



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

ISSUED: AUGUST 3, 2000

IN REPLY PLEASE
REFER TO OUR FILE

A-00108945F0001AmA

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

DOCUMENT
FOLDER

Application of Gardner Moving Company,
A Corporation of the Commonwealth of Pennsylvania...

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge John H. Corbett, Jr.. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
FG

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SRB

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Gardner Moving Company, a corporation
of the Commonwealth of Pennsylvania, for amendment
to its common carrier certificate, which grants the right,
inter alia, to transport 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 a removal of the house-
holder 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; subject to the
following condition: that no right, power or privilege is
granted to provide service to 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 highway of the limits of said city:
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.

Docket No.
A-00108945F0001AmA

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FOLDER

INITIAL DECISION

Before
John H. Corbett, Jr.
Administrative Law Judge

DOCKETED

AUG 09 2000

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History of the Proceeding

This decision dismisses an application, which Gardner Moving Company (“Applicant” or “Gardner”) filed with the Pennsylvania Public Utility Commission (“Commission”) on November 6, 1998. In this application, Gardner seeks to amend its certificate of public convenience to obtain additional motor common carrier authority as set forth in the caption of this case. Notice of this application was published in the Pennsylvania Bulletin on November 28, 1998. Protests were to be filed on or before December 21, 1998. *See*, 52 Pa. Code §3.381(d).

Twelve certificated carriers possessing operating rights in conflict with at least a part of the authority Gardner seeks in this application filed timely protests. The Protestants are: Anderson Transfer, Inc., Best Moving & Storage Company, Century III Moving Systems, Inc., t/d/b/a Clairton Transfer Company and Pleasant Hills Van & Storage, Debo Moving & Storage, Inc., Fife Moving & Storage Company, Forest Hills Transfer & Storage, Inc., McKean & Burt, Inc., t/d/b/a All Ways Moving & Storage, McNaughton Brothers, Inc., Timothy M. Moore, t/d/b/a Moore Movers, The Snyder Brothers Moving, Inc., t/d/b/a George Transportation Company, B. H. Stumpf Company, Inc., Vesely Brothers Moving & Storage, Inc., and Weleski Transfer, Inc.

Hearings scheduled for May 19, 1999, September 21-22, 1999, October 18-19, 1999, November 18-19, 1999, January 19-20, 2000, and March 8-9, 2000 were postponed at the request of Applicant’s counsel due to scheduling conflicts. Hearings were held in Pittsburgh on August 12, 1999 and April 6-7, 2000. Legal counsel represented all parties. At the hearing on April 6, 2000, counsel for McNaughton Brothers, Inc. withdrew its protest on the record (N.T. 280). Upon the close of the Applicant’s case, the Protestants moved to dismiss this application due to the Applicant’s alleged failure to present a *prima facie* case. I took this motion under advisement (N.T. 185-189). These hearings generated 397 pages of notes of testimony. The

Applicant submitted five exhibits for the record. The Protestants offered 18 exhibits for admission into the record. All parties filed main and reply briefs. The record closed on June 20, 2000. This decision grants the Protestants' motion to dismiss this application.

Findings of Fact

1. The Applicant, Gardner Moving Company, has maintained its principal place of business since March 1997 at 757 Millers Run Road, Cecil, South Fayette Township, Allegheny County, Pennsylvania (N.T. 8, 37-38, 71).

2. At that location, the Applicant built a self-storage facility and a small office. The Applicant also parks its vehicles at this location (N.T. 8, 54).

3. Prior to March 1997, the Applicant's business operated out of the home of the senior Mr. Gardner at 3236 Beacon Hill Avenue, Dormont, Pennsylvania (N.T. 7-8, 71).

4. The Applicant is a family-owned business. All of the shareholders are members of the Gardner family (N.T. 6-7, 70).

5. The Applicant has been in the moving business since at least 1921. The business started by transporting coal and moving buildings. For example, the Applicant participated in moving the Allegheny County Morgue to its present location. Members of the Gardner family have worked in this business from the time it started until the present (N.T. 8-9).

6. In summary, the Applicant's present operating authority allows it to move, *inter alia*, household goods between points in Allegheny County and from

Allegheny County to points in Pennsylvania, except to Dauphin County and Montgomery County (N.T. 10, 29-30, 51-53; Applicant's Exh. 1).

7. The Applicant has never provided transportation service to Dauphin or Montgomery counties (N.T. 52-53).

8. In this proceeding, the Applicant seeks to obtain authority to transport household goods in use between points within an airline radius of 75 statute miles of the Allegheny County Courthouse (N.T. 11; Applicant's Exh. 2, as redacted).

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

10. The Applicant professes no intention to establish facilities in any area outside of Allegheny County (N.T. 51).

11. The Applicant professes no intention to advertise its transportation service in any area outside of Allegheny County (N.T. 51, 64).

12. The Applicant decided upon the 75-mile radius after it received a number of calls from former customers or children of former customers, who had moved from Allegheny County to the Hidden Valley and Seven Springs areas a number of years ago and who now wish to return to Allegheny County (N.T. 31, 64).

13. The Applicant submitted a statement of financial position as of December 31, 1997 with an update (N.T. 11-12, 31-33, 74; Applicant's Exhs. 2 & 4).

14. The Applicant's only outstanding debts are two loans for a pickup truck and a car. It has very few receivables. It maintains a cash balance and supports three families in the Gardner relationship (N.T. 12).

15. The Applicant has never contemplated either liquidating itself or seeking the protection of the Bankruptcy Act (N.T. 13).

16. The Applicant has no financial obligation, which would render it unable to continue to provide transportation services (N.T. 13).

17. Besides four members of the Gardner family, the Applicant has 11 full and part-time employees (N.T. 28-29, 70-71).

18. The Applicant operates three trucks in its transportation business. One truck is a 28-foot cab-over configuration. Two trucks are 26-foot conventional trucks. One of these trucks is extra-wide and the other one is a regular width. Two of the trucks are of 1985-1986 vintage. One truck was built in 1993. All of these trucks are capable of handling eight to nine rooms of furniture. They are the largest trucks allowed on the highway that are not tractor-trailers. The Applicant also owns a 1997 pickup truck and a car (N.T. 14, 33).

19. The Applicant does not have any agency agreement with a national van line. Under a lease agreement with South Hills Movers, the Applicant performs interstate transportation. This arrangement has existed since the early 1980's. During 1998, the Applicant made 11 such moves. On average, it makes less than five moves per year under this lease agreement (N.T. 33-35, 387-394).

20. The Applicant is not an agent of South Hills Movers for intrastate transportation service. South Hills Movers has no ownership interest in the Applicant nor

does it have an agreement for joint management with the Applicant. Over the past 10 to 15 years, the Applicant has received intrastate referral business from South Hills Movers. Six or seven years ago, the Applicant provided intrastate transportation for South Hills Movers, but the Applicant has ceased performing such operations. The Applicant has never used the authority of South Hills Movers for intrastate transportation that it could not provide under its own authority or from any other area outside of Allegheny County (N.T. 35-37, 53-54, 374-375, 382-386, 388-394).

21. For trips under this lease agreement, the usual bill of lading shows South Hills Movers as the carrier. The Applicant collects the money from the customer (N.T. 35-37).

22. The Applicant has never leased equipment to South Hills Movers or to any other moving company for intrastate transportation service (N.T. 53-54).

23. The Applicant performs its own maintenance upon these vehicles. The trucks are inspected by the state twice a year. Major repairs are done by a qualified Mack or a Freightliner truck repair service (N.T. 14).

24. The Applicant has had several safety checks at weigh stations. None of its vehicles has ever failed a safety check (N.T. 14-15).

25. The Applicant has never received a citation from the Commission for any reason (N.T. 15).

26. The Applicant is current with all of its required filings with the Commission. It submitted into this record its 1998 Assessment Report. This Report discloses no interstate revenues and \$280,794 in total intrastate revenues for 425 moves.

The Applicant earned approximately \$25,000 to \$30,000 in interstate revenues in 1998 (N.T. 15, 34-35, 46, 74-75; Applicant's Exh. 3).

27. The Applicant leases a storage facility from an affiliated company owned by the Gardner family. There, the Applicant stores its cartons, moving equipment, dollies and pads. That Company, Secure Storage, rents space to customers for self-storage. Upon request, the Applicant will arrange for its customers to obtain storage space at this facility. The Applicant does not have a separate warehouse facility (N.T. 15-16, 38-41).

28. For the period from 1993 until August 1999, the Applicant received three property damage claims from its customers. These claims totaled less than \$775 (N.T. 16, 149-150).

29. The Applicant has never had a complaint brought against it with the Commission by a customer resulting from property damage or the service rendered (N.T. 17).

30. The Applicant opines it has spent a lifetime building a reputation of providing good transportation service at a fair price. Over the last eight to ten years, the Applicant notes an increasing number of its customers have left Allegheny County for the surrounding areas. The Applicant claims it has received calls from a number of people, including previous customers, who wish to hire the Applicant to transport household goods from these surrounding areas into Allegheny County (N.T. 17-18, 27-28, 43-44, 47-48).

31. The Applicant notes its business office and storage facility are adjacent to a four-lane highway near the Allegheny County-Washington County border. While driving on this highway, one passes from Allegheny County to Washington

County within 45 seconds. The Applicant claims it receives calls from people who notice its facility alongside the highway and request a local move. If the move originates outside of Allegheny County, the Applicant must decline the request under its current operating authority (N.T. 18-19).

32. Because it provided transportation service for television station WQED, the Applicant was asked to contribute to a children's book on moving. This book was part of a series of books that Mr. Rogers (of Mr. Rogers' Neighborhood) compiled to explain potentially traumatic events for young children (N.T. 20-21).

33. The Applicant does not charge a minimum rate for its transportation service. Consequently, it performs a lot of small moves. It does charge for one hour's travel time, regardless of the origination or destination (N.T. 22, 44-46, 57-65).

34. If it is granted the additional authority sought in this application, the Applicant anticipates it may pick up one or two additional moves per week depending upon the time of the year. Since the summer months are busier than the winter months and the period at the end of a month is busier than during the middle of a month, the Applicant hopes the additional business will solve the problem of having enough work for its employees during off-peak periods (N.T. 23-24, 26, 71-72).

35. The Applicant has not performed a study to determine how many occasions it has been fully booked for transportation service (N.T. 61-62).

36. The Applicant claims it receives "a couple" calls a week from people in Beaver, Butler or Westmoreland counties requesting its transportation services (N.T. 25).

37. The Applicant does not keep track of the calls it receives from customers outside of its existing authorized territory requesting its transportation services (N.T. 73-74).

38. The Applicant acknowledges a number of qualified household goods movers operate in Washington County (N.T. 54).

39. The Applicant has never paid anyone for referring its transportation business (N.T. 54-55).

40. The Applicant has not performed a study to determine what percentage or number of its moves involved five or more hours of service. However, it claims a large number of its moves are under the \$450-\$500 range, which indicates a large percentage of apartment moves that run to three or four hours of work (N.T. 56-57).

41. Gina Lison resides at 104 Meadow View Court, Venetia, in Peters Township, Washington County and provides a verified statement in support of the application (N.T. 78, 89, 92-94; Applicant's Exh. 2).

42. Ms. Lison hired the Applicant to move household goods from West Mifflin in Allegheny County to Washington County nearly five years ago. This move required two trucks and 12 hours. She was very satisfied with the Applicant's service (N.T. 79-80, 90).

43. Ms. Lison obtained an estimate from South Hills Movers for this move (N.T. 90).

44. Within the past year, the Applicant also performed two short moves for Ms. Lison's mother-in-law upon Ms. Lison's request. These moves were from West Mifflin to Whitehall; both points are within Allegheny County (N.T. 80, 86, 91-92).

45. Ms. Lison claims she would not have hired a carrier that charges a four or five hour minimum rate to move her mother-in-law's household goods. Instead, family members would have assisted in these moves (N.T. 87-88).

46. Ms. Lison did not call any carriers other than the Applicant to learn what rates they would have charged for these moves. Other than calls to the Applicant and South Hills Movers, she has not telephoned any other carriers to learn what their rates were within the last four years (N.T. 88, 94-95).

47. Ms. Lison anticipates hiring a carrier to move furniture from her home in Washington County to the home of a relative, when her basement is remodeled. She intends to move this furniture within the next six months (N.T. 88, 97).

48. If the Applicant is unavailable to provide this transportation, Ms. Lison does not know any other carrier who could make this move (N.T. 98).

49. Approximately two weeks after the initial hearing on August 12, 1999, an individual claiming to represent the Protestant Anderson called Ms. Lison to inform her that Anderson was available to transport her furniture and it was no longer charging a four-hour minimum rate. It now offered a flat rate (N.T. 141-142).

50. Patricia J. Honeygowsky resides at 1546 Meerschaum Lane, Coraopolis, Kennedy Township, Allegheny County, Pennsylvania (N.T. 120).

51. In 1997, the Applicant transported household goods for Ms. Honeygowsky from Green Tree in Allegheny County to Chippewa Township in Beaver County (N.T. 120-121).

52. Ms. Honeygowsky relates that move went very well and the quality of service was very good. None of her property was damaged (N.T. 121).

53. In October 1999, Ms. Honeygowsky contacted the Applicant again to transport household goods from Chippewa Township in Beaver County to Kennedy Township in Allegheny County. The Applicant informed her that it was not authorized to provide that transportation service (N.T. 121-122).

54. Ms. Honeygowsky then called the Protestant Debo to provide this transportation (N.T. 122-123).

55. For this move, Debo used one truck and three movers (N.T. 130).

56. Ms. Honeygowsky claims Debo damaged four pieces of her furniture during this move. She reported this incident on a survey she filled out for the shipper. She responded favorably to the manner and dress of the movers, and the cleanliness of the truck. But, she would not recommend that anyone use Debo's transportation service (N.T. 123-124, 128-137; Applicant's Exh. 5).

57. Due to language in the bill of lading granting a lower rate (due to less insurance cost) in exchange for limited liability, Ms. Honeygowsky did not file a claim for property damage with Debo. Her friend repaired the damage (N.T. 131-132).

58. The Applicant has a similar provision for limited liability and does not question the procedure Debo employed with Ms. Honeygowsky (N.T. 150-152).

59. The Protestant Weleski Transfer, Inc. has its principal place of business at 140 West Fourth Avenue, Tarentum, Allegheny County, Pennsylvania. It holds operating authority from this Commission and it provides service within a territory that is in conflict with at least a portion of the authority sought in this application. From these operations, Weleski derived approximately \$500,000 in revenue during 1999; due to a recent rate increase, it expects to earn even more during the year 2000. Weleski generates approximately 70%-75% of its revenue from operations within the Applicant's proposed service territory (N.T. 154-166, 175-179; Weleski Exh. 1).

60. In Tarentum, Weleski has three main warehouses and its business offices. It also has facilities in Johnstown, Pennsylvania and Cleveland, Ohio (N.T. 166-167, 179-180).

61. Weleski submitted a list of equipment and employees (N.T. 167-170, 174; Weleski Exh. 2, as redacted).

62. The moving business is seasonal. Sixty percent of Weleski's business occurs during the months of June, July and August (N.T. 170).

63. Weleski admits there are occasions when it cannot handle all of the public demand for its transportation service. On occasion, it has referred business that it could not handle to a competitor (N.T. 180, 182).

64. Weleski is an agent for Atlas Van Lines; this agency relationship allows Weleski to engage in interstate transportation (N.T. 170-171).

65. Weleski offers its household goods transportation service six days a week, 12 hours a day. It is currently not operating at full capacity (N.T. 171-172).

66. Weleski advertises its services in the Yellow Pages telephone directory, in newspapers and on the radio (N.T. 172-173).

67. Weleski provides its transportation service throughout the territory that it is currently authorized to serve. It renders service throughout the territory sought in this application, both inbound and outbound. Weleski faces "direct competition from some very good movers in those areas." It notes 40-50 other movers advertise in the Yellow Pages, while a lesser number of movers advertise in some areas. It opines further competition is unwarranted and the Applicant's proposed service is unneeded (N.T. 173-175, 180-183).

68. Weleski has not performed an analysis of what revenue it will lose, if this application is granted. It has not surveyed its customers to determine if they will change carriers in the event this application is granted. It concedes its revenue loss to the Applicant will be minimal, if this application is granted (N.T. 181).

69. The Protestant, Debo Moving and Storage, Inc., has its principal business office located at 1508-B State Street West, Baden, Pennsylvania 15005 (N.T. 190).

70. Debo, a Pennsylvania corporation, has operated its business for 15 years. Its principal shareholders are Mr. Debo and his wife (N.T. 190-191).

71. Debo leases 43,000 square feet of warehouse in Baden, which is climate controlled with a 24-hour/day monitored fire and security system. The building was built in March 1990. Debo parks all of its moving equipment at this location (N.T. 191-192).

72. Debo provides a list of the equipment it owns and uses in its transportation service (N.T. 198-201; Debo Exh. 2, as revised at the hearing).

73. Debo performs only minor maintenance on its vehicles. All other maintenance is performed at another location by other individuals (N.T. 192).

74. Including Mr. Debo and his wife, Debo employs 35 people; these employees include eight drivers, 15 helpers, three salespeople, a dispatcher, a warehouseman and five office personnel. Debo trains its employees through certified packer and moving courses. All of its drivers have commercial drivers' licenses (N.T. 192, 202-203).

75. As an agent for Mayflower Transit, Debo provides interstate transportation service (N.T. 193).

76. Debo holds operating authority from this Commission to provide transportation service within a territory that is in conflict with at least a portion of the authority sought in this application (N.T. 193-198; Debo Exh. 1).

77. Debo advertises its transportation service in various Yellow Pages telephone directories, including the Bell Atlantic Yellow Pages telephone directory for the Beaver Valley area, which is its primary market. It also advertises on billboards in Beaver County and in the Beaver County Times newspaper (N.T. 201-202, 204-205; Debo Exh. 3).

78. Debo describes how it prepares an estimate for a customer and who determines how many of its employees are needed to provide transportation service for a move. Finally, Debo's dispatcher schedules the move (N.T. 203, 205-207).

79. From intrastate transportation service within Pennsylvania, Debo earned gross operating revenues of approximately \$354,000 in 1999. Approximately 95% of this revenue involved transportation that originated in Beaver County. About 99% of this transportation service was performed within a 75-mile radius of Pittsburgh. Debo earned less than \$15,000 of this revenue for transportation service provided from points in Pennsylvania beyond 75 miles returning to Beaver County (N.T. 207, 217).

80. Debo charges a two-hour minimum charge for transportation of household goods within Pennsylvania (N.T. 207-210).

81. The driving time from Beaver to Pittsburgh is approximately 45 minutes (N.T. 210).

82. Debo experiences competition in its moving business within Beaver County and Cranberry Township in Butler County. Debo opines no need exists for an additional carrier to provide transportation service for household goods within Beaver County or anywhere else in its authorized service territory (N.T. 210-211, 215-216).

83. Debo acknowledges receiving unsatisfactory comments in its survey from Ms. Honeygowsky, but she made no comments relating to property damage on the shipping order. Ms. Honeygowsky never submitted a property damage claim to Debo (N.T. 211-215; Applicant's Exh. 5).

84. Debo has not conducted a study to determine the extent to which it is losing potential business to its competitors nor to determine the extent to which granting this application will affect its business financially. Likewise, Debo has not conducted a study to determine the extent to which the public in Beaver County is being adequately served with household moving service (N.T. 216-217).

85. The Protestants, Fife Moving and Storage Company and Best Moving and Storage Company, both of which are Pennsylvania corporations, have their principal places of business located at 2121 West Chestnut Street, Washington, Pennsylvania. Fife and Best share the same offices. They also have maintenance and warehouse facilities in Canton and Chartiers Townships, Washington County (N.T. 219-220, 232-235).

86. Charles W. Fife owns 98.5% of Fife, while his wife, Virginia N. Fife, owns Best (N.T. 219-220).

87. Fife has continuously operated its household goods transportation business since 1925 (N.T. 221).

88. In 1983, Global Van Lines instituted a policy, whereby Fife could not continue to be an agent for Global in interstate transportation while Fife itself held Interstate Commerce Commission ("ICC") authority. Accordingly, the owners of Fife started another company, Best Moving and Storage Company, and transferred Fife's ICC authority to Best. In the late 1980's, Best purchased Pennsylvania operating authority from another carrier, Haugh and Keenan Transportation, in the Pittsburgh market. In relation to Pennsylvania authority, some overlap of operations exists between Fife and Best in the Allegheny County area. Fife has been an agent for Global in interstate transportation for 21 years. Best is not affiliated with any interstate carrier (N.T. 221-223).

89. Fife and Best have two different pricing structures. These carriers try to give the customer the best price possible for their transportation needs (N.T. 222).

90. Fife holds authority from this Commission, which is in conflict with the authority sought in this application (N.T. 223-228; Fife Exh. 1).

91. From intrastate transportation service within Pennsylvania, Fife earned gross operating revenues of approximately \$450,000 in 1999. For the most part, Fife earned these revenues providing transportation service from Allegheny, Beaver and Washington counties (N.T. 228-229, 244).

92. Best holds authority from this Commission, which is in conflict with the authority sought in this application (N.T. 229-231; Best Exh. 1).

93. From intrastate transportation service within Pennsylvania, Best earned gross operating revenues of approximately \$200,000 in 1999. Best earned approximately 60% of these revenues from movements originating in surrounding counties moving into Allegheny County. About 50% of this latter amount is within a 75-mile radius of Pittsburgh and is within the territory sought in this application (N.T. 231-232, 243-245, 249-251).

94. Fife describes the type of equipment it uses in its transportation operations. It employs approximately a dozen owner-operators, who pull their own tractors (N.T. 235-236).

95. Best describes the type of equipment it uses in its transportation operations. Best leases the tractor-trailers it needs from Fife (N.T. 236-237).

96. Fife and Best provide transportation service to the public 24 hours a day, seven days a week (N.T. 237).

97. Fife and Best advertise their transportation services to the public in advertisements in the Yellow Pages telephone directories, in newspapers, on television

and on its own Internet Web site. They also advertise through donation of equipment and personnel to events for charitable organizations (N.T. 238-240).

98. Fife and Best opine substantial competition exists to provide household goods transportation in their certificated territories and no need exists for an additional household goods moving company to commence operations in these areas. Fife and Best claim they have equipment that sits idle for want of need. On rare occasions when they do not have equipment available to provide transportation, Fife and Best will refer the business to one of its competitors (N.T. 240-242, 245-247).

99. Fife and Best have not conducted any studies to determine how much business will be diverted from them, if this application is granted (N.T. 248).

100. The Protestants, Vesely Brothers Moving and Storage and Century III Moving Systems, both of which are Pennsylvania corporations, share a business office located at 316 Finley Road, Belle Vernon, Pennsylvania 15012. The office and warehouse facilities are located near the border of Fayette and Westmoreland counties. In April 1990, the owners of Vesely purchased Century III (N.T. 252-255, 270-271).

101. Vesely holds authority from this Commission, which is in conflict with the authority sought in this application (N.T. 255-260; Vesely Exh. 1).

102. From intrastate transportation service within Pennsylvania, Vesely earned gross operating revenues of approximately \$319,000 in 1999. Vesely earned approximately 85% of these revenues from outbound movements. About 40-45% of the outbound revenues were from movements originating within a 75-mile radius of Pittsburgh, but outside of Allegheny County. About 10% of the revenues for inbound movements is within a 75-mile radius of Pittsburgh and is within the territory sought in this application (N.T. 261-262).

103. Century III holds authority from this Commission, which is in conflict with the authority sought in this application (N.T. 256, 262-265; Century III Exh. 1).

104. From intrastate transportation service within Pennsylvania, Century III earned gross operating revenues of approximately \$192,000 in 1999. Century III earned approximately 90% of these revenues from outbound movements. About 50% of the outbound revenues were from movements originating within a 75-mile radius of Pittsburgh, but outside of Allegheny County (N.T. 265-266).

105. Vesely and Century III are agents for United Van Lines, through which they provide interstate transportation service (N.T. 267-268).

106. Vesely describes the equipment it uses to operate its intrastate transportation service (N.T. 268).

107. Century III describes the equipment it uses to operate its intrastate transportation service (N.T. 268-269).

108. Vesely and Century III lease equipment from each other (N.T. 269).

109. Vesely employs approximately 40 people, of whom 20-22 are drivers. The remainder are helpers, packers and office personnel (N.T. 269).

110. Century III employs 10 people, of whom six are drivers. The remainder are helpers, packers and office personnel (N.T. 269).

111. Vesely and Century III offer their transportation services 24 hours a day, seven days a week (N.T. 271).

112. Vesely advertises its transportation service to the public in its certificated area in the local Yellow Pages telephone directories and on its own Internet Web site. It also sponsors local high school athletic programs (N.T. 271-272).

113. Century III advertises its transportation service to the public in its certificated area in the local Yellow Pages telephone directories and on its own Internet Web site. It also sponsors local high school athletic programs (N.T. 273).

114. With the amount of competition they face in their territories, Vesely and Century III opine no need exists for an additional household goods moving company to commence operations in their certificated areas (N.T. 273, 276).

115. Vesely and Century III do not intentionally compete with each other for transportation business (N.T. 274-275).

116. Vesely and Century III have not conducted any studies to determine what adverse impact their businesses may suffer, if this application is granted (N.T. 279).

117. The Protestant, McKean & Burt, Inc., t/d/b/a All Ways Moving & Storage, has its principal place of business located at 326 West Main Street, Washington, Pennsylvania 15301. There, it owns two offices and two warehouses containing 32,000 square feet of storage space (N.T. 287-288, 296-297, 319).

118. Timothy M. Moore is the president and owner of All Ways (N.T. 287).

119. Mr. Moore also owns and operates the Protestant, Timothy M. Moore, t/d/b/a Moore Movers, a sole proprietorship, which also has its principal place of business situated at the same location as All Ways (N.T. 288).

120. All Ways holds authority from this Commission, which is in conflict with the authority sought in this application (N.T. 289-293; All Ways Exh. 1).

121. From intrastate transportation service within Pennsylvania, All Ways earned gross operating revenues of approximately \$300,000 in 1999. All Ways earned approximately 25% of these revenues from inbound and outbound movements to and from Washington County. About 95% of these revenues were from movements within a 75-mile radius of Pittsburgh. About 50% of the revenues from movements within the 75-mile radius were inbound to Allegheny County (N.T. 293-294, 300, 314-320).

122. From all operations, the gross revenues of All Ways for 1999 were approximately \$1.1 million (N.T. 314).

123. All Ways claims the volume of transportation business available in Washington County is insufficient to keep two crews busy 40 hours a week. For that reason, it purchased authority to operate in Allegheny County for \$20,000 (N.T. 295, 307).

124. Not including the owner, All Ways employs two office personnel, two sales representatives, eight drivers, eight laborers and five part-time laborers (N.T. 297).

125. All Ways opines another transportation competitor in Washington County will be harmful to its business, because Washington County itself cannot support another mover. Two other movers, Protestants Fife and Anderson are presently located

in that area. They have been able to survive, because they have diversified over the years. All Ways claims it is not operating its equipment at full capacity now (N.T. 298-299, 301, 310-314).

126. While it has its own ICC authority, All Ways has been affiliated with Wheaton World Wide Moving for the past 28 years, under which it provides interstate transportation service (N.T. 299).

127. All Ways offers household goods transportation to the public 24 hours a day, seven days a week (N.T. 300).

128. All Ways advertises its service to the public in the local Yellow Pages telephone directories and on the Internet. It also sponsors local athletic teams (N.T. 300-301).

129. All Ways does not have a minimum charge in its tariff. It does charge its customers one-hour's travel time for each move (N.T. 302-303).

130. Moore Movers holds authority from this Commission, which is in conflict with the authority sought in this application (N.T. 303-304; Moore Exh. 1).

131. Moore Movers has not utilized this authority, because Mr. Moore claims that insufficient business exists in Washington County to justify the expense of commencing operations. He purchased this authority for \$10,000, because his grandfather had originally started this business with another individual. He believes that he may be able to use this authority within five or 10 years, if the population expansion in Washington County continues (N.T. 304-310).

132. Mr. Moore believes no need exists for the additional service proposed in this application. Further, he opines existing carriers in Washington County can handle all of the household goods moves required to and from Washington County. Finally, he asserts existing carriers can handle all of the moves required from points within a 75-mile radius of Pittsburgh to points outside of Allegheny County (N.T. 305).

133. All Ways has not conducted a study to determine the financial impact that granting this application will have upon its future revenue (N.T. 313).

134. The Protestant, Anderson Transfer, Inc., has its principal business offices located at 231 Burton Avenue, Washington, Pennsylvania 15301. In addition to its office, Anderson also has a warehouse at this location. It has another warehouse at 330 Main Street, Washington, Pennsylvania (N.T. 321-322, 332-333).

135. Anderson holds authority from this Commission, which is in conflict with the authority sought in this application (N.T. 323-327; Anderson Exh. 1).

136. In 1989 or 1990, Anderson purchased from bankruptcy the rights of another carrier to operate within Allegheny County for \$20,000 to \$30,000, plus \$6,000 in attorney fees. Anderson claims it purchased these operating rights, because its Washington County business was "just breaking even." Its competitors were Fife and the predecessor of All Ways (N.T. 326-328).

137. Anderson believes another competitor will be harmful to its business, because the moving business is a mature, limited market in Washington County (N.T. 329).

138. From intrastate transportation service within Pennsylvania, Anderson earned gross operating revenues of approximately \$850,000 in 1999.

Anderson estimates it earned approximately 60% of these revenues from movements within Washington County and from points within Washington County to points within a 75-mile radius of Pittsburgh. The remaining 40% of the revenues represented movements within Allegheny County or inbound to or outbound from Allegheny County (N.T. 330-332, 345-347).

139. From all operations as a household goods carrier, the gross revenues of Anderson for 1999 were approximately \$1.2 million. From all operations, including its office moving and warehousing businesses, Anderson earned approximately \$1.35 million (N.T. 343-345).

140. For about 30 years, Anderson has been affiliated with Bekin's Van Lines, under which it provides interstate transportation service (N.T. 331-332).

141. Anderson provides a list of equipment it uses in its operations. In addition, Anderson leases three straight trucks for the three summer months, which are its busiest time of the year (N.T. 333-335; Anderson Exh. 2).

142. Anderson employs eight full-time drivers, eight helpers, five part-time packers, and six office and support staff (N.T. 335-336).

143. Anderson offers household goods transportation to the public 24 hours a day, seven days a week (N.T. 336).

144. Anderson advertises its service to the public in the local Yellow Pages telephone directories and on the Internet. It also sponsors local athletic teams, mails postcards and sends out bingo bulletins advertising its service (N.T. 336-337).

145. Anderson denies it recently changed its tariff to reflect a new *minimum charge*. It continues to charge its customers a one-hour minimum charge for weekday moves (N.T. 337-338, 340-343, 350).

146. Anderson believes no need exists for the additional service proposed in this application. Further, it opines existing carriers in Washington County can handle all of the household goods moves required to and from Washington County (N.T. 338-339).

147. Anderson has not conducted a study to determine the financial impact that granting this application will have upon its future revenue (N.T. 347).

148. The Protestant, Forest Hills Transfer & Storage, Inc., holds authority from this Commission that is in conflict with the authority sought in this application (N.T. 351-352; Forest Hills Exh. 1).

149. The Protestant, B. H. Stumpf Company, Inc., holds authority from this Commission that is in conflict with the authority sought in this application (N.T. 352; Stumpf Exh. 1).

150. The Protestant, The Snyder Brothers Moving, Inc., t/d/b/a George Transportation Company, has its principal business offices and a warehouse located at 729 West New Castle Street, Zelienople, Pennsylvania (N.T. 354, 356).

151. George holds authority from this Commission that is in conflict with the authority sought in this application (N.T. 360-365, 377-378; George Exh. 1).

152. George also provides interstate transportation service as an agent for North American Van Lines; this business operates under the name of John E. George, Inc. (N.T. 354).

153. George engages in the business of household goods transportation, business relocation, warehousing distribution, commercial office moving, high-value products distribution, and storage (N.T. 357-360).

154. The Commission granted intrastate transportation authority to George's predecessor, the Snyder Brothers, in 1954. The George family has owned and operated this business for the past 26 years (N.T. 358).

155. George employs 157 employees, including George family members (N.T. 355-356).

156. George lists and describes the equipment it uses to provide transportation service. George leases some equipment from North American Van Lines to supplement its fleet during the peak summer months. Four units are owner-operated (N.T. 365-371, 383; George Exh. 2).

157. George advertises its transportation service to the public in the Yellow Pages telephone directory, the Business to Business Yellow Pages telephone directory and university alumni programs; it provides an 800 telephone number; it appears at trade shows and realtor conventions; it has an Internet Web site; and it operates a full telemarketing department. George employs 12 full-time salaried salespeople in its telemarketing department to follow up possible leads for household goods moves obtained from newspapers, real estate ads and a network association of realtors. These salespeople provide estimates to potential customers in assigned geographic regions and markets to solicit business (N.T. 371-373; George Exh. 3).

158. From intrastate transportation service within Pennsylvania, George earned gross operating revenues of approximately \$2.2 million in 1999. About 75%-80% of these revenues were from movements within a 75-mile radius of Pittsburgh. About 2%-3% of this business originated in Butler County. About 1% of these movements originated in Venango County. About 7%-10% of these movements originated in Beaver County. About 1%-2% of these movements originated in each of Clarion and Blair Counties. About 5% of these movements originated in Washington County (N.T. 375-376, 378-382).

159. George believes no need exists for an additional carrier to commence providing the transportation service sought in this application, because at least five other carriers compete for this business in its service territory (N.T. 373).

160. George opines it possesses sufficient equipment and facilities to provide the transportation service sought in this case and no need exists to grant this application (N.T. 376).

Discussion

A. The Burden of Proof

Section 332(a) of the Public Utility Code (“Code”), 66 Pa. C.S. §332(a), generally provides for the party seeking affirmative relief from the Commission to bear the burden of proof. In this proceeding, the Applicant seeks to amend its certificate of public convenience so as to permit the transportation of household goods in use as a common carrier by motor vehicle between points in a defined territory within this State that it is currently not authorized to provide. Thus, as the party seeking affirmative relief from the Commission, the Applicant bears the burden of proof. *Id.*

After the Applicant rested its case at the hearing on April 6, 2000, the Protestants moved to dismiss this application for failure to establish a *prima facie* case. I took this matter under advisement at that time, because nearly eight months had elapsed since the Applicant had presented testimony at the original hearing on August 12, 1999. I was reluctant to rule on such an important matter after such a lengthy delay relying solely upon my memory and scanty notes. Accordingly, I directed the Protestants to proceed with presenting their cases (N.T. 185-189).

A motion to dismiss, like a motion for summary judgment, can only be granted, if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. 52 Pa. Code §§5.102(c)(1) & 5.103(b). When ruling upon a motion to dismiss, the evidence must be viewed in the light most favorable to the non-moving party, here the Applicant. *Ressler v. Jones Motor Co., Inc.*, 337 Pa. Superior Ct. 602, 487 A.2d 424 (1985); *see also*, 42 Pa. C.S. §1035(d). Having reviewed the record in the case *sub judice* most favorably to the Applicant, the conclusion inescapably follows that the motion to dismiss this application must be granted.

B. The Legal Standard

An applicant, who proposes to amend its authority to begin to offer, render, furnish or supply intrastate transportation service to the public for compensation of a different nature or to a different territory than that currently authorized, must obtain from the Commission a certificate of public convenience. 66 Pa. C.S. §§102, 1101-1103. The Commission will grant a certificate of public convenience "... only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. §1103(a).

The Commission implemented this statute through regulations it adopted originally in 1982. The evidentiary criteria the Commission employs to decide applications seeking motor common carrier authority are set forth in Section 41.14 of the Commission's regulations, 52 Pa. Code §41.14, which states:

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

Subsections (a) and (b) clearly place on the applicant the burden of proving its proposed service will serve a useful public purpose, responsive to a public need or demand, and that it is financially and technically fit to provide the proposed service.

1. **Public Demand or Need**

The Commission clarified the type of evidence an applicant may provide to satisfy its burden of proof under Section 41.14(a) in *Application of Blue Bird Coach Lines, Inc.*, 72 Pa. P.U.C. 262, 274 (1990), when it stated in pertinent part:

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."

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The witnesses supporting a motor common carrier application must be legally competent and credible, . . . and their testimony must be probative and relevant to the application proceeding. . . . The supporting witnesses must articulate a demand/need for the type of service embodied in the application. . . . 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. . . . (Citations and footnotes omitted); (emphasis added).

An applicant is not required to establish a public demand/need for the proposed transportation service in each and every point within the proposed service territory. It is sufficient, if an applicant establishes a public demand/need for the proposed service generally throughout the proposed service territory. *Morgan Drive Away, Inc. v. Pa. P.U.C.*, 512 A.2d 1359 (Pa. Cmwlth. 1986); *Purolator Courier Corp. v. Pa. P.U.C.*, 414 A.2d 450 (Pa. Cmwlth. 1980); *Pa. P.U.C. v. Purolator Courier Corp.*, 355 A.2d 850 (Pa. Cmwlth. 1976); and *Eagle Courier and Limousine Service, Inc.*, 57 Pa. P.U.C. 404 (1983). The Commission is not bound to any one method of analysis in determining whether this burden has been met. The Commission may, for example, examine the evidence of a public demand for the proposed service in the requested territory as a whole, rather than county by county. *G.G. & C. Bus Company, et al. v. Pa. P.U.C.*, Docket No. 707 C.D. 1994, et al. (Pa. Cmwlth. 1995).

In the context of Section 1103(a) of the Code, an applicant may prove a public demand/need for its proposed transportation service through witnesses comprising a representative sampling of the public that will use its proposed services within the application territory. *Blue Bird* at 274. The particular circumstances of a case determine what constitutes sufficient evidence of a public demand/need for the applicant's proposed service. The number of witnesses, which will comprise a cross-section of the public upon the issue of a public demand/need for an applicant's proposed service, will necessarily vary with the circumstances of each case. One may consider such factors 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. *Id.* at 274-275.

In the present case, the Applicant seeks authority to serve the public within a 75-mile radius of the Allegheny County Courthouse in Pittsburgh, which encompasses much of southwestern Pennsylvania. To support its request for this authority, the Applicant presents two public witnesses in addition to its operating witnesses. Neither public witness articulates an existing demand/need exists for the service sought in this application.

a. Public Witness Testimony

Gina Lison resides in Peters Township, Washington County (N.T. 78, 89, 92-94; Applicant's Exh. 2). Ms. Lison hired the Applicant to move household goods from West Mifflin in Allegheny County to her present residence in Washington County nearly five years ago (N.T. 79-80, 90). The Applicant currently is authorized to provide this transportation service under its existing authority. Within the past year, the Applicant also performed two short moves for Ms. Lison's mother-in-law upon Ms. Lison's request. These moves were from West Mifflin to Whitehall, which are within Allegheny County (N.T. 80, 86, 91-92).

On the important question of what demand/need she may have for the service proposed in this application, Ms. Lison testified at the hearing on August 12, 1999 that she anticipated hiring a carrier within the next six months to move furniture from her home in Washington County to the home of a relative, when she remodeled her basement (N.T. 79-80, 88, 90, 97). However, she failed to articulate a destination for the anticipated move. When Applicant's counsel asked how far the move would go, Ms. Lison stated "a half hour, 40 minutes" (N.T. 88). Presumably, "a half hour, 40 minutes" travel time from Washington County could include points within Ohio or West Virginia, which are obviously outside the proposed service territory. Moreover, this witness returned to testify on April 6, 2000 (nearly eight months later) about another carrier contacting her during the interim to solicit her transportation business (N.T. 141-142). At that second hearing, Ms. Lison failed to mention whether she had completed the earlier anticipated move or whether she still had any intention of moving her furniture.

The Applicant's second public witness, Patricia J. Honeygowsky, resides in Kennedy Township, Allegheny County (N.T. 120). In 1997, the Applicant transported household goods under its current authority for Ms. Honeygowsky from Green Tree in Allegheny County to Chippewa Township in Beaver County (N.T. 120-121). After her husband passed away, Ms. Honeygowsky contacted the Applicant again to transport household goods from Chippewa Township in Beaver County to Kennedy Township in Allegheny County. The Applicant informed her that it was not authorized to provide this transportation service (N.T. 121-122). Ms. Honeygowsky then contacted the Protestant Debo, which moved her property (N.T. 123-124, 128-137). Ms. Honeygowsky never indicated she will require transportation of her household goods in the future. Presumably, if Ms. Honeygowsky requires such service in the future, the Applicant will be able to render the service under its existing authority, since the move will originate within Allegheny County.

“Evidence tending to establish a public demand for the proposed service is usually in the form of an expressed and defined desire on the part of some portion of the public for the proposed service.” *Blue Bird* at 273. Public demand/need has customarily been demonstrated by witnesses’ testimony detailing requests for service. The relevant inquiry is what are the public’s needs. This element may be proven by the testimony of shippers or others having knowledge of that subject. *Id.* Neither Ms. Lison nor Ms. Honeygowsky expressed any demand/need for the Applicant’s proposed service.

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

b. Request Testimony

The Applicant contends it “regularly receives requests for moving services from its prior customers, seeking to move property from Butler, Washington or

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

An applicant may offer evidence of requests it receives relevant to the existence of public necessity for the proposed service. 52 Pa. Code §3.382. The credibility and demeanor of a witness offering such evidence will be considered in evaluating the evidence. The weight, which will be attributed to that evidence, will depend upon the extent to which the alleged requests are substantiated by such evidence as the date of the request, the name, address and phone number of the person requesting the service, the nature of the service requested, the origin and destination of the requested transportation, and the disposition of the request (whether the applicant provided the service or referred the shipper to another carrier). *Id.*

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

c. A Regional Service Area

The Applicant next posits the evidence developed in this record demonstrates a regional multi-county service area exists for the transportation service it

proposes in this application. The Applicant further claims it already is a “player” in this large regional market by virtue of its current authority to transport household goods from Allegheny County to these surrounding areas. Specifically, the Applicant argues:

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.

(Applicant’s M.B. at 4-5). However, the Applicant presents no evidence of its own to prove this purported “regional service area” exists. Instead, the Applicant suggests such a regional service area exists, because a careful examination of the operating authorities of the numerous Protestants in this case, taken collectively, “discloses a highly integrated network of service providers” (Applicant’s M.B. at 5-6).

This argument is premised upon circular reasoning. Most of the Protestants do not possess operating authority as broad as the Applicant proposes to obtain in this application. Instead, each Protestant only possesses operating authority in conflict with a portion of the authority sought in this application. Consequently, the operating authorities of all of the Protestants must be taken collectively to find a “regional service area.” However, the Applicant defined the “service area” at issue in this case, when it decided upon the service territory it would seek in this application. The Applicant’s proposed transportation of household goods within its proposed service area determined which Protestants would be interested in the outcome of this case. It is not surprising then, that the collective operating authorities of the Protestants, to some extent, matches the service territory that the Applicant seeks in this case. Following the Applicant’s reasoning, one could find a statewide “regional service area,” if the Applicant had applied for statewide authority and received protests from carriers that collectively held statewide authority. The fallaciousness of such reasoning is apparent on its face. It amounts to

nothing more than the Applicant's attempt to "bootstrap" itself into a position where it can argue a public demand/need exists for its proposed service without providing the requisite proof. Therefore, this argument fails to supply any probative weight to the Applicant's case.

d. Service Excellence

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

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

e. The Minimum Rate Issue

Finally, the Applicant argues a public demand/need exists for the proposed service based upon its ability to provide household goods moving service without charging a minimum rate (Applicant's M.B. at 7-8; Applicant's R.B. at 2-5). The Applicant notes other moving companies in the region, e.g., within Washington County, charge minimum rates as high as a five-hour minimum (N.T. 23). On the day before the first hearing, a representative of the Applicant contacted the Protestants Fife, Anderson and All Ways to confirm that each charges a minimum rate for a household goods move (N.T. 56). One of the Applicant's public witnesses, Ms. Lison, testified the Protestant Anderson contacted her during the interim between the first and second hearings to offer its transportation service, claiming it was no longer charging a four-hour minimum rate (N.T. 141-142).¹ Consequently, the Applicant contends the value that its no-minimum rate structure confers upon the public demonstrates a demand/need exists for its proposed service. This argument is factually misleading and legally incorrect.

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

If the Applicant is the sole carrier to offer a one-hour minimum charge, this fact, if accepted as true, may tend to establish "a useful public purpose," but it does not

¹ Protestant Anderson testified it has a four-hour minimum rate for weekends, but during the week it charges a one-hour minimum. Anderson claims it has had the one-hour minimum rate for some time (N.T. 337-338, 340-343).

demonstrate “a public demand/need” for the proposed service. These terms are separate and distinct. *Re: Richard L. Kinard, Inc.*, 58 Pa. P.U.C. 548 (1984). In *Kinard*, the Commission declared that “[w]hile granting the application may respond to ‘public demand or need,’ it would not necessarily ‘serve a useful public purpose....’” *Id.* at 552. The Commission explained a useful public purpose could be shown by evidence establishing that the applicant will be offering the public a different service, greater efficiency, lower rates, satisfaction of future transportation needs, backup service, rectification of the applicant’s authority, or more economical operations through a combination of the applicant’s interstate and intrastate authorities. In addition, an applicant could prove a useful public purpose by evidence that shipper competition required an increase in the number of carriers available to serve the shippers or by evidence that certain benefits would accrue to the applicant, and concomitantly would pass to the public, if the application were granted. These nine suggested methods of demonstrating a useful public purpose were collectively referred to as “alternatives to inadequacy.”

The Commission in *Blue Bird, supra*, unequivocally rejected attempts to substitute “inadequacy of existing service” for evidence of a public demand/need for the proposed service. There, it 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 throughout the Commission to substitute proof of one of the nine “alternatives to inadequacy” for proof of a supporting witness’s 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 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.

Id. at 273.

From the present record, one gleans that the Applicant's touting its one-hour minimum charge for travel time is nothing more than an attempt to prove its lower rates will serve a useful public purpose. In other words, the Applicant challenges the adequacy of existing service. Such an alternative to inadequacy can not substitute as substantive evidence of a public demand/need for the proposed service as a matter of law.

2. Summary

Upon careful consideration of the record and viewing all of the evidence in the light most favorable to the Applicant, it is readily apparent that the Applicant has failed to produce the slightest scintilla of evidence of a public demand/need for the transportation service proposed in this application. For this reason, the Protestants' motion to dismiss this application must be granted.

Conclusions of Law

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

2. The Applicant has failed to meet its burden of proving that a public demand/need exists for the transportation service it proposes in this application.

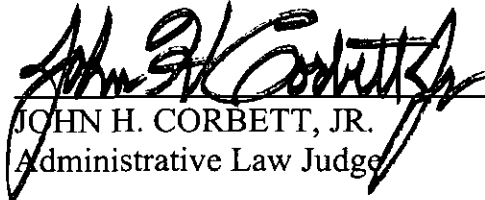
ORDER

THEREFORE,
IT IS ORDERED:

1. That the motion of the Protestants to dismiss the Application of Gardner Moving Company, which is docketed with the Pennsylvania Public Utility Commission at No. A-00108945F0001AmA, is hereby granted.

2. That the Application of Gardner Moving Company, docketed with the Pennsylvania Public Utility Commission at No. A-00108945F0001AmA, is hereby dismissed.

Dated: July 26, 2000



JOHN H. CORBETT, JR.
Administrative Law Judge