly approved pursuant to subsection 1103(a) of the Public Utility Code, and hence cannot be validly approved pursuant to our Policy Statement at 52 Pa. Code §41.14. See also 66 Pa. C.S. §1101.

Gardner filed this application nearly 18 months ago. It has had more than ample opportunity to develop a case supportive of its application. Hearings were scheduled on numerous occasions which provided the Applicant ample opportunity to present witnesses. The sum and substance of its need/demand evidence consists of the testimony of two witnesses. First, there is Mrs. Honeygosky, who has no present or reasonably foreseeable future need for service, who is now a resident of Allegheny County and who can use Gardner if and when she does move. Second, there is the testimony of Mrs. Lison, which is lacking in both credibility and substance. In this case, we had the benefit of hearing Mrs. Lison testify at the hearing on April 6, 2000, more than six months after she originally testified that she may have, within six months, a need for the Applicant to move a small amount of furniture from her basement in Washington County to her mother's

home in Allegheny County. This move apparently never materialized. Her subsequent testimony on April 6, 2000, virtually negates any probative value to her original testimony in August, 1999.

The application must be denied.

IV. CONCLUSION

Applicant has failed to offer evidence of need/demand for its proposed service. Further, Applicant has failed to present a representative sampling of witnesses who might use its service in the application area. On the basis of the entire record, the following conclusions are warranted:

1. The Commission has jurisdiction over the subject matter and the parties.
2. The Applicant has failed to sustain its burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.
3. Approval of the application would be contrary to the public interest.
4. The application must, accordingly, be denied.

Respectfully submitted,

PILLAR, MULROY & FERBER, P.C.

By: 

JOHN A. PILLAR

Attorney for
DEBO MOVING AND STORAGE, INC.,
THE SNYDER BROTHERS MOVING,
INC., t/a GEORGE TRANSPORTATION
COMPANY,
Protestants

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing **Brief In Support Of Motion To Dismiss Or Denial Of Application** on the following parties of record, by first-class mail, postage prepaid, this 2ND day of June, 2000:

HON. JOHN H. CORBETT, JR.
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

MARK C. STEPHENSON, ESQ. (2 copies)
Cozen & O'Connor
1900 Market Street
Philadelphia, PA 19103

WILLIAM.A. GRAY, ESQ. (2 copies)
Vuono & Gray
2310 Grant Building
Pittsburgh, PA 15219



JOHN A. PILLAR, ESQ.

Pillar, Mulroy & Ferber, P. C.
1106 Frick Building
Pittsburgh, PA 15219

COZEN AND O'CONNOR

A PROFESSIONAL CORPORATION

THE ATRIUM

1900 MARKET STREET

PHILADELPHIA, PA 19103

(215) 665-2000

(800) 523-2900

FACSIMILE

(215) 665-2013

www.cozen.com

ATLANTA, GA

CHARLOTTE, NC

CHERRY HILL, NJ

DALLAS, TX

LONDON, UK

LOS ANGELES, CA

NEW YORK, NY

NEWARK, NJ

SAN DIEGO, CA

SEATTLE, WA

WEST CONSHOHOCKEN, PA

WILMINGTON, DE

MARK C. STEPHENSON
DIRECT DIAL (215) 665-2176
DIRECT FAX (215) 665-2013
E-MAIL: MSTEPHENSON@COZEN.COM

June 5, 2000

VIA HAND DELIVERY

Honorable James J. McNulty, Secretary
c/o New Filing Section
Public Utilities Commission
North Office Building, Room B-18
Corner of North and Commonwealth Avenues
Harrisburg, PA 17105-3265

Re: Gardner Moving Company
Docket No. A-00108945, F.1, Am-A

RECEIVED
00 JUN -5 PM 2:27
PA.P.U.C.
SECRETARY'S BUREAU

Dear Sir:

Enclosed, for filing is an original and nine copies of Applicant's Brief in Support of Additional Authority.

Very truly yours,

COZEN AND O'CONNOR



MARK C. STEPHENSON

MCS/pm
Enclosures

cc: Honorable John J. Corbett, Jr. (w/enclosure) (via Federal Express)
John A. Pillar, Esquire (w/enclosure) (via Federal Express)
William A. Gray, Esquire (w/enclosure) (via Federal Express)

PHILA1\1246934\1 068037.000

DOCUMENT
FOLDER 95

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00108945, F. 1, Am-A

GARDNER MOVING COMPANY

APPLICANT'S BRIEF
IN SUPPORT OF ADDITIONAL AUTHORITY

MARK C. STEPHENSON, ESQUIRE
Attorney for
GARDNER MOVING
COMPANY
Applicant

Cozen and O'Connor
1900 Market Street
Philadelphia, PA 19103

Due Date: June 5, 2000

DOCKETED
JUN 06 2000

DOCUMENT
FOLDER

PA.P.U.C.
SECRETARY'S BUREAU

00 JUN -5 PM 2:27

RECEIVED

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00108945, F. 1, Am-A

GARDNER MOVING COMPANY

APPLICANT'S BRIEF
IN SUPPORT OF ADDITIONAL AUTHORITY

Applicant Gardner Moving Company hereby respectfully submits its Brief in support of the grant of its application for additional authority, relying upon the record evidence and the reasons set forth herein.

I. SUMMARY OF THE RECORD EVIDENCE

A. GARDNER MOVING COMPANY -- OWNERSHIP, FACILITIES AND EQUIPMENT AND EXISTING OPERATING RIGHTS

Gardner Moving Company has been in existence as a family-run business since 1921. *See* Tr. 7-8. Its shares are held by entirely by family members. Of the 100 outstanding shares, Joseph F. Gardner is Gardner Moving's Treasurer. His wife, Patricia, is Secretary. Together, they hold 15 shares. Joseph P. Gardner, their son, is President of Gardner Moving and holds 50 shares. Another son, Michael W. Gardner, is Vice-President and holds 35 shares. *See* Tr. 6-7. Until 1997, Gardner Moving maintained its offices at 3236 Beacon Hill Avenue, Dormont, Pennsylvania. *See* Tr. 7-8. In 1997, as part of the growth of the company, Gardner Moving

relocated to larger facilities at 130 Pinewood Drive, South Fayette, Bridgeville, Pennsylvania 15017.

Gardner Moving's existing grant of operating authority, docketed with the Commission at Certificate No. A-00108945, permits it:

[T]o transport, as a Class D carrier, household goods, personal effects and property used or to be used in a dwelling when a part of the furnishings, equipment or supplies of such dwelling as an incidental part of removal of the householder from one domicile to another; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment or supply of such stores, offices, museums, institutions, hospitals or other establishments in connection with the removal from one location to another; and articles, in-use, including objects of art, displays and exhibits which, because of their unusual nature or value, require special handling and equipment usually employed in moving household goods between points in the county of Allegheny, and from points in said county, to points in Pennsylvania no greater than seventy-five miles from the border of Allegheny County nearest to the point of origin or destination for such transportation falling outside Allegheny County.

See Tr. 10; Appl. Ex. 1. Gardner Moving's operating rights are limited, however, and do not grant operating rights to provide services to points in the counties of Chester and Montgomery, and the city of Harrisburg, and points ten miles by the usually traveled highways of the limits of said city. *Id.*

B. GARDNER'S DEMONSTRATED AND UNCONTROVERTED FITNESS AS A MOTOR CARRIER

There was no evidence of record to suggest other than that Gardner Moving has a long-established record of fitness as a certificated motor carrier. Gardner Moving owns and operates three moving vans, one pick-up truck and a car. One moving van is a 28-foot cab-over vehicle. The remaining vans are 26-foot conventional vans, of which one offers extra-wide carrying space. Each is capable of handling moves of as many as eight to nine rooms of furniture. *See* Tr. 13-14. Gardner maintains its vehicle to the highest standards. All are currently inspected.

Gardner handles all minor maintenance and retains a qualified Mack Truck of Freightliner service provider for major maintenance. *See* Tr. 14.

As part of its operations, Gardner maintains storage space from a sister company, Secure Storage. *See* Tr. 15-16. Gardner Moving leases storage space from Secure Storage for storage of cartons, moving equipment and related supplies. *See* Tr. 16. It also provides rental storage space through Secure Storage to its customers who require their property to be stored. *Id.* Gardner's leased storage space is safe and adequate for its operations. *Id.*

Gardner specializes in providing the highest level of service. Indeed, its service quality is sufficiently remarkable that its past customers exclusively refer it to others. Realtor Bob Rose was a Gardner customer. Gardner Moving moved his household in the rain, bringing Rose's furniture into a home with white rugs, leaving not a single foot print. *See* Tr. 19-20. Equally, Gina Lison found Gardner Moving's quality of service so remarkable that she would not consider another provider. *See* Tr. *. Patricia Honeygosky relied on Gardner Moving for the transportation of her household goods from Allegheny County and was completely satisfied. Due her husband's death, shortly thereafter, Ms. Honeygosky moved again. Gardner Moving was obligated to decline her request for service as beyond its operating rights. Protestant Debo Moving and Storage, Inc. transported her goods, damaging her furniture and causing her to complain.

From 1993 to the present, Gardner Moving has had only four claims for damage, totaling an aggregate claim for loss of under \$775.00. *See* Tr. 16. No customer has ever made a complaint to the Commission regarding Gardner's fitness as a certificated motor carrier. *See* Tr. 17.

Gardner Moving has never been stopped by Commission enforcement officers for safety violations nor has it ever been cited by the Commission for any reason. At all times, it has been and remains in compliance with all filing requirements. See Tr. 14-15. There exists no evidence to suggest other than that, for nearly 70 years, Gardner Moving has proven itself as maintaining the highest standards of fitness demanded by the Commission.

C. GARDNER'S PENDING APPLICATION FOR ADDITIONAL AUTHORITY

On November 4, 1998, Gardner Moving submitted this application. On November 28, 1998, notice of the application was provided publicly in the Pennsylvania Bulletin. In its application, Gardner Moving seeks to expand its present operating authority, asking the Commission issue to it an amended certificate of public convenience, granting it authority:

[T]o transport, as a Class D carrier, household goods, personal effects and property used or to be used in a dwelling when a part of the furnishings, equipment or supplies of such dwelling as an incidental part of removal of the householder from one domicile to another; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment or supply of such stores, offices, museums, institutions, hospitals or other establishments in connection with the removal from one location to another; and articles, in-use, including objects of art, displays and exhibits which, because of their unusual nature or value, require special handling and equipment usually employed in moving household goods between points within a radius of seventy-five air miles from the Allegheny County Courthouse.

In support of its application, Gardner Moving has presented witnesses who speak to the increasing need for such services.

1. *The Regional Multi-County Service Area for Moving Services*

During the hearings on the application, numerous representatives of moving companies testified as to the geographic area that each seeks to serve. Viewed

collectively, it is clear that there exists a regional service area for moving company services.

Presently, from time to time, Gardner Moving transports household property from Allegheny County to many of the counties for which it now seeks additional authority. This is particularly true with regard to Butler, Washington and Westmoreland Counties. See Tr. 25. Thus, Gardner is already a “player” in the larger regional market for moving services and competes with most or all of the protestants daily. Gardner Moving regularly receives requests for moving services from its prior customers, seeking to move property from Butler, Washington or Westmoreland counties elsewhere in the region.

The existence of this regional market for moving services is demonstrated clearly as well when the protestants’ operating authorities are compared carefully. For example, George Moving and Storage (“George Moving”) is located in Zelienople in Butler Count. *see* Tr. 356, and holds authority to operate in all or parts of Allegheny, Beaver, Blair, Butler, Clarion, Venango and Washington counties, as well as the cities of Altoona and Monongahela. *See* Tr. 360-364, 377-378; George Ex. 1. Weleski Transfer (“Weleski”) operates in all or parts of Allegheny, Armstrong, Beaver, Butler, Fayette and Westmoreland counties. *See* Tr. 158-160; Weleski Ex. 1. Debo Moving and Storage, Inc. (“Debo”) has authority to operate in all or parts of Allegheny, Armstrong, Beaver and Butler counties. *See* Tr.194-197; Debo Ex. 1. Fife Moving and Storage Company (“Fife”) has authority to operate in Allegheny, Beaver, Fayette, Washington and Westmoreland counties, *see* Tr. 226-229; Fife Ex. 1, while its related company Best Moving and Storage Company (“Best”) operates only in Allegheny County and from there to points in Pennsylvania and back. *See* Tr. 219-20, 230-31; Best Ex. 1. Vesely

Brothers Moving and Storage (“Vesely”) and Century III Moving Systems (“Century III”) are companies under common management. *See* Tr. 252. Vesely operates in all or parts of Allegheny, Fayette, Washington, and Westmoreland counties. *See* Tr. 255-260; Vesely Ex. 1. Century III provides service in substantially the identical area. *See* Tr. 263-265.

Protestant McKean & Burt, doing business as All Ways Moving and Storage (“All Ways”), originally had authority to operate substantially restricted to Washington County. *See* Tr. 290. In 1990, seeking to expand to meet demand, it acquired existing rights to provide service in Allegheny County. *See* Tr. 291. Timothy Moore, All Ways’ president, testified that in his opinion, there does not exist enough business in Washington County alone to support his company’s operation. These facts require him, like the other protestants, to expand throughout the region. *See* Tr. 311.

Anderson Transfer (“Anderson”) has authority to operate in Allegheny and Washington counties. Like All Ways, originally based and operating primarily in Washington County, Anderson has expanded into the regional market place by acquiring additional rights in Allegheny County in order to remain competitive. *See* Tr. 326-327.

Overlapping these many grants of operating authority discloses a highly integrated network of service providers, competing with each other to provide the public relatively better with property transportation services than their competitors.

2. The Public Demand or Need For Gardner Moving's Additional Authority

Gardner Moving has provided ample evidence of the public demand or need for additional moving company providers in the regional multi-county market. It has done so in several ways.

a. *Public Demand for Excellence in Service*

Gardner Moving provides a remarkable level of careful work performance. Gina Lison testified that Gardner Moving provides remarkable and unique care for the property transported and the homes in which it works. *See* Tr. 78-99. Joseph P. Gardner testified as to Bob Rose's satisfaction with Gardner Moving's high quality performance under adverse circumstance. Gardner Moving handled the moving of the Rose household in the rain without leaving a foot print on his carpeting. *See* Tr. 20. Mr. Gardner also testified regarding circumstances of high satisfaction when moving household goods for Butler County realtor Madge Hamel, *see* Tr. 21. As a result, Ms. Hamel continues to refer clients to Gardner Moving, based on its reputation for excellence. *Id.*

Prior Gardner Moving customers continue to contact Gardner for moving services, even when Gardner lacks operating authority to accept the job. *See* Tr. 43. As Joseph P. Gardner explained, the very loyal niche of customers that it has developed as the result of its high quality service recognizes the excellence of Gardner Moving's service. Indeed, the protestants acknowledge that Gardner Moving has developed this loyal following. *See* Tr. 347.

b. *Public Demand for Services Not Presently Available.*

Gardner Moving charges no minimum amount for its moving services¹. *See* Tr. 22. Other companies in the region -- for example, in Washington County -- may charge minimum rates as high as a five-hour minimum. *See* Tr. 23. On August 11, 1999, the day before the first day of hearings on this application, Joseph P. Gardner contacted Fife, Anderson and All Ways

¹ Gardner Moving does charge a flat rate of one hour travel time, a charge standard in the regional market. *See* Tr. 22.

and confirmed that each charges a minimum charged for a property movement. See Tr. 56. Gardner does not make this charge and, thus, offers the public a valuable service.

The value to the public by permitting Gardner Moving to compete with existing certificated movers is demonstrated by Anderson's reaction to Ms. Lison's testimony. Barely two weeks after her initial testimony, Anderson contacted Ms. Lison, apparently at the suggestion of counsel, because she was "looking for a mover." See Tr. 341. The Anderson representative stated that it was Anderson's understanding that she was looking for a mover, see Tr. 141, and told her that "we now have, we don't have the four-hour minimum[. W]e have a flat rate." Prior to this time, Ms. Lison was of the understanding that Anderson did not offer a flat rate or a less than four-hour charge on a movement. See Tr. 142. As the result of Gardner Moving's mere statement of its willingness to provide this valuable service, Anderson was compelled to meet Gardner Moving's higher service level and provide better service to the public. Moreover, Anderson conceded that it does not anticipate losses among its loyal customers and concedes to Gardner Moving those customers loyal to it. See Tr. 347. Thus, Anderson only suspects a substantial adverse financial impact if the application is granted, but has no evidence whatsoever to support its suspicions.

As Joseph F. Gardner explained, there has been substantial growth in the service area, most notably in Washington County. This growth has been at the expense of Allegheny County population as people have relocated to Butler and Washington Counties. As a result, the demand for moving services has increased to meet the need. See Tr. 27-28.

D. THE ABSENCE OF NEGATIVE IMPACT TO PROTESTANTS

Despite nearly two days of testimony, the protestants failed to offer more than their personal suspicions, doubts, concerns and opinions that granting the application would

substantially injure their operations. None offered any objective evidence that granting the application will adversely affect their respective businesses in any substantial way.

If the application is granted, Gardner Moving anticipates that it will increase its operations by one to two movements per week. See Tr. 23-24. In response, George Moving candidly concedes that Gardner Moving is not a practical competitor. Tr. 384.

No protestant made any study to determine what business they were likely to lose. See Tr. 181 (Weleski), 216 (Debo), 248 (Fife Moving and Best Moving), 279 (Vesely and Century III), 348 (Anderson). Protestants have made no attempt to project their revenue losses and did not even attempt to identify specific revenue losses that they may suffer if the application is granted. See Tr. 181 (Weleski), 216 (Debo), 252-279 (Vesely and Century III), 313 (Moore Movers and All Ways).

Indeed, Patrick Sobotka, testifying on behalf of Weleski, was forced to admit that Weleski anticipated no more than a minimal loss in its operations and revenues if the application is granted. See Tr. 181. Brian Debo, testifying for Debo Moving, conceded under cross-examination that he had no idea the number of movements that Debo would lose if this application were granted. See Tr. 217. Timothy Moore of Moore Movers and All Ways was unable to provide even an educated guess as to whether projected revenue for his companies was already substantial open to Gardner's competitive efforts under existing authority. See Tr. 319. Mr. Moore saw the loss of even one move as material to his business. See Tr. 318-319. No protestant offered more in opposition to the application that they might suffer a minor diversion in traffic.

II. ARGUMENT

A. THE APPLICABLE STANDARD FOR GRANT OF ADDITIONAL MOTOR CARRIER AUTHORITY

The Commission has established the following as the applicable standard for the grant of additional motor carrier authority

When, through relevant, probative, 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." (citations omitted.) This interpretation of subsection 41.14 is consonant with our avowed reasons 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." *Re Blue Bird Coach, Lines, Inc.*, 72 Pa PUC 262, *** (1990)
In order to meet its burden of proof, the applicant has the burden to establish two criteria.

First, under 52 Pa. Code § 41.14 (a), Gardner must demonstrate that approval of the application serves a useful public purpose, responsive to public demand or need. Second, under § 41.14 (b), it must demonstrate that it possesses the technical and financial ability to provide the proposed service. When the applicant established both criteria, it has met its prima facie burden of proof in a motor carrier application proceeding. *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC at 271.

There is no controversy that Gardner Moving Company meets all standards established by the Commission that motor carriers must meet in order to be considered technical and financially fit. The only issue in this case is whether there exists public demand or need sufficient to warrant granting this application.

B. A USEFUL PUBLIC PURPOSE, RESPONSIVE TO A PUBLIC NEED/DEMAND EXISTS AND WARRANTS GRANTING THE APPLICATION

In *Re Blue Bird Coach*, 72 Pa PUC 262 (1990), among other things, the Commission indicated that for the purposes of an application for additional authority, there is no distinct to be made between public demand or need in applicant's burden. The particular circumstances of a case determine what constitutes sufficient evidence of a public demand/need for the applicant's proposed service. *Id.* Appellant may meet its burden through witnesses who provide a representative sample of those who will avail themselves of the proposed service. *Id.* The supporting witnesses must articulate a demand/need for the type of service embodied in the application. *Id.*

Gardner Moving has demonstrated that at least two useful public purposes will be served when its application is granted. First, its lower rate structure gives consumers a choice between certificated providers and promotes competition to the public benefit. Second, by offering the very highest in quality service -- for example, receiving only four consumer complaints that involved insurance, Gardner Moving forces its competitors to do a better job or risk consumers not availing themselves of lower quality motor carriers. These public purposes and the clearly demonstrated need for them are exactly the types of purposes the Commission embraced when it declined further to maintain monopolistic protections for existing motor carriers.

Despite direct cross-examination, Ms. Lison was adamant that a no-minimum working time rate to move small amounts of property is a valuable service to public and one that she wanted to use. See Tr. 87. Clearly, consumers will want to pay for moving services they actually use, not the four-hour minimum that appears to be the standard charge. See Tr. 23. Recognizing that this need exists and warrants granting the application, Anderson Moving contacted Ms. Lison after her testimony to tell her that it had changed its rates to provide a new

no-minimum rate. *See* Tr. 141-142. Simply by making this application, Gardner Moving was able to cause a more effective rate structure for consumers. It is critical to note that no other protestant suggested that they provide a similar no-minimum rate service. There is no reason to anticipate that any protestant will continue to offer this rate if the application is not approved and the additional authority granted. Rather, it is highly likely that the public will be injured by inflated rates if there is no pro-consumer competitive pressure that compels motor carriers to adopt cost-effective rates.

In addition, Gardner Moving serves as a rising tide that floats all boats when it provides the highest quality in service. Ms. Honeygosky was unable to use Gardner Moving as the result of restrictions in its current authority. Instead, she hired protestant Debo Moving who damaged several pieces of her furniture. While she elected not to pursue her damage claim, she was adamant that Debo Moving had not provided her with quality service. Clearly, in the entire course of her testimony, she had no such reservations with Gardner Moving. Other protestants, for example, Anderson Moving, recognize that Gardner Moving has developed a loyal niche of customers who rely upon it for high quality service. Indeed, as the result of providing such service, local realtors refer their clients to Gardner Moving. They do this even when they know that Gardner Moving cannot accept the work due to limitations in its current operating authority.

Excellence in service to consumers is always in the public's interest. While there is legitimate concern over rates and adequacy in numbers of motor carriers, ultimately the Commission has embraced competition in motor carrier transportation of property to ensure that the pressures of competition force all participants to work to provide the very best service possible for the lowest rate that it can charge, consistent with making a fair return on its

investment. As Anderson's response to Ms. Lison's testimony shows, there is a public need for service that none of the protestants provide.

C. PROTESTANTS HAVE FAILED TO MEET THEIR BURDEN TO SHOW THAT GRANTING THE APPLICATION IS INIMICAL TO THE PUBLIC INTEREST.

While existing motor carriers may challenge an application for additional service, they carry a heavy burden of proof under subsection 41.14 (c). They "must show that the entry of a new carrier into the transportation field would endanger or impair their existing operations to such an extent that, on balance, the granting of the requested authority would contravene the public interest. Re Blue Bell, 72 Pa PUC at 286. The Commission expressly held that:

The mere potential for diversion of traffic volume from existing carriers to an applicant is insufficient to sustain the protesting carriers' burden of proof under subsection 41.14 (c).

There is literally not a shred of evidence offered by protestants beyond their unfounded suspicions and subjective projections that the grant of the application will injure them. Indeed, George Moving candidly admitted that there was no practical way that it will be harmed if the application is granted. Rather, protestants make clear that they only look to diversion of traffic as the anticipate harm and, as Debo Moving defined harm, one movement lost was harm enough.

Protestants cannot effectively argue that they have met this burden and their protests must be dismissed.

III. CONCLUSION

Applicant Gardner Moving Company has demonstrated its technical and financial fitness to undertake the service it proposes in its application for additional authority. It has shown that a present need exists -- indeed, a need that protestants rushed to fill and remove from the Commission's consideration during the course of these hearings -- for cost-effective, no-minimum work time property movements. It has also shown that its entry into the geographic

areas applied for will serve to promote a higher quality of service to consumers. By the same token, the protestants have failed to adduce any meaningful proof to support their claims as a matter of law.

As a result, Gardner Moving respectfully submits that the following conclusions are appropriate:

1. The Commission has jurisdiction of the subject matter and the parties.
2. The applicant has met its burden of demonstrating that its application will serve a useful public purpose, responsive to public demand or deed.
3. Approval of the application will be in the public interest.
4. The Commission should enter an order directing that a certificate of public convenience issue to Gardner Moving Company, amending its existing certificate to state:

To transport, as a Class D carrier, household goods, personal effects and property used or to be used in a dwelling when a part of the furnishings, equipment or supplies of such dwelling as an incidental part of removal of the householder from one domicile to another; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment or supply of such stores, offices, museums, institutions, hospitals or other establishments in connection with the removal from one location to another; and articles, in-use, including objects of art, displays and exhibits which, because of their unusual nature or value, require special handling and equipment usually employed in moving household goods between points within a radius of seventy-five air miles from the Allegheny County Courthouse.

Respectfully submitted,

COZEN AND O'CONNOR



BY: MARK C. STEPHENSON
Attorney for Gardner Moving Company

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief in Support of Additional Authority on the following parties of record by express mail and/or hand delivery this 5th day of June, 2000.

HONORABLE JOHN H. CORBETT, JR.
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

William A. Gray, Esquire (2 copies)
Vuono & Gray
2310 Grant Building
Pittsburgh, PA 15219

John A. Pillar, Esquire
Pillar, Mulroy and Ferber, P.C.
1106 Frick Building
Pittsburgh, PA 15219



MARK C. STEPHENSON, ESQUIRE

RECEIVED
00 JUN -5 PM 2:27
PA.P.U.C.
SECRETARY'S BUREAU

Law Offices

VUONO & GRAY, LLC

John A. Vuono
William A. Gray
Mark T. Vuono*
Dennis J. Kusturiss
Christine M. Dolfi
Louise R. Schrage
**Also Admitted in Florida*

2310 Grant Building
Pittsburgh, PA 15219-2383

(412) 471-1800

June 5, 1000

Richard R. Wilson
of Counsel

Facsimile
(412) 471-4477

Re: Gardner Moving Company
Docket No. A-00108945, F. 1, Am-A
Our File 1773P-188

MAILED WITH U.S. POSTAL SERVICE
CERTIFICATE OF MAILING FORM 3817

RECEIVED

Mr. James J. McNulty
Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

JUN 05 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Mr. McNulty:

DOCUMENT
FOLDER

We enclose for filing with the Commission the signed original and nine (9) copies of the Main Brief of Protestants in connection with the above-captioned proceeding.

A copy of the Main Brief has been sent to Administrative Law Judge John H. Corbett, Jr. and two (2) copies have been served on the attorney for the applicant. We are also sending to the Administrative Law Judge a computer disk pursuant to his letter dated May 4, 2000.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Very truly yours,

VUONO & GRAY, LLC

William A. Gray

EEF

pz/11408

Enclosures

cc: Honorable John H. Corbett, Jr. (w/enc.)
Mark C. Stephenson, Esq. (w/enc.)
John A. Pillar, Esq. (w/enc.)

(2)

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

DOCKET NO. A-00108945, F. 1, Am-A

GARDNER MOVING COMPANY

RECEIVED

JUN 05 2000

MAIN BRIEF OF PROTESTANTS

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT
FOLDER

DOCKETED
JUN 08 2000

WILLIAM A. GRAY, ESQ.
Attorney for
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. STUMPF CO., INC.
VESELY BROS. MOVING & STORAGE, INC.
CENTURY III MOVING SYSTEMS, INC.
t/d/b/a CLAIRTON TRANSFER COMPANY
and PLEASANT HILLS VAN & STORAGE
WELESKI TRANSFER, INC.

Protestants

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Due Date: June 5, 2000

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF THE CASE.....	1
II. STATEMENT OF THE QUESTIONS INVOLVED.....	3
III. ABSTRACT OF TESTIMONY AND PROPOSED FINDINGS OF FACT.....	4
A. TESTIMONY RELATING TO THE APPLICANT AND ITS PUBLIC WITNESSES.....	4
B. TESTIMONY RELATING TO THE PROTESTANTS.....	8
IV. ARGUMENT.....	21
A. BURDEN OF PROOF.....	21
B. THE APPLICANT HAS FAILED TO DEMONSTRATE THAT THERE IS A PUBLIC DEMAND OR NEED FOR THE PROPOSED SERVICE.....	21
V. PROPOSED CONCLUSIONS OF LAW.....	30
VI. CONCLUSION.....	31

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>Application of Blue Bird Coach Lines, Inc.,</u> 72 Pa. P.U.C. 262 (1990)	22, 23, 25, 26
<u>Consolidated Edison Co. v. National Labor Relations Board,</u> 305 U.S. 197 (1938).....	21
<u>Dutchland Tours, Inc. v. Pennsylvania Public Utility</u> <u>Commission,</u> 19 Pa. Commw. 1, 7, 337 A.2d 922 (1975).....	22
<u>Follmer Trucking Company v. Pennsylvania Public Utility</u> <u>Commission,</u> 189 Pa. Super. 204, 215, 150 A.2d 163 (1959).....	21
<u>Leaman Transportation Corporation v. Pennsylvania Public</u> <u>Utility Commission,</u> 153 Pa. Super. 303, 308, 33 A.2d 721 (1943)...	21
<u>Motor Freight Express v. Pennsylvania Public Utility Commission,</u> 188 Pa. Super 80, 85, 146 A.2d 323 (1958).....	21
 <u>Statutes</u>	
66 Pa. C.S.A. §1103(a).....	21
 <u>Regulations</u>	
52 Pa. Code §3.382.....	25
52 Pa. Code §41.14.....	21
52 Pa. Code §41.14(a).....	21, 22

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00108945, F. 1, Am-A
GARDNER MOVING COMPANY

MAIN BRIEF OF PROTESTANTS

I. STATEMENT OF THE CASE

By this application, Gardner Moving Company (“Gardner” or “applicant”) seeks the following authority:

Household goods, in use, between points within an airline radius of 75 statute miles of the Allegheny County Courthouse, located in the city of Pittsburgh, Allegheny County.

Hearings were held in this case in Pittsburgh on August 12, 1999 and April 6 and 7, 2000, before Administrative Law Judge John H. Corbett, Jr. Testimony was presented on behalf of the applicant and on behalf of the protestants filing this Main Brief and by protestants represented by other counsel.

Prior to the presentation of testimony of the protestants, counsel for protestants made a motion on the record to dismiss the application on the grounds that applicant had not met its threshold burden of proof. The Administrative Law Judge agreed to take this motion under advisement and directed the protestants to present testimony in opposition

to the application. At the conclusion of the hearings, protestants renewed their motion to dismiss and the Administrative Law Judge indicated that the motion would be considered at the time briefs were filed by the parties.

Subsequent to the close of the record, the Administrative Law Judge directed that Main Briefs be filed. The protestants hereby submit this Main Brief and request that the motion to dismiss be granted and/or that the application be denied.

II. STATEMENT OF THE QUESTIONS INVOLVED

The questions involved are: (1) whether the applicant has demonstrated that approval of the application is necessary or proper for the service, accommodation, convenience and safety of the public; and (2) whether the applicant has demonstrated that the granting of the authority sought will serve a useful public purpose, responsive to a public demand or need.

III. ABSTRACT OF TESTIMONY AND
PROPOSED FINDINGS OF FACT

A. Testimony Relating to the Applicant and Its Public Witnesses.

1. Gardner presently has authority from the Commission at Docket No. A-00108945 to transport household goods between points in Allegheny County and from points in Allegheny County to points in Pennsylvania except for points in the counties of Chester and Montgomery and the city of Harrisburg, Dauphin County, and points within ten (10) miles by the usually traveled highways of the limits of said city. (Applicant Ex. 1; 10)

2. Gardner does not presently have authority to transport household goods from other points in Pennsylvania to Allegheny County. (Applicant Ex. 1)

3. This application seeks authority to transport household goods between points within a radius of 75 air miles of the Allegheny County Courthouse in Pittsburgh. (Applicant Ex. 2; 17)

4. Gardner chose the 75 miles radius so that it would encompass *Hidden Valley* and *Seven Springs*. (31)

5. The 75 mile radius of Pittsburgh includes all or parts of 17 different counties. (50-51)

6. Gardner does not intend to establish facilities in any of the other 16 counties besides Allegheny County. (51)

7. Gardner does not intend to advertise in any of the other 16 counties besides Allegheny County. (51)

8. Gardner earned revenues from transporting household goods in intrastate commerce during 1998 of \$280,794. (Applicant Ex. 3; 46)

9. Gardner's offices are located in South Fayette Township, Allegheny County. (8, 38)

10. Gardner owns and operates three moving vans and a pickup truck used to provide service at the present time. (13)

11. Gardner leases storage space from a related company named Secure Storage, which is owned by the owners of the applicant. (15-16)

12. Gardner has never had a complaint filed against it with the Public Utility Commission. (17)

13. Gardner has received telephone calls from people it has moved or friends of people it has moved who want to utilize Gardner's service. (17-18, 25)

14. Gardner recognizes that there are many moving companies located outside of Allegheny County who move people into Allegheny County and then get calls from those customers to move them and they cannot provide service to them because they can't serve Allegheny County. (43-44)

15. Many of the calls that Gardner gets are from people who are just asking for a rate quote where it never ends up getting the movements. (65)

16. Gardner believes that there are some movers that charge minimums, which Gardner does not charge. The witness for Gardner testified that he believes that some of the movers in Washington County charge minimums. (22)

17. Gardner is not affiliated with a national van line and handles interstate movements through South Hills Movers. (34) Gardner handled 11 interstate moves last year. (35)

18. Gardner admitted that it's existing tariff has a provision for one hour travel time. (60) The one hour minimum is in addition to actual working time and is a charge to cover time coming to and from the job. (44-45) The one hour travel time would apply regardless of the distance between Gardner's facility and the origin and destination of the movement. (45-46)

19. Gina Lison supported the application and originally testified at the hearing on August 12, 1999. She resides at 104 Meadowview Court, Venetia, PA 15367, which is in Peters Township, Washington County. (78)

20. Ms. Lison was moved by Gardner from Allegheny County to Washington County approximately four years prior to when she testified on August 12, 1999. (79) Ms. Lison was satisfied with the moving services of Gardner. (79-80)

21. Ms. Lison also used Gardner's service to move a living room set and dining room set for her mother-in-law within Allegheny County. (80) These moves (2) for the mother-in-law took less than one hour. (81) Ms. Lison was also charged an hour travel time for her mother-in-law's moves. (86)

22. Ms. Lison admitted that she has not made any inquiries of any moving company located in Washington County concerning service that they can provide. (94)

23. Ms. Lison testified that she wanted to move her basement furniture when she and her husband refinished their basement, which was to be within six months after she testified in August, 1999. (97)

24. Ms. Lison was recalled as a witness on April 6, 2000. The only matter that she testified concerning was that she had been contacted by a representative of Anderson about two weeks after the August 12 hearing concerning the fact that Anderson did not have a minimum charge but rather had only a flat charge. Ms. Lison testified that she told the representative of Anderson that she wasn't looking to move and wasn't interested. (141-142).

25. Although Ms. Lison previously testified in August, 1999 that she expected to move her basement furniture within six months, when she testified eight months later she gave no indication that she had moved any basement furniture and appeared to have no interest in utilizing any moving service.

26. Patricia J. Honeygosky testified in support of the application at the hearing on April 6, 2000. Ms. Honeygosky resides at 1546 Meerscham Lane, Coraopolis, PA, which is actually in Kennedy Township in Allegheny County. (120)

27. Ms. Honeygosky previously used Gardner's service to move her household furnishings in 1997 from Greentree to Chippewa Township in Beaver County. (120) She was satisfied with the service. (121)

28. Ms. Honeygosky used the service of Debo for a subsequent movement in October, 1999 from Chippewa Township in Beaver County to Kennedy Township in

Allegheny County. (121-122) Ms. Honeygosky testified that she was not satisfied with the service of Debo and that some of her furniture was damaged. (123)

29. Ms. Honeygosky indicated on the papers that she gave to Debo after the movement in 1999 that she was not going to make a claim for any damages. (133) She also completed a form after the movement was finished and gave Debo ratings based on 1 to 5 (5 being the highest) of 5 on the professional attitude of the crew, the appearance of the crew, truck equipment, overall appearance, and office personnel. (136) She gave ratings of 3 to 4 for job performance, careful handling of belongings and overall job satisfaction. (136)

30. Ms. Honeygosky did not testify concerning any need for service at any time in the future.

B. Testimony Relating to the Protestants.

1. Patrick H. Sobotka testified on behalf of Weleski Transfer, Inc., which has its principal place of business at 140 West Fourth Avenue, Tarentum, PA. (153) Weleski has three warehouses plus its office facilities in Tarentum. (166)

2. Weleski presently holds authority from the Commission at Docket No. A-96502. (Weleski Ex. 1)

3. The relevant grants of authority of Weleski that are in conflict with the authority sought by this application are paragraphs 2, 3, 4, 5, 8, 9, 10, 13 and 14 of its lead authority, F. 1, Am-C and paragraphs 1, 4 and 5 of its authority at Am-E. (156-164)

4. Weleski has relevant authority in conflict with the authority sought by this application in the counties of Butler, Armstrong, Allegheny, Washington, Fayette and Westmoreland. (Weleski Ex. 1; 164-165)

5. Weleski derived approximately \$500,000 in 1999 from service pursuant to its PUC authority. (165) These revenues are significant to its operation. (166)

6. The witness for Weleski testified that approximately \$350,000 of its \$500,000 in intrastate revenues involved the area where Gardner is applying. (179)

7. Weleski owns and operates 43 tractors, 48 air ride trailers, 28 straight vans, six non-air ride trailers, three pup trailers, four pallet trailers, 14 pack vans and ten Peterbilt tractors purchased in 1998 and 1999 and, in addition, uses 12 tractors leased from owner-operators. (Weleski Ex. 2) Weleski does not utilize its equipment to its full capacity at the present time. (171-172)

8. Weleski presently employs 37 company drivers, 42 full-time movers, 28 part-time movers and 18 summer employees who are drivers and helpers. (Weleski Ex. 2)

9. Weleski is an agent for Atlas Van Lines. Weleski's affiliation with Atlas Van Lines involves interstate moves. (170-171)

10. Weleski advertises the availability of its service through Yellow Page advertising, newspaper advertising and radio advertising. (172)

11. Charles W. Fife testified on behalf of Fife Moving & Storage Co. (Fife) and Best Moving & Storage Co. (Best). The principal place of business for both Fife and Best is 2121 West Chestnut Street, Washington, PA, which is actually in Canton Township, Washington County. (220) Fife and Best also share a warehouse facility in

Chartiers Township in Washington County. (233) Fife and Best have approximately 31,000 square feet of warehouse space in Canton Township and approximately 5,000 square feet of warehouse space in Chartiers Township.

12. Fife presently has authority from the Commission at Docket No. A-00094528. (Fife Ex. 1)

13. All of Fife's authority is in conflict with the authority sought by this application. (Fife Ex. 1; 224, 227-228)

14. Fife has relevant authority in conflict with the authority sought by this application in the counties of Allegheny, Washington and Beaver. (Fife Ex. 1; 228)

15. Fife and its predecessor company operating under the same name has been in the household goods transportation business since 1925. (221)

16. Fife owns and operates 25 tractors with trailers, 17 straight trucks and two pack vans. In addition, Fife leases 12 tractors from owner-operators. (235-236)

17. During 1999, Fife earned revenues from Pennsylvania intrastate service of approximately \$450,000. (228)

18. Fife has both outbound and inbound shipments in the application territory. Approximately 75% of Fife's inbound shipments are from points within 75 miles and would therefore be relevant to this application. (251)

19. Fife is affiliated with Global Van Lines. (222-223) Fife handles its interstate shipments under the Global operating authority. (223)

20. Best presently has authority from the Commission at Docket No. A-00107776. (Best Ex. 1)

21. Best came into existence in 1983 as a result of Global Van Lines not permitting Fife to operate its own ICC authority so Best was created and Fife transferred its ICC authority to Best. (221)

22. Best purchased its PUC authority from a company named Haugh & Keenan Transportation. (222)

23. The relevant authority of Best in conflict with the authority sought by this application is at paragraph 1 of its authority. (Best Ex. 1; 230)

24. Best has relevant authority in conflict with the authority sought by this application involving service from points in Pennsylvania located within 75 miles of Pittsburgh to points in Allegheny County. (Best Ex. 1; 230)

25. Best owns and operates three straight trucks and leases eight tractors and trailers from Fife. (236-237)

26. During 1999, Best earned revenues from Pennsylvania intrastate service of approximately \$200,000. (231) Of this amount, approximately 60% was from inbound shipments. Of this amount, approximately 50% was from points within 75 miles. (249-250) The remaining 40% was from outbound shipments.

27. Fife and Best principally advertise their services through the Yellow Pages, although they also do some newspaper advertising, cable television advertising and internet advertising. (238)

28. Both Fife and Best advertise in multiple editions of the Yellow Pages. (238)

29. Fife and Best both have equipment sitting idle most of the time that can be used to provide any additional service if it would be required. (240-241)

30. There are very few occasions when Fife and Best do not have equipment available and on those occasions, they refer the business to other carriers such as Anderson, All Ways and Foster Transfer. (242)

31. Fred Shawl testified on behalf of Vesely Bros. Moving & Storage, Inc. (Vesely Bros.) and Century III Moving Systems, Inc. t/d/b/a Clairton Transfer Company and Pleasant Hills Van & Storage (Century III). The principal place of business for Vesely Bros. and Century III is located at 316 Finley Road, Belle Vernon, PA 15012. (252) Prior to December 1, 1999, Century III's offices were located in McKeesport. (253)

32. The warehouse and office of Vesely Bros. and Century III in Belle Vernon includes 31,000 square feet of warehouse space and 6,000 square feet of office space. (270)

33. Vesely Bros. presently has authority from the Commission at Docket No. A-00102958 (Vesely Bros. Ex. 1)

34. The relevant authority of Vesely Bros. in conflict with the authority sought by this application are both paragraphs of its lead authority and paragraphs 1, 2, 3, 4 and 5 of its authority at F. 1, Am-A. (Vesely Bros. Ex. 1; 257-260)

35. Vesely Bros. has relevant authority in conflict with the authority sought by this application in the counties of Westmoreland, Fayette, Washington and Allegheny. (Vesely Bros. Ex. 1; 257-260)

36. Vesely Bros. operates 18 tractors, 16 trailers, six straight vans and four pack vans. (268)

37. Vesely Bros. has approximately 40 employees, of which number 20-22 are drivers. (269)

38. During 1999, Vesely Bros. earned revenues from Pennsylvania intrastate service of approximately \$319,000. (260) Of this amount, 85% was from outbound shipments and 15% was from inbound shipments. Of the revenues from the outbound shipments, 40%-45% was to points within 75 miles of Pittsburgh and the other 55%-60% was to points beyond 75 miles of Pittsburgh. Approximately 90% of the revenues from the inbound shipments was from points more than 75 miles from Pittsburgh and 10% was from points within 75 miles of Pittsburgh. (260-262)

39. Vesely Bros. is an agent for United Van Lines and has been an agent for United since 1947. (254)

40. Century III presently has authority from the Commission at Docket No. A-00109240 (Century III Ex. 1)

41. The owners of Vesely Bros. purchased Century III from Mr. Shawl and Gene Balombini in April, 1990. (254)

42. The relevant authority of Century III in conflict with the authority sought by this application is at paragraphs 2, 3, 5, 9, 10 and 11. (Century III Ex. 1; 262-265)

43. Century III has relevant authority in conflict with the authority sought by this application in the counties of Allegheny, Washington, Westmoreland and Fayette. (Century III Ex. 1; 262-265)

44. Century III operates two tractors, two trailers, four straight vans and one pack van. (268)

45. Century III has approximately ten employees, six of whom are drivers. (269)

46. During 1999, Century III earned revenues from Pennsylvania intrastate service of approximately \$192,000. (265) Of this amount, approximately 90% was from outbound shipments and 10% was from inbound shipments. Of the revenues from outbound shipments, approximately 50% involved service that the applicant cannot presently provide (i.e., from counties other than Allegheny). All of the revenues from inbound shipments involved service that the applicant cannot presently provide. (265-266)

47. Vesely and Century III advertise their services primarily in the Yellow Pages, although they also have a web site and advertise through sponsoring local programs. (271-272) Vesely and Century III advertise their service in all of the counties where they provide service. (272-273)

48. Timothy M. Moore testified on behalf of McKean & Burt, Inc., t/d/b/a All Ways Moving & Storage (All Ways) and Timothy M. Moore, t/d/b/a Moore Movers (Moore). The principal place of business of both All Ways and Moore is 326 West Maiden Street, Washington, PA 15301. (288) There are two warehouses and two offices at this location. The warehouses have approximately 32,000 square feet of space combined. (296)

49. All Ways presently has authority from the Commission at Docket No. A-00091652. (All Ways Ex. 1) Mr. Moore's father purchased this company in 1963. (290)

50. All of the authority of All Ways is in conflict with the authority sought by this application. (All Ways Ex. 1; 290-292)

51. All Ways has relevant authority in conflict with the authority sought by this application in the counties of Washington and Allegheny. (All Ways Ex. 1; 290-292)

52. All Ways purchased the operating authority that it has at F. 1, Am-A involving Allegheny County for \$19,500 in 1990. (291) All Ways purchased this authority since when it only had Washington County PUC authority, there was not enough business to keep its crews busy. It therefore had to purchase the Allegheny County authority so that it could keep its crews busy and could keep them employed. The volume of business in Washington County was simply not sufficient to keep these employees busy. (295) Mr. Moore had to take out a loan for \$20,000 to purchase the Allegheny County authority just to keep his people employed. (295)

53. During 1999, All Ways earned revenues from Pennsylvania intrastate service of approximately \$300,000. (293) Of these revenues, approximately 25% were to or from Washington County and the other 75% were to or from Allegheny County. Of the Washington County revenues, approximately 95% were to points within 75 miles of Pittsburgh. Of the Allegheny County revenues, approximately 50% were inbound revenues from points within 75 miles of Pittsburgh. (293-294)

54. All Ways has 20 full time employees and five part-time employees. (297)

55. The equipment of All Ways is not operated to full capacity at the present time. (298-299)

56. All Ways is affiliated with Wheaton World Wide Moving and has been for approximately 28 years. (299) All Ways operates interstate shipments under the Wheaton authority. (299)

57. All Ways advertises primarily in the Yellow Pages, but also advertises in small publications such as church publications. (300) All Ways also advertises on the Internet. It also sponsors athletic teams. (301)

58. All Ways does not have a minimum in its tariff and only charges for one hour of travel time.

59. Moore presently has authority from the Commission at Docket No. A-00113305. (Moore Ex. 1)

60. All of Moore's authority is in conflict with the authority sought by this application. (Moore Ex. 1; 304)

61. Mr. Moore testified that he has not utilized the authority for Moore, which was purchased from Neel Transportation in 1996. (304) This authority has not been used since there is not enough business in Washington County to establish that company. (305)

62. Mr. Moore purchased the Neel authority because it was formerly his grandfather's authority. His father had a gentlemen's agreement with Harvey Neel that he would offer it back to his family if he went out of business. (308) Neel was not a household goods carrier, but rather was a freight carrier. (309)

63. Mr. Moore testified that Washington County cannot support another mover and really cannot even by itself support one mover. Fife and Anderson are already competitors in Washington County. (298)

64. Mr. Moore absolutely believes that existing carriers presently located in Washington County are able to handle all of the household goods moves required to and from Washington County. (305)

65. Although Mr. Moore is the brother of the owner of Anderson, All Ways and Anderson actively compete with one another and compete in the same manner that they each compete with Fife. (322)

66. Barbara Moore testified on behalf of Anderson Transfer, Inc. (Anderson). The principal place of business of Anderson is located at 231 Burton Avenue, Washington, PA 15301. (322) Anderson also has an additional warehouse facility located at 330 South Main Street, Washington, PA 15301, where it has an additional 30,000 square foot of warehouse space. (333)

67. Anderson presently has authority from the Commission at Docket No. A-00109593 (Anderson Ex. 1)

68. The relevant authority of Anderson in conflict with the authority sought by this application is at paragraphs 2, 5, 7 and 9 of its lead authority. (Anderson Ex. 1; 324-326)

69. Anderson has relevant authority in conflict with the authority sought by this application in the counties of Washington and Allegheny. (Anderson Ex. 1; 324-326) Anderson provides outbound service from these counties and also provides inbound service to these counties from points located within 75 miles of Pittsburgh. (326, 329)

70. Ms. Moore's mother and father previously owned the rights of Anderson individually before they were transferred to the corporation. (323-324)

71. Anderson operates two Freightliner tractors, two Freightliner pallet trucks, two International box trucks, one International truck, one GMC topkick truck, one GMC pack van and two trailers. (Anderson Ex 2) Anderson also leases three straight trucks during the summer. (335)

72. Anderson has approximately 38 employees, of whom eight are full time drivers. (335)

73. During 1999, Anderson earned revenues from Pennsylvania intrastate service of approximately \$850,000. (330) Anderson earns approximately 60% of its Pennsylvania intrastate revenues from service between points in Washington County and from points in Washington County to points within 75 miles of Pittsburgh and from points within that area to Washington County. (331) The other 40% of its intrastate revenues are earned from service between points in and to and from points in Allegheny County. Of this amount, approximately 5% to 10% are earned from service from points located within 75 miles of Pittsburgh to Allegheny County. (331)

74. Anderson purchased the Allegheny County authority in 1989 or 1990 from Robinson-Ogleby, which went bankrupt, since it was having a very hard time just breaking even with the Washington County business, with having to compete with Fife and All Ways for that limited business. (326-327) These rights were purchased for in the \$20,000-\$30,000 range. (327)

75. Anderson opposes this application particularly because there is a limited market in Washington County. (329)

76. Anderson is an agent for Bekins Van Lines and has been affiliated with Bekins for approximately 30 years. (331-332)

77. Anderson advertises its service in the Yellow Pages, church bulletins, tee-shirts on little league teams, post cards that are mailed out, bingo bulletins, etc. (336) Anderson advertises in approximately ten different Yellow Pages publications. (336-337)

78. Anderson has a one hour minimum charge in its tariff. Anderson did not recently change its tariff to eliminate its minimum charge as testified to by Gina Lison. (337)

79. It was reported to Ms. Moore by her salesman (Rob Danzic) that he talked with Gina Lison after she first testified in this case and that his interpretation of what she said was that she really was not moving and that she didn't want them to call her. (342)

In that regard, she stated:

“When he probed her and was trying to get information out of her, it seemed like she wasn't really moving because every time he offered to do something for her, she kept saying well, six months from now, don't call me back.” (342)

Q: But she hasn't called you and said, I am moving, will you move me?

A: She did everything she could to keep us from calling her back.” (351)

80. Forest Hills Transfer & Storage, Inc. (Forest Hills) did not present testimony at the hearings but its authority was introduced into evidence and it remains a protestant

in this proceeding. (351-352) Forest Hills presently has authority from the Commission at Docket No. A-00088631. (Forest Hills Ex. 1)

81. Forest Hills has relevant authority in conflict with the authority sought by this application in the counties of Allegheny, Westmoreland and Indiana. (Forest Hills Ex. 1)

82. B. H. Stumpf Co., Inc. (Stumpf) did not present testimony at the hearings but its authority was introduced into evidence and it remains a protestant in this proceeding. (351-352) Stumpf presently has authority from the Commission at Docket No. A-00105669. (Stumpf Ex. 1)

83. Stumpf has relevant authority in conflict with the authority sought by this application involving service from points in Pennsylvania located within 75 miles of Pittsburgh to points in Allegheny County. (Stumpf Ex. 1)

84. Debo Moving & Storage, Inc., which holds authority at Docket No. A-00106548, also presented testimony in opposition to this application and is represented by separate counsel who will be filing a separate brief.

85. The Snyder Brothers Moving, Inc. t/d/b/a George Transportation Company, which holds authority at Docket No. A-00086452, also presented testimony in opposition to this application and is represented by separate counsel who will be filing a separate brief.

IV. ARGUMENT

A. BURDEN OF PROOF.

The applicant in this proceeding is required to prove that approval of the application is necessary or proper for the service, accommodation, convenience or safety of the public. 66 Pa. C.S.A. §1103(a).

The Commission had adopted regulations at 52 Pa. Code §41.14 to determine whether the above statutory burden of proof has been met.

B. THE APPLICANT HAS FAILED TO DEMONSTRATE THAT THERE IS A PUBLIC DEMAND OR NEED FOR THE PROPOSED SERVICE.

52 Pa. Code §41.14(a) provides as follows:

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. (emphasis added)

It is well established in Pennsylvania law that an applicant for a Certificate of Public Convenience has the burden of establishing a need for the proposed service. Follmer Trucking Company v. Pennsylvania Public Utility Commission, 189 Pa. Super. 204, 215, 150 A.2d 163 (1959); Motor Freight Express v. Pennsylvania Public Utility Commission, 188 Pa. Super 80, 85, 146 A.2d 323 (1958). While recognizing that it is not necessary for an applicant to present proof of need relating to every point in the territory requested, the Commission is still duty bound to withhold issuing a favorable order “without a basis in evidence having rational probative force.” Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197 (1938), cited in Leaman Transportation Corporation v. Pennsylvania Public Utility Commission, 153 Pa. Super. 303, 308, 33 A.2d 721 (1943). Therefore, before a Certificate of Public Convenience may be issued by the Commission, the applicant must present substantial evidence that a need for the

proposed service exists in the application territory. Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Commw. 1, 7, 337 A.2d 922 (1975).

The Commission revised and clarified its entry standards involving the need criteria enumerated in 52 Pa. Code §41.14(a) in Application of Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262 (1990). The Commission in Blue Bird, *supra*, promulgated the following simplified interpretation of the burden now required by 52 Pa. Code §41.14(a), stating:

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant's proposed service will satisfy the supporting witness' 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."
(at p. 274)

In discussing the type of evidence required to establish need for the proposed service in Blue Bird, *supra*, the Commission made the following pertinent statements:

The witnesses supporting a motor common carrier application must be legally competent and credible, e.g., D.F. Bast, Inc.; Merz White Way Tours v. Pennsylvania Public Utility Commission, 204 Pa. Superior Ct. 43, 201 A.2d 446 (1964), and their testimony must be probative and relevant to the application proceeding. e.g., Purolator Courier Corp. I; Dutchland Tours, Inc.; Morgan Drive Away, Inc. II; 66 Pa. C.S. §332(b). The supporting witnesses must articulate a demand/need for the type of service embodied in the application. e.g., Purolator Courier Corp. I; Re Lenzner Coach Lines, Inc.; Re Mobilfone of Northeastern Pennsylvania, Inc.; Re James A. Means, 53 Pa. P.U.C. 216 (1979); Re Hesser Bros., Inc., 52 Pa. P.U.C. 69 (1978). 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. E.g., Re Nothstein Bros., Inc., 64 Pa. P.U.C. 411 (1987); Re Purolator Courier Corp., 50 Pa. P.U.C. 308 (1976). (at p. 274).

In discussing the quantum of evidence required to establish need for the proposed service in Blue Bird, supra, the Commission made the following pertinent statements:

Therefore, the number of witnesses which will comprise a cross section of the public on the issue of public demand/need for an applicant's proposed service will necessarily vary with the circumstances of the case such as the breadth of the applicant's intended operating territory, the population density in the intended operating territory, and the scope of the requested operating authority. (at pp. 274-275)

In applying the standards set forth in Blue Bird, it is clear that the applicant in this case has failed to demonstrate a public demand or need for the requested service.

Initially, it is significant to note that this application seeks authority in a very broad area of western Pennsylvania consisting of all or part of 17 counties. Because of the broad territory sought by this application, the number of witnesses which will comprise a cross-section of the public in this area would necessarily be far greater than if the application sought authority in just one or two counties.

The only witnesses who testified in support of this application were Gina Lison and Patricia Honeygosky. The testimony of these witnesses clearly does not establish a public demand or need for service by the applicant.

Gina Lison testified that she resides in Peters Township, Washington County, and that the applicant moved her and her husband from West Mifflin, Allegheny County, to her present residence in Washington County approximately four years prior to when she testified in August, 1999. She testified that she has also utilized the applicant within a year prior to when she testified in August, 1999 to transport on two separate occasions living room furniture and dining room furniture for her mother-in-law where Ms. Lison ordered and paid for the moving service. This service was provided between points in Allegheny County. Ms. Lison also testified that she was remodeling her residence in Peters Township and may in the future have furniture to be moved out of that house when

the remodeling was done. She testified that she wants to be able to use the applicant for this service. She indicated that she expected that this move would take less than five hours and that she did not want to pay a five hour minimum, which she understood was charged by other moving companies providing service in Washington County. Ms. Lison admitted that she had not made any inquiries concerning service from other moving companies.

Ms. Lison was recalled as a witness in April, 2000 and gave no indication that she had remodeled her house or had used the applicant or any other service between when she had testified in August, 1999 and April, 2000, which raises the issue of whether her testimony concerning remodeling was credible. She was recalled only to testify that she had been contacted by a representative of Anderson about two weeks after the August 12 hearing concerning the fact that Anderson did not have a minimum charge but rather had only a flat charge. Ms. Lison told the representative of Anderson that she wasn't looking for a move and wasn't interested. (141-142)

Ms. Lison's testimony and testimony by Ms. Moore of Anderson concerning Ms. Lison's conversation with that company call into question whether Ms. Lison indeed requires any transportation service.

It was reported to Ms. Moore by her salesman (Rob Danzic) that he talked with Ms. Lison after she first testified in this case and that his interpretation of what she said was that she really was not moving and that she didn't want them to call her. (342) In that regard, she stated:

“When he probed her and was trying to get information out of her, it seemed like she wasn't really moving because every time he offered to do something for her, she kept saying well, six months from now, don't call me back.” (342)

Q: But she hasn't called you and said, I am moving, will you move me?

A: She did everything she could to keep us from calling her back.” (351)

Although Ms. Lison previously testified in August, 1999 that she expected to move her basement furniture within six months, when she testified eight months later she gave no indication that she had moved any basement furniture and appeared to have no interest in utilizing any moving service. Ms. Lison testified that she told the representative of Anderson that she wasn't looking to move and wasn't interested. (141-142)

Ms. Honeygosky testified that she had utilized the applicant's service from Beaver County to Allegheny County. She testified that the service of the applicant was satisfactory. She did not indicate that she was scheduled to move in the future or that she would require the applicant's service in the future. In fact, the applicant can already provide service from Allegheny County and would therefore be presently able to provide service to Ms. Honeygosky if she required service in the future.

The testimony of Ms. Lison and Ms. Honeygosky collectively does not establish public demand or need for service in any area. As indicated above, the Blue Bird case stands for the proposition that the applicant is required to show a cross-section of public demand/need in the application territory. In this case, there were only two public witnesses who testified in support of the application. These witnesses do not constitute a cross-section of need from the involved application territory, particularly where, as here, the testimony of the witnesses was very weak and where the application territory is so broad.

The applicant will probably also attempt to argue that it received service requests from people who did not testify in support of the application. However, the telephone calls to which the witness for the applicant testified are not requests for service within the meaning of 52 Pa. Code §3.382. The specific information set forth in §3.382 was not provided. Furthermore, the witness for the applicant admitted that frequently telephone

calls involving household goods service are merely inquiries concerning rates and not actual requests for service.

This application seeks authority in an area comprising all or part of 17 counties in western Pennsylvania. In support of its application for this very broad authority, the applicant presented only two public witnesses, neither of which had a definite movement scheduled in the future.

The applicant presented testimony from its operating witness and from Ms. Lison to try to establish that there may be some sort of need for the applicant's service, at least in Washington County, based upon the fact that the applicant does not have a minimum charge in its existing tariff involving Allegheny County and presumably will not publish a minimum charge in its subsequent tariff involving any expanded authority. This argument fails both factually and legally. First, the applicant does have what is in effect a minimum charge in that it has a charge for one hour of travel time even where there is little or no travel time involved. (44-46, 60) Second, the witness for All Ways testified that his company does not have a minimum in its tariff, although it does charge for one hour of travel time. The witness for Anderson testified that her company has a one hour minimum charge in its tariff, which presumably is also for travel time. She also testified that Anderson did not recently change its tariff to eliminate its minimum charge as testified to by Ms. Lison. (337) In any event, the Commission in Blue Bird unequivocally rejected attempts to substitute matters such as this for public demand/need testimony. In that regard, the Commission stated:

During the intervening years since our decision in Re: Richard L. Kinard, Inc., we have had many opportunities to confront difficulties in construing subsection 41.14(a) *vis-à-vis* Re: Richard L. Kinard, Inc. Chief among the interpretation problems has been a tendency among motor carriers, legal counsel representing motor carriers, and occasionally staff in various capacities through the Commission to substitute proof of one of the nine "alternatives to inadequacy" for proof of a supporting witness' actual need for transportation between

identified points in Pennsylvania that are within the scope of the applicant's proposed operating territory. We unequivocally reject that attempted substitution and affirm that, without proof in the record of a public demand/need for an applicant's proposed service between specified, intrastate points, an application for motor common carrier authority cannot be validly approved pursuant to subsection 1103(a) of the Public Utility Code, and hence cannot be validly approved pursuant to our Policy Statement at 52 Pa. Code §41.14. See also 66 Pa. C.S. §1101. (at p. 273)

If there are individuals in the application territory who require moving services, the protestants are certainly able to provide the moving services required by the witnesses. The protestants collectively can provide service in much of the application territory. For example, protestant Weleski has relevant authority in conflict with the authority sought by this application in the counties of Butler, Armstrong, Allegheny, Washington, Fayette and Westmoreland. (Weleski Ex. 1; 164-165) Protestant Fife has relevant authority in conflict with the authority sought by this application in the counties of Allegheny, Washington and Beaver. (Fife Ex. 1; 228) Protestant Best has relevant authority in conflict with the authority sought by this application involving service from points in Pennsylvania located within 75 miles of Pittsburgh to points in Allegheny County. (Best Ex. 1; 230) Protestant Vesely Bros. has relevant authority in conflict with the authority sought by this application in the counties of Westmoreland, Fayette, Washington and Allegheny. (Vesely Bros. Ex. 1; 257-260) Protestant Century III has relevant authority in conflict with the authority sought by this application in the counties of Allegheny, Washington, Westmoreland and Fayette. (Century III Ex. 1; 262-265) Protestant All Ways has relevant authority in conflict with the authority sought by this application in the counties of Washington and Allegheny. (All Ways Ex. 1; 290-292) Protestant Anderson has relevant authority in conflict with the authority sought by this application in the counties of Washington and Allegheny. (Anderson Ex. 1; 324-326) Protestant Forest Hills has relevant authority in conflict with the authority sought by this application in the counties of Allegheny, Westmoreland and Indiana. (Forest Hills Ex. 1)

Protestant Stumpf has relevant authority in conflict with the authority sought by this application involving service from points in Pennsylvania located within 75 miles of Pittsburgh to points in Allegheny County. (Stumpf Ex. 1) Protestants Debo Moving & Storage, Inc. and The Snyder Brothers Moving , Inc. t/d/b/a George Transportation Company are represented by separate counsel who will be filing a separate Brief and will undoubtedly indicate the territory served by those companies.

The testimony of several of the protestants domiciled in Washington County, which is where Ms. Lison resides, clearly indicates that there is no need for an additional moving company to be licensed in that county. For example, the testimony of Timothy M. Moore of All Ways is that his company had to purchase additional operating authority involving Allegheny County in 1990 at a cost of \$19,500 since when it only had Washington County PUC authority, there was not enough business to keep its crews busy. It therefore had to purchase the Allegheny County authority so that it could keep its crews busy and could keep them employed. The volume of business in Washington County was simply not sufficient to keep these employees busy. (295) Mr. Moore had to take out a loan for \$20,000 to purchase the Allegheny County authority just to keep his people employed. (295) Mr. Moore testified that Washington County cannot support another mover and really cannot even by itself support one mover. Fife and Anderson are already competitors in Washington County. (298)

Barbara Moore, who testified on behalf of Anderson, testified that Anderson purchased its Allegheny County authority in 1989 or 1990 from Robinson-Ogleby, which went bankrupt, since it was having a very hard time just breaking even with the Washington County business, with having to compete with Fife and All Ways for that limited business. (326-327) These rights were purchased for in the \$20,000-\$30,000 range. (327) Ms. Moore testified that there is a limited market in Washington County. (329)

The evidence presented by the applicant in this case clearly does not demonstrate a legitimate public demand or need for the service requested by the applicant. The application must therefore be denied.

V. PROPOSED CONCLUSIONS OF LAW

Protestant requests that the Administrative Law Judge make the following conclusions of law:

1. This Commission has jurisdiction over the subject matter and the parties in this proceeding.
2. The application is properly before the Commission.
3. The application must be denied since the applicant has failed to meet its burden of demonstrating that approval of the application is necessary or proper for the service, accommodation, convenience or safety of the public.
4. The application must be denied since the applicant has failed to meet its burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

VI. CONCLUSION

For all of the foregoing reasons, the protestants respectfully requests that the application of Gardner Moving Company be denied in its entirety.

Respectfully submitted,

VUONO & GRAY, LLC

By: 

WILLIAM A. GRAY, ESQ.

Attorney for

ANDERSON TRANSFER, INC.

BEST MOVING & STORAGE CO.

FIFE 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. STUMPF CO., INC.

VESELY BROS. MOVING & STORAGE, INC.

CENTURY III MOVING SYSTEMS, INC. t/d/b/a

CLAIRTON TRANSFER COMPANY and

PLEASANT HILLS VAN & STORAGE

WELESKI TRANSFER, INC.

Protestants

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Due Date: June 5, 2000
/11411

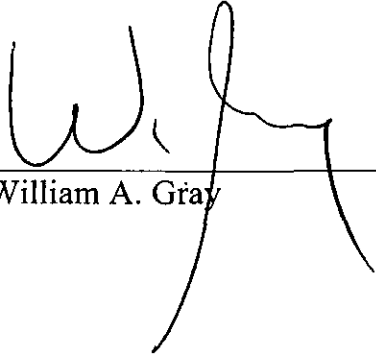
CERTIFICATE OF SERVICE

I hereby certify that I have this day served two (2) copies of the Main Brief of Protestants on the following parties of record by first class mail, postage prepaid:

Mark C. Stephenson, Esq.
Cozen and O'Connor
1900 Market Street
Philadelphia, PA 19103

John A. Pillar, Esq.
Pillar Mulroy & Ferber
1106 Frick Building
Pittsburgh, PA 15219

Dated this 5th day of June, 2000.



William A. Gray

Law Offices

VUONO & GRAY, LLC

John A. Vuono
William A. Gray
Mark T. Vuono
Dennis J. Kusturiss
Christine M. Dolfi
Louise R. Schrage
**Also Admitted in Florida*

2310 Grant Building
Pittsburgh, PA 15219-2383
(412) 471-1800

Richard R. Wilson
of Counsel

Facsimile
(412) 471-4477

DOCUMENT
FOLDER

June 12, 1000

Re: Gardner Moving Company
Docket No. A-00108945, F. 1, Am-A
Our File 1773P-188

515602

Mr. James J. McNulty
Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Dear Mr. McNulty:

We enclose for filing with the Commission the signed original and nine (9) copies of the Reply Brief of Protestants in connection with the above-captioned proceeding.

A copy of the Reply Brief has been sent to Administrative Law Judge John H. Corbett, Jr. and two (2) copies have been served on the attorney for the applicant. We are also sending to the Administrative Law Judge a computer disk pursuant to his letter dated May 4, 2000.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Very truly yours,

VUONO & GRAY, LLC

William A. Gray

SECRETARY'S OFFICE
00 JUN 16 10:34

jc/11524

Enclosures

cc: Honorable John H. Corbett, Jr. (w/enc.)
Mark C. Stephenson, Esq. (w/enc.)
John A. Pillar, Esq. (w/enc.)

23

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00108945, F. 1, Am-A
GARDNER MOVING COMPANY

515604

REPLY BRIEF OF PROTESTANTS

DOCUMENT
FOLDER

DOCKETED
JUN 14 2000

RECEIVED
SECRETARY'S OFFICE
00 JUN 14 AM 8:34

WILLIAM A. GRAY, ESQ.
Attorney for
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. STUMPF CO., INC.
VESELY BROS. MOVING & STORAGE, INC.
CENTURY III MOVING SYSTEMS, INC.
t/d/b/a CLAIRTON TRANSFER COMPANY
and PLEASANT HILLS VAN & STORAGE
WELESKI TRANSFER, INC.

Protestants

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219-2383
(412) 471-1800

Due Date: June 20, 2000

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00108945, F. 1, Am-A
GARDNER MOVING COMPANY

REPLY BRIEF OF PROTESTANTS

I. STATEMENT OF THE CASE

By this application, Gardner Moving Company (“Gardner” or “applicant”) seeks the following authority:

Household goods, in use, between points within an airline radius of 75 statute miles of the Allegheny County Courthouse, located in the city of Pittsburgh, Allegheny County.

Hearings were held in this case in Pittsburgh on August 12, 1999 and April 6 and 7, 2000, before Administrative Law Judge John H. Corbett, Jr. Main Briefs were filed by the applicant, by protestants represented by John A. Pillar, Esq. and by the protestants filing this Reply Brief. The Main Brief filed by the applicant sets forth factual and legal arguments which must be addressed by the protestants filing this brief. The protestants therefore hereby file this Reply Brief to respond to the Main Brief filed by the applicant.

II. REBUTTAL ARGUMENT

A. THE APPLICANT HAS FAILED TO DEMONSTRATE THAT THERE IS A PUBLIC DEMAND OR NEED FOR THE PROPOSED SERVICE.

1. Regional Service Area Theory.

Interestingly, one of the applicant's primary arguments in its Main Brief involving the issue of public demand or need for service involves not the testimony of the public witnesses who supported the application (of which there were only two), but rather testimony of the witnesses for the protestants who indicated that they provide service to the public throughout their operating territory, which the applicant characterized generally as a "regional service area". In that regard, the applicant stated, at pages 4 and 5 of its Main Brief: "During the hearings on the application, numerous representatives of moving companies testified as to the geographical area that each seeks to serve. Viewed collectively, it is clear that there exists a regional service area for moving company services." This attempt by the applicant to bootstrap itself on the issue of need by arguing that the protestants' testimony establishes some sort of "regional service area" for moving company services in which presumably the applicant should also participate is absurd. Significantly, the applicant wants to be able to provide service in 17 counties and none of the protestants have authority that is even remotely close to being this broad. Perhaps the applicant sees the "regional service area" as being much broader for its own purposes.

The applicant also argues at page 5 of its Main Brief that it is already a "player" in the so-called regional market since it has movements from Allegheny County to the

surrounding counties. The applicant, in fact, does not presently compete with most of the protestants since it is presently not able to provide service originating at any other county besides Allegheny County.

The applicant's "regional service area" theory does not establish public demand or need for the applicant's service.

2. Reliance Upon Prior Service.

The applicant argues beginning at page 6 of its Main Brief that it has demonstrated a public demand or need for the proposed service based upon its excellent service provided in the past in its existing territory. The applicant states at page 3 of its Main Brief that its service is sufficiently remarkable that its past customers exclusively refer it to others. There is nothing unusual about this. This is common in the household goods moving industry. The protestants and other carriers, and not just the applicant, provide excellent service to the public, which results in people recommending their service to other parties. There is no testimony concerning the service of the protestants filing this brief being anything but satisfactory. There was not a scintilla of evidence concerning any problems with any service provided by the protestants filing this brief. The fact that the applicant provides satisfactory service under its existing authority does not establish public demand or need for the applicant's service in the application territory.

3. Minimum Rate Issue.

The applicant argues beginning at page 6 of its Main Brief that it has demonstrated a public demand or need for the proposed service based upon its ability to provide a

“service not presently available”. In that regard, the applicant relies upon a minimum charge issue that it has created, which is both factually and legally defective.

The applicant states at page 7 of its Main Brief that it charges no minimum amount for its moving services, although it does admit in a footnote that it charges one hour for travel time, which it characterizes as “a charge standard in the regional market”. The applicant also makes the statements that “Other companies in the region -- for example, in Washington County -- may charge minimum rates as high as five-hour minimum.” This testimony was refuted by Anderson and All Ways (both located in Washington County), who both indicated that they do not charge a minimum of the nature described by the applicant. In any event, as indicated in the Main Brief filed by the protestants filing this brief, the Commission does not, based upon Blue Bird, consider such evidence as public need or demand for service.

The applicant also argues at page 11 of its Main Brief that a four-hour minimum “appears to be the standard charge” (presumably now not just limited to Washington County). There is absolutely no support in the record for this statement. This minimum charge issue is merely an attempt by the applicant to make up for its lack of evidence of public demand or need. The applicant was not able to produce public witnesses to establish public demand or need and is trying everything possible to create arguments to try to make up for this deficiency.

The applicant argues at page 12 of its Main Brief that no other protestant besides Anderson suggested that they provide a similar no-minimum rate structure. In fact, the witness for All Ways testified that his company provides a similar no-minimum rate

structure. Furthermore, it is significant to note that the attorney for the applicant did not cross-examine any of the protestant witnesses concerning whether they charged a minimum rate as suggested by the applicant. Furthermore, the applicant had the ability to obtain the tariffs of the protestants to determine whether they charged minimum rates and did not. There is no evidence of record to establish that any of the protestants presently charge a minimum rate and, as indicated above, this argument is merely an attempt by the applicant to camouflage its failure to provide public witnesses to demonstrate public demand or need for service.

The applicant argues at page 11 of its Main Brief that “its lower rate structure” will give consumers a choice and will promote competition to the public benefit. In fact, there is absolutely no basis in the record for any argument that the applicant will have a lower rate structure than the protestants or other carriers. There was no evidence concerning the existing rates of the applicant or, more importantly, the rates that the applicant will charge in the application territory if the application is approved. To the extent that the applicant is referring to the minimum rate issue discussed above, this is really a non-issue since there was no credible evidence that the protestants charge a minimum rate.

The applicant argues at page 11 of its Main Brief that its proposed service will force the competitors to do a better job of providing high quality service. In fact, as indicated above, there is no evidence whatsoever that the protestants filing this brief provide anything but high quality service at the present time. The fact that the applicant

would be able to provide additional service in the application territory will not, as suggested by the applicant, have any affect on the service provided by the protestants.

The argument at page 12 of the applicant's Main Brief that the applicant "serves as a rising tide that floats all boats when it provides the highest quality in service", while it sounds nice, is nothing more than unfounded self-promotion. The applicant is a household goods mover with only three vehicles in its fleet and to categorize it as anything other than a minor player in the household goods moving industry is unrealistic.

4. Request Testimony.

The applicant refers at page 5 of its Main Brief to service requests received from its prior customers. This testimony does not establish public demand or need for service since it does not meet the Commission's requirements involving service request testimony as set forth at 52 Pa. Code §3.382.

The applicant argues at page 12 of its Main Brief that local realtors refer clients to it even when they know that it cannot accept the work due to limitations in its current operating authority. There is no evidence whatsoever to this effect. In fact, no local realtors testified in support of this application. These local realtors may refer work to the applicant in Allegheny County under its existing authority but there was no testimony from any local realtor that it would refer any work to the applicant outside of Allegheny County.

5. The Lison and Honeygosky Testimony.

Not surprisingly, the applicant failed to address the issue of whether Ms. Lison or Ms. Honeygosky, the only public witnesses who testified in support of the application,

provided credible evidence of need for service. The absence of such an argument is not surprising since these witnesses did not testify concerning a need for service in the application territory. Both of these witnesses were merely character witnesses for the applicant who testified that they had previously used the applicant's service and found the service to be satisfactory. Neither of the witnesses had a movement scheduled for the future where the applicant's service was needed. Ms. Lison testified that she may remodel her basement within six (6) months after she testified and that she may require service at that time. However, it has been almost ten (10) months since she testified and if she did require service, the service is now no longer required. Furthermore, her statements made to one of the protestants, Anderson Transfer, Inc., clearly casts doubt on whether she required any moving service in the future. She stated to a representative of Anderson that she was not looking for a mover and was not interested in a mover. Ms. Honeygosky is currently residing in Allegheny County and the applicant already has authority to provide service from Allegheny County to all points within 75 miles of the courthouse in the City of Pittsburgh. Therefore, even if Ms. Honeygosky does move in the future, the applicant can provide that service and her testimony therefore clearly does not establish a need for the applicant's service.

The applicant implies at page 8 of its Main Brief that there was something wrong with Anderson contacting Ms. Lison two weeks after she testified. In fact, this is a standard practice in the industry. Anderson was contacting Ms. Lison to make it clear to her that it could provide any service that she required if, in fact, she did require service. Interestingly, Anderson concluded that Ms. Lison did not require any moving services

and, in fact, Anderson was discouraged by Ms. Lison from contacting her further. Ms. Lison's understanding concerning whether Anderson had a four-hour minimum turned out to be wrong.

The applicant states at page 11 of its Main Brief that despite direct cross-examination, Ms. Lison was adamant that a no-minimum rate to move small amounts of property is a valuable service to the public and one that she wanted to use. In fact, as testified to by the protestants, Ms. Lison has available to her at the present time a no minimum rate to move any small amount of property that she requires. Based upon Ms. Lison's discussion with the representative of Anderson, it is clear that Ms. Lison is not interested in a no-minimum rate and is not interested in using any moving services.

The testimony of Ms. Lison and Ms. Honeygosky clearly does not establish a public demand or need for the applicant's service.

III. CONCLUSION

The applicant in this case produced only two public witnesses and the testimony of these witnesses clearly did not establish a public demand or need for the proposed service.

The Commission in Blue Bird clearly enunciated the standards required for an applicant to demonstrate a public demand or need for service and the Commission has not subsequently eliminated any of the standards established in Blue Bird. In this case, the applicant has clearly failed to meet the standards set forth in the Blue Bird case.

For all of the foregoing reasons and for the additional reasons set forth in their Main Brief, the protestants filing this Reply Brief respectfully request that the application of Gardner Moving Company be denied in its entirety.

Respectfully submitted,

VUONO & GRAY, LLC

By: 

WILLIAM A. GRAY, ESQ.

Attorney for

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. STUMPF CO., INC.

VESELY BROS. MOVING & STORAGE, INC.

CENTURY III MOVING SYSTEMS, INC. t/d/b/a

CLAIRTON TRANSFER COMPANY and
PLEASANT HILLS VAN & STORAGE

WELESKI TRANSFER, INC.

Protestants

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219-2383
(412) 471-1800

Due Date: June 20, 2000

/11525

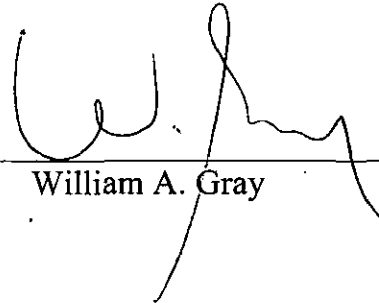
CERTIFICATE OF SERVICE

I hereby certify that I have this day served two (2) copies of the Reply Brief of Protestant on the following attorneys of record by first class mail, postage prepaid:

Mark C. Stephenson, Esq.
Cozen and O'Connor
1900 Market Street
Philadelphia, PA 19103

John A. Pillar, Esq.
Pillar Mulroy & Ferber
1106 Frick Building
Pittsburgh, PA 15219

Dated this 12th day of June, 2000.



William A. Gray



PILLAR · MULROY & FERBER

June 16, 2000

Re: Gardner Moving Company
Docket A-00108945, F.1, Am-A
File No. 2894

Hon. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
c/o New Filing Section
North Office Building, Room B-18
Harrisburg, PA 17105-3265

Dear Sir:

We enclose for filing the original and nine copies of **Reply to Applicant's Brief In Support of Additional Authority** in connection with the above docketed proceeding.

Please acknowledge receipt of the enclosures on the duplicate of this letter of transmittal and return it in the stamped, self-addressed envelope provided.

Very truly yours,

John A. Pillar
JOHN A. PILLAR

DOCUMENTS
FOLDER 59

sw
Enclosures

cc: Hon. John J. Corbett, Jr. (w/encl.)
Mark C. Stephenson, Esq. (w/encl.)
William A. Gray, Esq. (w/encl.)
Debo Moving and Storage, Inc. (w/encl.)
George Transportation Company (w/encl.)

U. S. POSTAL SERVICE CERTIFICATE OF MAILING ENCLOSED

00116 516495
RECEIVED
SECRETARY'S BUREAU

RECEIVED

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUN 1 2000

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Application of
GARDNER MOVING COMPANY

Docket No. A-00108945, F.1, Am-A

RECEIVED

JUN 1 2000

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

REPLY TO APPLICANT'S BRIEF
IN SUPPORT OF ADDITIONAL AUTHORITY

DOCUMENT DEPOSITED
JUN 19 2000

DOCUMENT
FOLDER

JOHN A. PILLAR, ESQ.

Attorney for
DEBO MOVING AND STORAGE, INC.,
THE SNYDER BROTHERS MOVING,
INC., t/a GEORGE TRANSPORTATION
COMPANY,
Protestants

Pillar, Mulroy & Ferber, P.C.
1106 Frick Building
Pittsburgh, PA 15219
412/471-3300

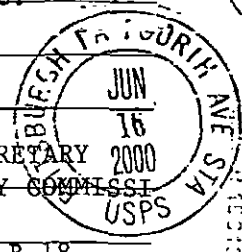
Due Date: June 20, 2000

U.S. POSTAL SERVICE **CERTIFICATE OF MAILING**
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT
PROVIDE FOR INSURANCE - POSTMASTER

Received From:
JOHN A. PILLAR, ESQ.
PILLAR MULROY & FERBER, P.C.
1106 FRICK BUILDING
PITTSBURGH, PA 15219

One piece of ordinary mail addressed to:
HON. JAMES J. McNULTY, SECRETARY
PENNSYLVANIA PUBLIC UTILITY COMMISSION
c/o NEW FILING SECTION
NORTH OFFICE BUILDING ROOM B-18
HARRISBURG, PA 17105-3265

re: Gardner Moving A-108945, F.1, Am



U.S. POSTAGE
0000

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of
GARDNER MOVING COMPANY
Docket No. A-00108945, F.1, Am-A

RECEIVED
JUN 15 2000
PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**REPLY TO APPLICANT'S BRIEF
IN SUPPORT OF ADDITIONAL AUTHORITY**

This Reply Brief is directed to portions of Applicant's brief as indicated hereinafter. Protestants contend that the brief for Applicant relies upon self-serving testimony and inferences that do not rise to the level of competent and probative evidence and do not warrant denial of Protestants' Motion to dismiss or, in the alternative, approval of the application on its merits.

In section 2.a of Applicant's brief, Applicant refers to the testimony of Mr. Gardner, an operating witness, as to the satisfaction of Bob Rose with the quality of service performed by Gardner in moving Rose's household goods and Madge Hamel's alleged referral of clients to Applicant. Neither Rose nor Hamel appeared as witnesses in support of this application notwithstanding the several opportunities to do so. Even if Gardner's testimony regarding Rose and Hamel are given some consideration, Rose's satisfaction with Gardner's existing service and

Hamel's referral of clients under its existing authority do not establish a need for services in areas Gardner does not presently serve and which are within the scope of this application.

Applicant's contention that it receives requests for service beyond its present operating area is also without probative value in that Gardner fails to provide the necessary detail as to dates, origins, and destinations that would warrant giving such testimony some weight on the issue of public demand or need.

In section 2.b, it contends that it offers a service that is not presently available since Applicant does not charge a "minimum" for the movement of household goods. Without connecting this evidence to some actual need or demand for service in the application area, this testimony is merely self-serving. Moreover, since household goods are usually transported on an hourly rate basis, and a certain minimal amount of time is required by all carriers, there is no evidence of record to warrant a conclusion that Gardner will charge less than other movers. Further, the testimony by Mr. Gardner about substantial growth in the area, specifically from Allegheny to Washington and Butler Counties, merely infers that there is a need for the transportation of household goods from Allegheny County to Butler and Washington Counties, a service that Applicant can presently perform.

Applicant repeats the same arguments beginning on page 11 of its brief. In alleging that approval of its application will result in a useful public purpose, Gardner raises both its alleged "lower rate structure" and its so-called "quality" service. While evidence of a useful public purpose might otherwise be meaningful if it is related to proof of public need or demand, here there is no evidence that a

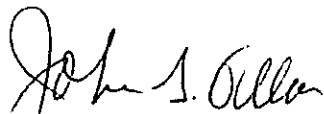
public demand or need for Gardner's service exists. Applicant has, therefore, failed to meet the second aspect of its statutory burden of proof. In other words, establishing a useful public purpose without showing that the purpose would be responsive to a public demand or need, does not meet Gardner's burden of proof.

Finally, Applicant relies upon the contention that the Commission has embraced competition in motor carrier transportation and that competition from Gardner in the application area warrants approval of its application. While competition may be favored by the Commission, the legislature has not authorized the Commission to approve an application for expanded operating authority on the basis of increased competition alone, or even if coupled with evidence of a useful public purpose. On the contrary, the legislature has specifically mandated that an Applicant must prove that its service would result in a useful public purpose responsive to a public demand or need.

Protestants renew their request that the application be dismissed or, in the alternative, that the application be denied.

Respectfully submitted,

PILLAR, MULROY & FERBER, P.C.

By: 

JOHN A. PILLAR

Attorney for

DEBO MOVING AND STORAGE, INC.,
THE SNYDER BROTHERS MOVING,
INC., t/a GEORGE TRANSPORTATION
COMPANY,
Protestants

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing **Reply to Applicant's Brief in Support of Additional Authority** on the following parties of record, by first-class mail, postage prepaid, this 16th day of June, 2000:

HON. JOHN H. CORBETT, JR.
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

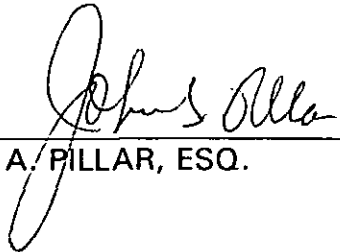
MARK C. STEPHENSON, ESQ. (2 copies)
Cozen & O'Connor
1900 Market Street
Philadelphia, PA 19103

WILLIAM A. GRAY, ESQ. (2 copies)
Vuono & Gray
2310 Grant Building
Pittsburgh, PA 15219

RECEIVED

JUN 16 2000

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



JOHN A. PILLAR, ESQ.

Pillar, Mulroy & Ferber, P. C.
1106 Frick Building
Pittsburgh, PA 15219

COZEN AND O'CONNOR

A PROFESSIONAL CORPORATION

THE ATRIUM

1900 MARKET STREET

PHILADELPHIA, PA 19103

(215) 665-2000

(800) 523-2900

FACSIMILE

(215) 665-2013

www.cozen.com

ATLANTA, GA

CHARLOTTE, NC

CHERRY HILL, NJ

DALLAS, TX

LONDON, UK

LOS ANGELES, CA

NEW YORK, NY

NEWARK, NJ

SAN DIEGO, CA

SEATTLE, WA

WEST CONSHOHOCKEN, PA

WILMINGTON, DE

RECEIVED

MARK C. STEPHENSON
DIRECT DIAL (215) 665-2176
DIRECT FAX (215) 665-2013
E-MAIL: MSTEPHENSON@COZEN.COM

JUN 15 2000

June 16, 2000

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

Honorable James J. McNulty, Secretary
c/o New Filing Section
Public Utilities Commission
North Office Building, Room B-18
Corner of North and Commonwealth Avenues
Harrisburg, PA 17105-3265

ORIGINAL

Re: Gardner Moving Company
Docket No. A-00108945, F.1, Am-A

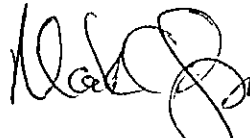
Dear Sir:

Enclosed, for filing is an original and nine copies of Applicant's Reply in Support of Additional Authority.

Applicant has transmitted directly to Administrative Law Judge Corbett a computer diskette, containing Applicant's Brief and Reply in Support of Additional Authority in Word format.

Very truly yours,

COZEN AND O'CONNOR



MARK C. STEPHENSON

DOCUMENT
FOLDER

MCS/pm
Enclosures

cc: Honorable John J. Corbett, Jr.(w/enclosures)(via Federal Express)
John A. Pillar, Esquire (w/enclosure) (via Federal Express)
William A. Gray, Esquire (w/enclosure)(via Federal Express)

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00108945, F. 1, Am-A

GARDNER MOVING COMPANY

RECEIVED

APPLICANT'S REPLY
IN SUPPORT OF ADDITIONAL AUTHORITY

JUN 16 2000

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MARK C. STEPHENSON, ESQUIRE
Attorney for
GARDNER MOVING
COMPANY
Applicant

Cozen and O'Connor
1900 Market Street
Philadelphia, PA 19103

Due Date: June 20, 2000

DOCKETED

JUN 19 2000

DOCUMENT
FOLDER

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00108945, F. 1, Am-A

GARDNER MOVING COMPANY

APPLICANT'S REPLY
IN SUPPORT OF ADDITIONAL AUTHORITY

Applicant Gardner Moving Company hereby respectfully submits its Reply in support of the grant of its application for additional authority, relying upon the record evidence and the reasons set forth herein.

I. PROTESTANTS EFFECTIVELY CONCEDE APPLICANT'S FITNESS AS A MOTOR CARRIER.

Protestants make no challenge and effectively conceded that Applicant is fit to operate a motor carrier to provide the type of service that it proposes in its application. In light of the record evidence and protestants' concession, the Commission should find that Gardner Moving has meet its burden in this regard.

II. PROTESTANTS HAVE FAILED TO MEET THEIR BURDEN TO SHOW THAT THE GRANTING OF THE APPLICATION WILL INJURE THEM.

Protestants make little attempt to argue that they will be materially injured if the application is granted. Several conceded that either Gardner Moving was not a competitor in

practical terms or that they had made no study or analysis of the impact granting the application might have on their business.

In reply, the protestants apparently abandon this element of their presentation and do not seriously claim that the granting of the application will do to them the serious type of injury, which Commission has determined, must be likely to occur before it will deny the application.

III. APPLICANT HAS DEMONSTRATED THE NEED FOR SERVICES, GREATLY BENEFICIAL TO CONSUMERS AND NOT OFFERED BY PROTESTANTS OTHER THAN AS A LITIGATION TACTIC.

Protestants' arguments in opposition to the application are misleading and obscure simple facts. Prior to the application, the record evidence demonstrates that none offered a "one-hour travel time -- no-minimum working time" rate. None of protestants' evidence is a meaningful challenge to this.

It is critical that Anderson Moving contacted Ms. Lison after her testimony in support of applicant and prior to concluding hearing to inform her that they had changed their rates to now offer a "no-minimum working time" rate. *See* Tr. 341. Anderson and told her that "we now have, we don't have the four-hour minimum[. W]e have a flat rate." *See* Tr. 141. Barbara Moore, Anderson Moving's President, does not challenge this. Rather, she testified that Anderson Moving's rates changed but she did not recall when that happened. *See* Tr. 340. This conduct was an admission that the type of service that Gardner Moving seeks to provide does not exist meaningfully in the applied-for geographic area.

Ms. Lison testified on Thursday, April 7th and Ms. Moore on Friday, April 8th. During the April 7th hearing, applicant cross-examined protestants' witnesses on the financial aspects of their operations. Advised by her counsel as to what she would need at the hearing when she testified, Ms. Moore brought Anderson Moving's 1999 Assessment report with her. *See* Tr. 343.

Ms. Moore did not bring her company's tariff, despite the fact that her rate structure was at issue as was her company's contacts with Ms. Lison. See Tr. 341-343.

The only reasonable inference to be drawn from the coincidence of Anderson Moving's contacts with Ms. Lison, its rate change and its evidence at hearing is that, in fact, it never had offered such a rate. The Commission should also infer that if Ms. Moore had produced evidence of its past charges to consumers, the evidence would show that, apart from its present protest, it does not offer a "one-hour travel time -- no-minimum work time" rate. In retrospect, it is clear that Anderson Moving's offer to Ms. Lison, just as its solicitation of her at the advice of its counsel, *see* Tr. 341, was a litigation tactic, designed to divert attention from the merits of applicant's intended service.

Upon approval of its application, Gardner Moving will fill a void in the regional market for needed moving services that exists in Southwestern Pennsylvania. No other protestant testified that it offers "no-minimum working time" rates.

Gardner Moving will offer "one-hour travel time -- no-minimum working time" rates, exactly the type of rate that Ms. Lison, who only wanted to move a limited amount of furniture, finds so valuable. Students going to school, young people just starting their careers, seniors leaving large homes to live in smaller surroundings typically do not move large amounts of furniture. Applicant's witness Patricia Honeygosky is just such a good example of why consumers value the type of service Gardner Moving seeks to provide.

With Gardner Moving's help, Ms. Honeygosky moved a household of furniture to a new Chippewa home that she and her husband had built. Tragically, her husband passed away shortly after they moved in. Understandably, she chose to sell her new home and move into a condominium in Kennedy Township. See Tr. 122-123. As part of her move, she "downsized a

lot" and moved much less furniture. See Tr. 122-123. This is exactly the type of consumer who seeks the services that Gardner Moving seeks to provide, a "no-minimum" working rate that saves consumers of small moving services from paying unnecessary charges.

Ms. Lison wanted to move a living room set from her mother-in-law's to her parents, a distance of 5 miles taking roughly 15 minutes to drive. See Tr. 92. With Gardner Moving's help, the move, which occurred in its present operating area, was completed in less than one hour. See Tr. 80-81.

Had Gardner Moving not been able to help Ms. Lison with her move, she would have had to pay a significant minimum charge, disproportionate to the work done. Ms. Lison would have had to turn to her father to get the furniture moved. See Tr. 87. The practical value of the type of service that Gardner Moving seeks to provide both is obvious and real. Ms. Lison is the mother of three and whose husband holds a demanding position. See Tr. 93. At the time of her second move, Ms. Honeygosky was a recent widow, seeking to simplify her life. No one expects such consumers to rent a U-Haul truck but equally neither should be required to pay for services not rendered, i.e., hours not actually worked while moving furniture.

The Commission has clearly indicated that it intends to regulate the motor carrier industry so as

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.

Re Blue Bird Coach, Lines, Inc., 72 Pa PUC 262 (1990). It would be counter-intuitive, contrary to public policy and the Commission's expressed intentions to argue that consumers do not deserve the highest quality of service at a price that accurately reflects

the time worked. However, to adopt protestants' arguments is to reach this unacceptable result.

Protestants argue that evidence of this valuable service, which was provided in applicant's present operating area, *e.g.*, Ms. Lison's move, is irrelevant. Protestants object that because this evidence did not occur in the geographic area sought now it should be ignored. To the contrary, this evidence speaks very forcefully. To ignore it compels the very counter-intuitive result rejected by the Commission in *Re Blue Bird*.

The force of this evidence is most quickly demonstrated by observing that Anderson Moving sought to create the same type of evidence on its own behalf as a protestant. It is entirely fair to ask whether Anderson Moving would have offered Ms. Lison a lower rate if Gardner Moving were not just ready, willing but also *able* to do so. It is far more sensible to conclude that if Gardner Moving were unable to offer this valuable service, Anderson Moving would never have offered the lower rate available.

IV. CONCLUSION

Applicant has demonstrated and protestants, by their admissions and conduct, concede that there exists a void in the regional market for moving services that consumers want filled. Gardner Moving Company is the first certificated carrier willing to step up to the task. By granting this application, the Commission will improve service to consumers immediately and in a way that will affect those most needing such services.

There is no question that Gardner Moving is ready, willing and able. Protestants do not dispute this.

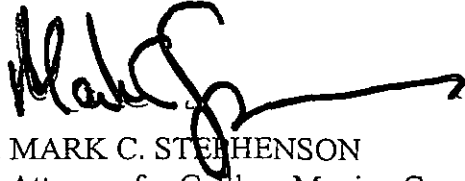
Ultimately, the promotion of healthy competition, recognition and satisfaction of the public need and implementation of the Commission's sound transportation policy merge to

militate that the Commission grant the application and order that a certificate of public convenience be issued to Gardner Moving for the additional authority requested in its application.

Date: June 16, 2000

Respectfully submitted,

COZEN AND O'CONNOR

A handwritten signature in black ink, appearing to read "Mark C. Stephenson", with a long horizontal stroke extending to the right.

BY: MARK C. STEPHENSON
Attorney for Gardner Moving Company

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Reply in Support of Additional Authority on the following parties of record by express mail and/or hand delivery this 16th day of June, 2000.

HONORABLE JOHN H. CORBETT, JR.
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

RECEIVED

William A. Gray, Esquire (2 copies)
Vuono & Gray
2310 Grant Building
Pittsburgh, PA 15219

JUN 16 2000
PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

John A. Pillar, Esquire
Pillar, Mulroy and Ferber, P.C.
1106 Frick Building
Pittsburgh, PA 15219


MARK C. STEPHENSON, ESQUIRE

Phila1/1254455 1/068037.000