



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

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: January 18, 2007

A-00112271 F0002

GLAMOUR MOVING COMPANY INC
1285 LANDING LANE
WESETMINSTER MD 21157

Application of Glamour Moving Company, Inc.

TO WHOM IT MAY CONCERN:

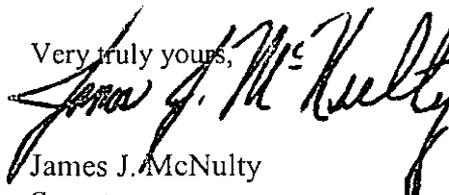
Enclosed is a copy of the Initial Decision of Administrative Law Judge David A. Salapa. This decision is being issued and mailed to all parties on the above specified date.

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 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, 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
MH

**DOCUMENT
FOLDER**

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Glamour Moving Company, :
Inc. for the right to begin to transport, as a :
Common carrier, by motor vehicle, :
Household goods in use from points in the : A-00112271F0002
Counties of Franklin, Adams, York and :
Lancaster to points in Pennsylvania :

INITIAL DECISION

DOCKETED
JAN 18 2007

**DOCUMENT
FOLDER**

Before
David A. Salapa
Administrative Law Judge

HISTORY OF THE PROCEEDING

On April 14, 2006, Glamour Moving Company, Inc, (Glamour) filed an application with the Commission to transport household goods in use from points in Franklin, Adams, York and Lancaster Counties to points in Pennsylvania. The Commission caused notice of this application to be published in the Pennsylvania Bulletin dated June 10, 2006 at 36 Pa.B. 2889. The notice stated that the deadline for filing protests was July 3, 2006. On June 14, 2006, Gastley's Moving & Storage, Inc. (Gastley's), Jack Treier, Inc. (Treier) and Shelly Moving & Storage, Inc. (Shelly) all filed protests to the application. On June 16, 2006, Warners Moving & Storage, Inc. (Warners) filed a protest to the application. On June 26, 2006, Zeigler's Storage and Transfer, Inc. (Zeigler's) filed a protest to the application. On June 27, 2006, Charles E. Groff and Sons, Inc (Groff) filed a protest to the application. On June 29, 2006, M.F. Rockey Moving Company (Rockey) filed a protest to the application. I will refer to the entities that have filed protests in this proceeding collectively as the Protestants.

By notice dated August 11, 2006, the Commission scheduled an initial hearing in this case for September 21, 2006 and assigned the case to me. By letter dated August 16, 2006, counsel for the Protestants informed me that, as a member of the Pennsylvania Supreme Court Disciplinary Board, he was scheduled for mandatory training on September 21, 2006. In response to this information, I directed the parties to confer and agree on convenient hearing dates. As a result of the parties' agreement, the Commission, by notice dated September 6, 2006, rescheduled the initial hearing in this proceeding for November 7, 2006 at 10:00 a.m. in Hearing Room #5 of the Keystone Commonwealth Building in Harrisburg. I issued a prehearing order on August 22, 2006 addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On August 21, 2006, Glamour filed a motion to compel discovery pursuant to 52 Pa. Code §5.103 and 5.342. The motion requested that I issue an order compelling the Protestants to provide meaningful responses to Glamour's interrogatories. On August 28, 2006, the Protestants filed an answer to the motion to compel. The parties attempted to resolve this dispute informally but advised me on September 7, 2006 that they were unable to resolve the matter and requested that I rule on the motion to compel. On September 11, 2006, I issued an order granting in part and denying in part Glamour's motion to compel. On September 7, 2006, Rockey withdrew its protest to the application.

I conducted the initial hearing as scheduled on November 7, 2006. David P. Zambito, Esquire represented Glamour, which presented six witnesses and sponsored twenty-nine exhibits. James D. Campbell, Jr. Esquire represented the Protestants which presented three witnesses and sponsored six exhibits. The initial hearing resulted in a transcript of one hundred sixty one pages.

I issued an order on November 8, 2006 setting forth a briefing schedule. The Protestants filed their main brief on December 20, 2006. Glamour filed its main brief on December 22, 2006. The Protestants filed their reply brief on January 4, 2007. Glamour filed its

reply brief on January 5, 2007. The record closed on January 5, 2007, the date Glamour filed its reply brief.

FINDINGS OF FACT

1. Glamour, the applicant in this proceeding, filed this application on April 14, 2006.
2. The Commission caused notice of Glamour's application to be published in the Pennsylvania Bulletin dated June 10, 2006 at 36 Pa.B. 2889.
3. The notice in the Pennsylvania Bulletin stated that the deadline for filing protests to Glamour's application was July 3, 2006.
4. On June 14, 2006, Gastley's Moving & Storage, Inc., Jack Treier, Inc. and Shelly Moving & Storage, Inc. all filed protests to Glamour's application.
5. On June 16, 2006, Warners Moving & Storage, Inc. filed a protest to Glamour's application.
6. On June 26, 2006, Zeigler's Storage and Transfer, Inc. filed a protest to Glamour's application.
7. On June 27, 2006, Charles E. Groff and Sons, Inc. filed a protest to Glamour's application.
8. On June 29, 2006, M. F. Rockey Moving Company filed a protest to Glamour's application.

9. On September 7, 2006, M.F. Rockey Moving Company withdrew its protest to Glamour's application.

10. Glamour's facilities are located at 1285 Landing Lane, Westminster, Maryland 21158. (N.T. 6)

11. Glamour's facilities are located near the Pennsylvania border approximately six miles from Littlestown, Adams County, Pennsylvania. (N.T. 9)

12. Jack Dill is the president, estimator, driver, mover and 50% stockholder of Glamour. (N.T. 7)

13. Jack Dill founded Glamour in 1989. (N.T. 7)

14. Before founding Glamour in 1989, Jack Dill worked for North American Van Lines, a moving company, for fifteen years. (N.T. 7)

15. Jack Dill has a total of more than thirty years experience in the moving business. (N.T. 8)

16. Glamour currently has sixteen to twenty employees. (N.T. 8, 12, Applicant Ex. A-7)

17. Glamour has interstate moving authority granted by the Interstate Commerce Commission at Docket No. MC240967 in 1991. (N.T. 8-9)

18. Glamour has intrastate authority to operate between points in Maryland. (N.T. 9)

19. Jack Dill has received inquiries from potential customers to move them between points in Pennsylvania. (N.T. 10)

20. Glamour has fourteen trailers, five tractors, seven straight trucks, and two pack vans. (N. T. 11, 41-42, Applicant Ex. A-9)

21. Glamour has a preventative maintenance program with a full time mechanic who inspects its equipment regularly. (N.T. 11-12)

22. Glamour performs background checks on all employees that it hires. (N.T. 12)

23. Glamour provides on the job training and training videos for all of its employees. (N.T. 13)

24. Glamour requires its drivers to undergo road tests. (N.T. 12)

25. Some of Glamour's employees have between fifteen and twenty years of experience in the moving business. (N.T. 13)

26. Glamour's employees are subject to random drug testing every thirty days. (N.T. 13, 50-51, Applicant Exhibit A-15)

27. Glamour performs an average of three moves per day, six days per week. (N.T. 13-14)

28. Glamour employs an accountant to perform its bookkeeping functions. (N.T. 14)

29. Glamour maintains mover's insurance, cargo insurance, liability insurance and worker's compensation insurance. (N.T. 14)

30. Glamour has never had any difficulty in obtaining insurance of any kind. (N.T. 14)

31. Glamour reinvests seventy-five percent of its profits into maintaining its equipment and facilities. (N.T. 15)

32. Glamour has moved customers from Maryland to Pennsylvania using its interstate authority. (N.T. 15-17)

33. Glamour provides storage services to its customers. (N.T. 16)

34. Glamour may open a storage facility in Pennsylvania if it receives approval to operate between points in Pennsylvania and the volume of business justifies opening such a facility. (N.T. 18)

35. Glamour has moved customers from Maryland to apartments in Pennsylvania while those customers are building new homes in Pennsylvania. These customers plan to move into their new homes once their new house is completed. (N.T. 17)

36. Glamour's busy season is from June to September. (N.T. 19)

37. Glamour advertises in the Yellow Pages in York and Adams Counties. (N.T. 22)

38. Daina Dill is the secretary and fifty percent stockholder of Glamour. (N.T. 25)

39. Daina Dill acts as the office manager for Glamour. (N.T. 26)
40. Applicant's Exhibit A-1 depicts Glamour's facilities and equipment.
(Applicant Exhibit A-1, N.T. 27-28)
41. Glamour has current interstate authority. (Applicant Exhibit A-2 & A-3,
N.T. 29-31)
42. Glamour had its interstate authority revoked once because its insurance carrier failed to provide the Federal Motor Carrier Safety Administration (FMCSA) with documents indicating it was properly insured. (N.T. 31-33, Applicant Exhibit A-3)
43. Glamour's interstate authority was reinstated on July 17, 1995. (N.T. 32,
Applicant Exhibit A-3)
44. Glamour currently has a satisfactory safety rating from FMCSA. (N.T. 33-
34, Applicant Exhibit A-4)
45. Glamour has current insurance for its interstate operations. (N.T. 34-35,
Applicant Exhibit A-5)
46. Glamour has a bond in the amount of \$5,000.00 to reimburse customers in the event that one of Glamour's employees commits a fraudulent or dishonest act while moving a customer's property. (N.T. 36-37, Applicant Exhibit A-6)
47. All of Glamour's drivers have a current valid driver's license authorizing them to operate Glamour's equipment. (Applicant Exhibit A-8, N.T. 39-41)
48. In 2005, Glamour's total income was \$1,547,679. (Applicant Exhibit A-10, N.T. 42-44)

49. Glamour's assets exceed its liabilities. (Applicant Exhibit A-11, N.T. 45-46)

50. Glamour's credit rating is satisfactory. (Applicant Exhibit A-12, N.T. 46-47)

51. Glamour is a member of the American Moving and Storage Association. (Applicant Exhibit A-14, N.T. 49-50)

52. Glamour is a member of the Better Business Bureau of Maryland. (Applicant Exhibit A-16, N.T. 52-53)

53. Glamour has won awards from the Carroll County Times. (Applicant Exhibit A-17, N.T. 54)

54. Glamour maintains a website that potential customers can use to contact it. (Applicant Exhibit A-13, N.T. 47-49)

55. Should the Commission approve its application, Glamour will charge the same rates for intrastate moves in Pennsylvania as it currently charges for interstate moves. (Applicant Exhibit A-18, N.T. 55-56)

56. Glamour issues a copy of FMCSA safety regulations to each of its drivers and expects its drivers to be familiar with those safety rules and regulations. (Applicant Exhibit A-20, N.T. 58-60)

57. Glamour issues a copy of the preventative maintenance program to each of its drivers as set forth in the Code of Maryland Regulations and expects its drivers to be familiar with those rules and regulations. (Applicant Exhibit A-21, N.T. 60-61)

58. Glamour has received some telephone inquiries from customers regarding moving between points in Pennsylvania. (Applicant Exhibit A-25, N.T. 68-71, 80)

59. Glamour has received an e-mail inquiry from a customer regarding moving between points in Pennsylvania. (Applicant Exhibit A-26, N.T. 73-74)

60. According to the United States Census Bureau, the population in York County grew by 19,000 people between 2000 and 2005. (Applicant Exhibit A-27, N.T. 75)

61. According to the United States Census Bureau, the population in Lancaster County grew by 6,000 people between 2000 and 2005. (Applicant Exhibit A-27, N.T. 76)

62. According to the United States Census Bureau, the population in Adams County grew by 4,000 people between 2000 and 2005. (Applicant Exhibit A-27, N.T. 76)

63. According to the United States Census Bureau, the population in Franklin County grew by 5,000 people between 2000 and 2005. (Applicant Exhibit A-27, N.T. 76)

64. Yearly home sales in York County grew from 4365 in 1998 to 6192 in 2005. (Applicant Exhibit A-28, N.T. 78)

65. Yearly home sales in Adams County grew from 878 in 1998 to 1136 in 2005. (Applicant Exhibit A-28, N.T. 78)

66. According to the United States Census Bureau, the number of houses in Adams County grew by 3,000 between 2000 and 2005. (Applicant Exhibit A-29, N.T. 80)

67. According to the United States Census Bureau, the number of houses in Franklin County grew by 4,000 between 2000 and 2005. (Applicant Exhibit A-29, N.T. 80)

68. According to the United States Census Bureau, the number of houses in Lancaster County grew by 10,000 between 2000 and 2005. (Applicant Exhibit A-29, N.T. 80)

69. According to the United States Census Bureau, the number of houses in York County grew by 11,000 between 2000 and 2005. (Applicant Exhibit A-29, N.T. 80)

70. Glamour continued to operate as an interstate mover after the FMCSA revoked its authority to operate in 1994. (N.T. 83)

71. FMCSA fined Glamour \$3,300 when one of its drivers, Steven Glaser had a positive reading on a random drug test. (N.T. 84)

72. Glamour still employs Steven Glaser as a driver. (N.T. 93)

73. Steven Glaser has completed a drug rehabilitation program and continues to be subject to random drug testing as a driver for Glamour. (N.T. 93-94)

74. Jack Dill was cited for four motor vehicle code violations between 2003 and 2005 with three of those violations being moving violations. (Applicant Exhibit A-8, N.T. 84-85)

75. In 1995, the Commission fined Glamour \$1,000 at Docket No. C-00956799, for moving household goods between points in Pennsylvania without Commission authority. (N.T. 86)

76. In 1996, the Commission fined Glamour \$4,000 at Docket No. A-00112271C9601 for moving household goods between points in Pennsylvania without Commission authority. (N.T. 86)

75. In 2002, the Commission fined Glamour \$2,000 at Docket No. A-00112271C0201 for moving household goods between points in Pennsylvania without Commission authority. (N.T. 86)

76. Eddie Lookingbill is employed by the Taneytown, Maryland Public Works Department and resides in Littlestown, Adams County, Pennsylvania. (N.T. 99-101)

77. Eddie Lookingbill's brother is employed by Glamour. (N.T. 99)

78. Eddie Lookingbill testified that he would use Glamour for moving his property. (N.T. 100)

79. Lorie Bangs is employed and resides in Littlestown, Adams County, Pennsylvania. (N.T. 102-104)

80. Lorie Bangs' son is employed by Glamour. (N.T. 104)

81. Lorie Bangs testified that she would use Glamour for moving her property. (N.T. 103)

82. Ronald Marsh is employed and resides in Littlestown, Adams County, Pennsylvania. (N.T. 106-109)

83. Glamour moved Ronald Marsh from Taneytown, Maryland to Silver Run, Maryland. (N.T. 107-108)

84. Ronald Marsh was satisfied with the service provided by Glamour. (N.T. 108)

85. Ronald Marsh testified that he would use Glamour again for moving his property. (N.T. 108)

86. Kimberly Burton resides in Littlestown, Adams County Pennsylvania. (N.T. 113)

87. In October, 2005, Glamour moved Kimberly Burton between points in Maryland. (N.T. 114-115)

88. Kimberly Burton plans on moving between points in Pennsylvania in January, 2007. (N.T. 115-116)

89. Kimberly Burton was satisfied with the service that Glamour previously provided to her and wants to use them to move her property between points in Pennsylvania. (N.T. 114-116)

90. Charles Morris is the manager of Shelly Moving & Storage, Inc. (N.T. 120-121)

91. Shelly Moving & Storage, Inc.'s business address is 4 Lee Boulevard, Malvern, Pennsylvania. (N.T. 120)

92. Shelly Moving & Storage, Inc. has household goods moving authority between points in York, Lancaster and Adams Counties. (Protestant's Ex. 1, N.T. 122)

93. Shelly Moving & Storage, Inc. has storage facilities in Malvern, York and Harrisburg, Pennsylvania. (N.T. 123)

94. Shelly Moving & Storage, Inc. has 21 straight trucks, 16 tractors, 39 trailers and 4 pack vans. (N.T. 123)

95. Shelly Moving & Storage, Inc. has approximately one hundred employees. (N.T. 123)

96. Shelly Moving & Storage, Inc.'s peak season is from May 15 through Labor Day. (N.T. 124)

97. Shelly Moving & Storage, Inc.'s business consists of approximately 30%-40% interstate moves with the balance intrastate. (N.T. 124)

98. Shelly Moving & Storage, Inc. has numerous competitors in York, Lancaster and Adams County. (N.T. 124-125)

99. Another competitor in York, Lancaster and Adams County will have an adverse financial impact on Shelly Moving & Storage, Inc. (N.T. 125)

100. Shelly Moving & Storage, Inc. sometimes has to turn business away during portions of June, July and August. (N.T. 127-128)

101. According to the assessment report that Shelly Moving & Storage, Inc. filed with the Commission, its Pennsylvania intrastate revenue for 2005 was \$1.8 million. (N.T. 129-130)

102. Brenda Davidson is the president and a stockholder of Zeigler's Storage and Transfer, Inc. (N.T. 133-134)

103. Zeigler's Storage and Transfer, Inc. has household goods moving authority between points in Pennsylvania in portions of Cumberland, Dauphin, York, Franklin and Adams Counties. (N.T. 135-141, Protestants Ex. 2)

104. Zeigler's Storage and Transfer, Inc. has 3 tractors, 6 trailers and 5 straight trucks. (N.T. 136)

105. Zeigler's Storage and Transfer, Inc. has approximately 16 employees. (N.T. 136)

106. Zeigler's Storage and Transfer, Inc. sometimes has to turn business away during portions of June. (N.T. 143)

107. Zeigler's Storage and Transfer, Inc. has the capacity to handle a maximum of five moves per day. (N.T. 143)

108. Jeremiah Ott is the vice president of Gastley's Moving & Storage, Inc. (N.T. 146)

109. Gastley's Moving & Storage, Inc. has household goods moving authority between points in Pennsylvania in portions of Adams and York Counties. (Protestant's Ex. 3, N.T. 147)

110. Gastley's Moving & Storage, Inc. has three straight trucks, two tractors, five trailers and one packing van. (N.T. 148)

111. Gastley's Moving & Storage, Inc. has fifteen employees. (N.T. 148)

112. Gastley's Moving & Storage, Inc. generates approximately 58% of its business through interstate moves. (N.T. 148)

113. Gastley's Moving & Storage, Inc. has experienced a 7% increase in intrastate revenues. (N.T. 153)

114. Charles E. Groff and Sons, Inc. has household goods moving authority between points in Pennsylvania in portions of Lancaster County. (Protestant's Ex. 4)

115. Jack Treier, Inc. has household goods moving authority between points in Pennsylvania in Lancaster County. (Protestant's Ex. 5)

116. Warners Moving & Storage, Inc. has household goods moving authority between points in Pennsylvania in York County. (Protestant's Ex. 6)

DISCUSSION

Glamour has the burden of proof to establish that it is entitled to the relief it is seeking in this proceeding. 66 Pa. C.S. §332(a) It must establish its case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet its burden of proof, Glamour must present evidence more convincing, by even the smallest amount, than that presented by the Protestants. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). In this case, Glamour requests that the Commission, pursuant to 66 Pa. C.S. §1102, approve its application to transport household goods in use from points in Franklin, Adams, York and Lancaster Counties to points in Pennsylvania.

The statute at 66 Pa. C.S. §1103 sets forth the standard that governs whether the Commission shall approve Glamour's application and issue an order granting the request for a certificate of public convenience:

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 a certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.

Generally, the utility must demonstrate a public need or demand for the proposed service and its fitness to provide the service. Seaboard Tank Lines, Inc. v. Pennsylvania Pub. Util. Comm'n, 502 A.2d 762 (Pa. Cmwlth. 1985); Re: Pennsylvania-American Water Co., 85 Pa. P.U.C. 548 (1995)

The specific criteria the Commission uses in determining whether to approve a motor carrier application is set forth in the policy statement codified at 52 Pa. Code §41.14:

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

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

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

(4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant's record, if any, of compliance with 66 Pa.C.S. (Relating to the Public Utility Code), this title and the Commission's orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

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

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

The Commonwealth Court has upheld the validity of an earlier version of this policy statement. Seaboard Tank Lines, Inc. v. Pennsylvania Pub. Util. Comm'n., 502 A.2d 762 (Pa. Cmwlth. 1985). The Commission modified this policy statement in 2004 in response to the Pennsylvania Supreme Court's decision in Elite Industries, Inc. v. Pennsylvania Pub. Util. Comm'n., 832 A.2d 428 (Pa. 2003) by adding (b) (1)-(6). In the Pennsylvania Bulletin at 34 Pa. B. 3912, the Commission stated that it was appropriate for it to place greater emphasis on the factors to be considered in evaluating an applicant's fitness under 52 Pa. Code §41.14(b). In order to provide guidance to the industry and Commission staff, the Commission stated that it would consider the factors now set forth in 52 Pa. Code §41.14(b)(1)-(6) with regard to the fitness of limousine applicants. The Commission noted that these listed factors did not represent a hard and fast set of rules that must be considered in every application but rather were factors the Commission would ordinarily examine in determining fitness pursuant to 52 Pa. Code §41.14(b). The Commission also stated that since these guidelines were general in nature, they were relevant to the issue of fitness for all motor carriers, and would be used as guidelines for evaluating motor carrier applications generally.

In Elite the Supreme Court of Pennsylvania upheld the Commission's adoption of subsection 52 Pa. Code §41.14(d) which eliminated the requirement that applicants for limousine authority had to demonstrate need for their service. In its decision, the Supreme Court stated as follows:

In Seaboard, the Commonwealth Court affirmed the PUC's decision to eliminate the requirement that an applicant demonstrate inadequacy of existing service before a certificate of public convenience would be granted. The court stated:

The PUC's mandate with respect to the granting of certificates of public convenience is a broad one: "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 legislature, however, provided no definition of specifically what the criteria were to be in determining the propriety of granting a certificate, leaving the formulation of such criteria to the PUC. It is true, as discussed above, that courts have consistently articulated the "inadequacy" requirement as an element of a utility's application for authority. Nevertheless, it is evident that the policy of the legislature pursuant to which the original criteria were established does not show an intention that expanded service be allowed only when existing service is inadequate. Rather, we believe that that policy consists of the more broad intention that utilities not be allowed to engage in unrestrained and destructive competition, which activity was thought to be, by its very nature, at odds with the public interest.

Id., at 764-65 (citations omitted) (footnote omitted). Thus, the court acknowledged the PUC's prior interpretations of its statutory mandates are not binding upon it simply because those interpretations received judicial approval in the past. Of import to the court's reasoning was the fact the inadequacy requirement was not statutorily created, but a regulation. Id., at 766-67.

Here, the changes in policy and regulation were made in consideration of the public interest. See 31 Pa.B. 2385 (Final Policy Statement on Evidentiary Criteria Used to Decide Motor Common Carrier Applications). The PUC acted in public interest by permitting competitive growth in an industry, which results in competitive pricing. *Id.* An applicant seeking to establish a luxury service would be hard pressed to show a "public need" for convenience. Allowing the applicant to meet a less stringent evidentiary burden makes expansion of the market possible. This situation falls squarely within the PUC's area of expertise and is best left to the commission's discretion.

Elite, 574 Pa. at 483-484. Essentially, the Supreme Court ruled that the Commission could eliminate need as well as inadequacy as criteria to be considered in determining whether to issue a certificate of public convenience for limousine applications. The Commission has not taken the step of eliminating need as well as inadequacy with respect to household goods applications, so Glamour must meet the requirements set forth in 52 Pa. Code §41.14(a)-(c).

I. Need for Glamour's proposed service.

The first requirement set forth in 52 Pa. Code §41.14(a) is that an applicant must demonstrate that "approval of the application will serve a useful public purpose, responsive to a public demand or need." Historically, applicants have shown "need" by presenting witnesses who testified that they required service that they were unable to obtain. This evidence is subject to the guidelines set forth in 52 Pa. Code §3.382:

3.382. Evidentiary guidelines for applications for passenger and household goods in use of authority.

(a) *Service request evidence.* Evidence of requests received by an applicant for passenger or household goods in use service may be offered by the applicant in a transportation application proceeding relevant to the existence of public necessity for he proposed service. The credibility and demeanor of a witness offering evidence will be considered in evaluating the evidence. The weight which will be attributed to the evidence will depend upon the extent to which the alleged requests are substantiated by evidence such as the following:

- (1) The date of each request.
- (2) The name, address and phone number of the person or company requesting service.
- (3) The nature of the service requested on each occasion, including the commodities or persons to be transported, and the origin and destination of the requested transportation.
- (4) The disposition of the request, that is, whether the applicant provided the service or, if not, whether the requesting shipper was referred to another carrier and, if there was a referral, to which carrier was the shipper referred.

(b) *Prospective rate evidence.* An applicant for a motor carrier certificate or permit for the transportation of passengers or household goods in use, though not required to offer testimony as to the rates proposed to be charged, may do so if it is otherwise competent. The weight to be attributed to the evidence will depend upon the extent to which it is accompanied by cost evidence demonstrating that the prospective rates would be compensatory, that is, that the prospective rates would be adequate to enable the applicant to recover its costs and realize a reasonable return either on investment or under operating ratio standards. The demeanor and credibility of a witness offering the evidence will also be considered in evaluating the weight to be attributed to the evidence.

In Re: Richard L. Kinard, Inc., 58 Pa. PUC 548 (1984), the Commission held that in addition to offering evidence of customer support, an applicant had to prove either the inadequacy of existing services to meet the customer's need, or to prove one of several alternatives to inadequacy, nine of which were enumerated in Kinard. The Commission noted in Kinard, prior to the adoption of 52 Pa. Code §41.14, an applicant had to establish both need for the proposed service and the inadequacy of existing service to meet that need. Kinard, 58 Pa. PUC at 550-552.

In Application of Blue Bird Coach Lines, Inc., 72 Pa. PUC 262 (1990), the Commission overruled Kinard and held that:

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.

Blue Bird, 72 Pa. PUC at 274. The supporting customer testimony must be legally competent and credible, and must be probative and relevant to the application proceeding. The supporting witnesses must articulate a demand or need for the type of service set forth in the application. The 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. Blue Bird, 72 Pa. PUC at 274-275.

In the Blue Bird opinion, the Commission stated that it considered "demand" and "need" as used in 52 Pa. Code §41.14(a) to be "interchangeable terms." Blue Bird, 72 Pa. PUC at 272. The Commission held in Blue Bird that customer support is sufficient to satisfy the applicant's burden, and the applicant need not demonstrate either the inadequacy of existing services or alternatives to inadequacy. Under the Blue Bird interpretation of 52 Pa. Code §41.14, customer support testimony is sufficient to support a finding of need even if the service of other carriers is available to the customer.

In contrast, under the Kinard interpretation of 52 Pa. Code §41.14, it was necessary to determine whether the applicant had established either the inadequacy of existing service or several alternatives to inadequacy. By establishing either inadequacy or one of several alternatives to inadequacy, the applicant would have demonstrated that there would be an advantage to the public arising from the applicant's proposed service as compared to the existing service available from other carriers. Under the Blue Bird doctrine, however, it is unnecessary to give consideration to evidence of inadequacy or of alternatives to inadequacy. My research has not revealed any Commission or Pennsylvania appellate court decisions that have overruled Blue Bird. In addition, the Supreme Court ruling in Elite and the Commission's subsequent modification of 52 Pa. Code §41.14 indicates that the Commission need not follow a rigid set of rules in determining whether

to issue a certificate of public convenience provided that the record contains evidence of a public benefit to be obtained from the service.

I turn now to the evidence Glamour presented regarding the need for its proposed service. Jack Dill is the president of Glamour. (N.T. 7) Mr. Dill testified that he has received inquiries from potential customers to move them between points in Pennsylvania. (N.T. 10) Mr. Dill did not testify regarding the date of each request, the name, address and phone number of the person or company requesting service or the origin and destination of the requested transportation. Based on the criteria set forth in 52 Pa. Code §3.382, I conclude that Mr. Dill's testimony is entitled to minimal weight in establishing that there is need for Glamour's proposed service.

Glamour presented the testimony of only four customer witnesses who testified in support of the application. Of those, only one, Kimberly Burton, stated that she would have a need for a household goods mover in the foreseeable future when she moves from her apartment to her new home both of which are located in Adams County. (N.T. 115-116) Ronald Marsh only testified that he had used Glamour in the past to move between points in Maryland. (N.T. 107-108) However, he did not indicate that he had any plans to move in the near future. (N.T. 111) Eddie Lookingbill testified that he knew of Glamour because Glamour employs his brother. (N.T. 99) He stated that he would use Glamour if he was going to move but did not have any plans to move in the near future. Similarly, Lorie Bangs testified she knew about Glamour because Glamour employed her son. She testified that she would use Glamour if she was going to move but did not have any plans to move. (N.T. 103-105)

Only one witness, Kimberly Burton, actually presented testimony meeting all the criteria of 52 Pa. Code §3.382. She testified that she requested service from Glamour, along with information on the goods to be transported and the origin and destination of the requested service between points in Adams County. The other witnesses did not testify that they had requested service from Glamour at all but rather stated that they would use Glamour if they were going to move. Based on the criteria set forth in 52 Pa. Code §3.382, I conclude that Ms. Burton's

testimony is entitled to some weight in establishing that there is need for Glamour's proposed service. Based on that same criteria, I conclude that the other witnesses' testimony is entitled to minimal weight in establishing need for Glamour's proposed service. The testimony of the four witnesses and Mr. Dill is not sufficient by itself to establish need for Glamour's proposed service by a preponderance of the evidence.

The lack of witnesses is understandable to an extent, because individuals, as opposed to businesses, do not have an ongoing need for household goods moving services. When an individual needs a household goods mover to move their household goods, they cannot testify in support of a new company and then wait to see if that company's application is granted. They would need to move soon, and once moved, would not need to move again for several years, if ever. Consequently, it can be difficult to produce customer support witnesses for a household goods application.

In order to overcome this problem, in addition to the testimony of these witnesses, Glamour provided a document listing calls Glamour received requesting information on moves between points in Pennsylvania. (Applicant's Ex. A-25) This document lists the dates of various telephone calls Glamour received. After the dates, the calls are listed, some with the names and telephone numbers of the caller. A few of the listings include the origin and destination of the proposed moves. The origin and destination of the proposed moves are located in York and Adams Counties.

Based on the criteria set forth in 52 Pa. Code §3.382, I conclude that the information set forth in Applicant's Exhibit A-25 is entitled to minimal weight in establishing that there is a need for Glamour's proposed service. It is not clear that the telephone calls listed in Applicant's Exhibit A-25 were actual requests for service. In addition, many of the dates listed do not have any information other than the telephone number of the callers to substantiate that these were requests for service. Many of the entries do not have the name, address or telephone number of the caller. Many of the entries do not have an origin and destination of the

proposed move. Without at least some additional information beside the number of telephone calls on a particular date, there is no way to substantiate the alleged requests for service.

Glamour also provided a copy of an email request for service that it received on October 17, 2006. (Applicant's Exhibit A-26) The request contains the person's name, telephone number, the items to be transported and the origin and destination of the proposed move between points in York County. Based on the criteria set forth in 52 Pa. Code §3.382, I conclude that Protestant's Ex. A-26 is entitled to some weight in establishing that there is a need for Glamour's proposed service. This document provides enough information to substantiate that Glamour received a genuine request for service.

Glamour also offered documents from the United States Census Bureau. (Applicant's Ex. A-27) The documents taken from the United States Census Bureau's web site show 2000 and 2005 population figures for York, Lancaster, Adams and Franklin Counties. According to the United States Census Bureau, between 2000 and 2005, the population in York County grew by 19,000 people; the population in Lancaster County grew by 6,000 people, the population in Adams County grew by 4,000 people and the population in Franklin County grew by 5,000 people. (Applicant Exhibit A-27, N.T. 74-77)

Glamour offered documents from the Realtor's Association of York and Adams Counties. (Applicant Exhibit A-28, N.T. 77-78) According to the document from the Realtor's Association of York and Adams Counties, yearly home sales in York County grew from 4365 in 1998 to 6192 in 2005 and from 878 in 1998 to 1136 in 2005. (Applicant Exhibit A-28, N.T. 78-79)

Glamour offered additional documents from the United States Census Bureau. (Applicant's Ex. A-29) These documents contained the annual housing unit estimates in each Pennsylvania county for the years 2000-2005. According to the United States Census Bureau, between 2000 and 2005, the number of housing units in Adams County grew by 3,000, the number of housing units in Franklin County grew by 4,000, the number of housing units in

Lancaster County grew by 10,000 and the number of housing units in York County grew by 11,000. (Applicant Exhibit A-29, N.T. 80)

The documents above tend to show that York, Adams, Franklin and Lancaster Counties are growing in terms of both population and the number of homes. As a result, home sales are increasing in these counties. Glamour argues from this evidence that because there are more people moving into these counties, there must be more need for household goods moving services. The Protestants disagree.

Protestants' primary argument is that, under the Blue Bird criteria, Glamour must present witnesses which express a tangible, present personal need for household goods transportation, and that it failed to do so. However, the Commission has rejected this approach with respect to need for household goods moving services or other services in several decisions.

Customer support testimony is not always necessary to support a finding of need. Philboro Coach Corp. v. Pennsylvania Pub. Util. Comm'n., 446 A.2d 725, (Pa. Comwlth.1982) was an appeal from the Commission's approval of an application for group and party bus service. Included in the evidence of need was testimony by travel agents in the area who "testified as to quantity and quality problems with presently available carriers." The Court approved the Commission's reliance on this testimony, despite the fact that it did not come from customers.

Similarly, Limelight Limousine, Inc. v. Pennsylvania Pub. Util. Comm'n., 570 A.2d 1378, (Pa. Cmwth.1990), was an appeal from the Commission's approval of an airport transfer service application. In Limelight, the Commission relied on testimony by representatives of hotels in downtown Philadelphia that there was a need for an additional airport transfer service. The Commonwealth Court found that such testimony was sufficient to support a finding of need.

In Application of Broadway Moving & Storage, Inc., 1987 Pa. P.U.C. LEXIS 111 (1987), the Commission considered as evidence of need the testimony of two real estate brokers who arranged for, or referred clients to, moving services within the area proposed to be served. While this case is less persuasive than the Limelight and Philboro cases because it was unprotested when the Commission ruled, it nevertheless supports the proposition that evidence other than traditional shipper support testimony can support a Commission finding of need.

In Application of Williamsport Moving Company, Inc., t/d/b/a Keystone Relocation (Williamsport), Docket No. A-00089650F0002AmE, (Order entered July 27, 2004), the protestants in a household goods application case had argued, similar to the Protestants in this case, that supporting witness testimony as to need was insufficient to satisfy the Blue Bird criteria. The supporting witnesses in Williamsport case had generally testified that they might have a need for a household goods mover in the foreseeable future. In Williamsport, the Commission found that the testimony of four witnesses, who might have a need for household goods movers in the foreseeable future, when coupled with statistical evidence of area growth, was sufficient to substantiate a finding of need for additional household goods moving services. The Commission recognized the need to be flexible with respect to evidentiary standards due to the transient nature of need for household goods service, and held that the supporting testimony must be viewed in this light.

In Application of Raymond J. Coll, Docket No. A-00119828, (Order entered November 22, 2004), the Commission clarified the approach to household goods carrier need testimony that it had approved in Williamsport:

Our recent decision in Williamsport noted that need testimony for household goods was difficult to produce, given the sporadic and immediate nature of household goods service. Typically, people that need that type of service do not have an ongoing need. When they do require this type of service, the need is immediate, and they will not wait for a new entrant to obtain a certificate to provide that service. Accordingly, we observed that household goods

need evidence must be viewed in a fashion
“commensurate with the nature of the service to be
provided.” Williamsport, slip. op. at 9.

Thus, Williamsport stands for the proposition that
we will not require a rote, formulaic approach to
need testimony in household goods applications.

In this case, Glamour presented statistical evidence of growth in housing units, home sales and population in Franklin, Adams, York and Lancaster Counties. (Applicant Exhibit A-27, A-28, A-29, N.T. 76-80) The Commission has approved an applicant’s use of statistical data to support witness testimony of need in Williamsport. I conclude that this statistical evidence is entitled to substantial weight in establishing that there is a need for Glamour’s proposed service. This statistical evidence, coupled with the other documentary evidence, notably the copy of the email request for service that Glamour received on October 17, 2006 (Applicant’s Exhibit A-26) and the testimony of the witnesses, particularly Kimberly Burton is sufficient to establish need for Glamour’s proposed service by a preponderance of the evidence.

The Protestants also argue that all of Glamour’s witnesses who testified regarding need reside in the Littlestown area of Adams County. The Protestants point out that no witnesses from Lancaster, York or Franklin Counties testified regarding need. The Protestants conclude that the testimony of witnesses from Adams County is not sufficient under the Blue Bird criteria to establish need throughout the territory for which Glamour seeks authority.

In Blue Bird, the Commission stated that the number of witnesses sufficient to comprise a representative cross section of the public necessary to support an application will vary with the circumstances of each case, such as the breadth of the intended operating authority, the population density in the intended operating territory, and the scope of the requested operating authority. The Commission reasoned that where the intended operating territory is broad and heavily populated, and an applicant seeks an expansive grant of operating authority, more witnesses would be required to show a cross section of the public needing the proposed service in the intended operating territory. Where the intended operating territory is restricted, is not heavily populated and the applicant seeks a narrow grant of operating authority, fewer witnesses

would be required to show a cross section of the public needing the applicant's proposed transportation in the intended operating territory.

An applicant is not required to establish a public demand or need for the proposed transportation service in each and every point within the proposed service area. It is sufficient to show a representative demand generally throughout the area. Morgan Drive Away, Inc. v. Pennsylvania Pub. Util. Comm'n, 512 A.2d 1359 (Pa. Cmwlth. 1986); Purolator Courier Corp. v. Pennsylvania Pub. Util. Comm'n, 414 A.2d 450 (Pa. Cmwlth. 1980)

In Application of O.D. Anderson, Inc., Docket No. A-00096222F.1, Am-E (Second Corrected Order entered April 19, 1994) the applicant sought authority to provide group and party service between all points in Pennsylvania lying on and west of a line which is five statute miles east of U.S. Highway 219, to all points in Pennsylvania. No evidence as to need was presented by that applicant for many of the counties encompassed by the application. The protestants in Anderson argued that need or demand must be established on a county-by-county basis. The Commission rejected this argument and held that a representative sampling was sufficient.

In this case, Glamour presented statistical evidence of growth in housing units, home sales and population in Franklin, Adams, York and Lancaster Counties. (Applicant Exhibit A-27, A-28, A-29, N.T. 76-80) This statistical evidence represents larger trends than just an individual witness could. This trend generally is that the Pennsylvania counties in this region that border Maryland are experiencing significant growth in population, home sales and housing construction. This growth indicates a need for Glamour's proposed service throughout the four county area. I conclude that this statistical evidence, coupled with the other documentary evidence and the testimony of the witnesses is sufficient to establish a representative sampling throughout Glamour's proposed territory.

The Protestants contend that the United States Census Bureau statistics regarding York, Lancaster, Adams and Franklin Counties have no probative value on the issues in this

proceeding. According to the Protestants, the statistics only show that the population in those counties has increased but do not indicate whether this is the result of births, deaths or population shifts. The Protestants argue that the statistics do not indicate whether new residents used a moving company to relocate. The Protestants' argument is without merit.

The Protestants' argument overlooks the United States Census Bureau statistics setting forth the increase in housing units for those four counties and the document from the Realtor's Association of York and Adams Counties setting forth the increase in housing sales for those two counties. These statistics indicate that more housing units exist now than in the past. Combined with the increase in population, one can reasonably infer that people are relocating to these four counties and that at least some of these people would need and use a household goods mover. Increasing population is an indication of increasing need for household goods moving service.

If increasing population does not give rise to a greater need for moving services, then in theory Philadelphia County could be served by the same number of household goods movers as Adams County. Taking the proposition to its ultimate conclusion, if only one household goods mover were needed to serve Adams County, then only one would be needed to serve Philadelphia County. This is clearly not the case. The fact that York, Lancaster, Adams and Franklin Counties have experienced recent, significant growth in population and housing units, is a valid indicator of a need for additional moving services. For the foregoing reasons, I conclude that the evidence establishes that approval of Glamour's application will serve a useful public purpose, responsive to a public demand or need by a preponderance of the evidence.

II. Fitness of Glamour to provide the proposed service.

Glamour must next demonstrate that it possesses the technical and financial ability to provide the proposed service. The Commission may withhold authority if the record demonstrates that Glamour lacks the propensity to operate safely and legally. 52 Pa. Code §41.14(b). In evaluating whether Glamour can satisfy these fitness standards, the Commission

will examine whether it has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested; whether Glamour and its employees have sufficient technical expertise and experience to serve the territory requested; whether Glamour has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public; whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards; Glamour's record, if any, of compliance with the Public Utility Code, Commission regulations and the Commission's orders and whether Glamour or its drivers have been convicted of a felony or crime of moral turpitude and remain subject to supervision by a court or correctional institution.

A motor carrier that the Commission has previously authorized to provide service, and which is now applying for additional authority, enjoys a rebuttable presumption that it is technically and financially fit to provide the proposed service. Re: V.I.P. Travel Service, Inc., 56 Pa. P.U.C. 625, 631 (1982). In the V.I.P. decision and other Commission decisions following it, this presumption of fitness arises from the fact that the Commission has already approved a previous application based on the evidentiary criteria set forth in 52 Pa. Code §41.14 or its predecessors and in doing so determined that the carrier met those criteria. My research has revealed no Commission decisions where the Commission has applied a presumption of fitness to the application of a carrier that a neighboring state or the federal government has already authorized to provide service between points in that neighboring state or between a neighboring state and Pennsylvania.

I conclude that the Commission should apply this presumption of fitness in this case where the applicant already operates pursuant to authority issued by a neighboring state or the federal government. In this case, Glamour has been operating as a common carrier since 1989 under federal or Maryland authority. (Applicant Exhibit A-2, A-3, N.T. 7, 29-32) This is an entirely different situation from one where the applicant is not currently operating at all, has no operating authority from the federal government or a neighboring state and is seeking an initial grant of authority from the Commission.

Even if the Commission did not apply a presumption of fitness in this case, the evidence that Glamour presented establishes by a preponderance of the evidence that it possesses the technical and financial ability to provide the proposed service. Glamour presented testimony and photographs describing and depicting its existing facilities in Maryland and some of its equipment. (Applicant Exhibit A-1, N.T. 27) Glamour also provided testimony and a list describing the fourteen trucks and fourteen trailers it currently utilizes. (Applicant Exhibit A-9, N.T. 41) Clearly, Glamour has sufficient equipment and facilities to serve York, Adams, Franklin and Lancaster Counties.

Glamour provided copies of its 2005 federal income tax return, its balance sheet as of 2005, and its Dun & Bradstreet profile. (Applicant Exhibit A-10, 11, & 12, N.T. 42-47) This information clearly demonstrates that Glamour has sufficient capital to serve the territory requested.

Glamour provided information on the employees currently working for it. (Applicant Exhibit A-7, N.T. 37-39) These employees have many years experience in the moving industry and Glamour currently averages three moves per day, six days per week. (N.T. 13-14) Glamour's employees have sufficient technical expertise and experience to serve the territory requested.

Glamour provided information on its vehicle, liability and cargo insurance. (Applicant Exhibit A-3, 5 & 6, N.T. 30-37) Glamour is able to secure insurance for all its vehicles.

Glamour provided testimony regarding its equipment maintenance program and a copy of its motor carrier safety rating from FMSCA. (Applicant Exhibit A-4, N.T. 33-34) Glamour clearly has a plan to comply with the Commission's driver and vehicle safety regulations and service standards.

The Protestants have not presented evidence sufficient to either rebut the presumption of Glamour's fitness or overcome the overwhelming evidence presented by Glamour that it is technically and financially capable of providing the proposed service. Rather, the Protestants, through cross examination, challenged Glamour's propensity to operate safely and legally.

First, the Protestants point out that, according to the FMCSA document admitted as Applicant's Ex. A-3, the FMCSA revoked Glamour's interstate authority in November, 1994 and reinstated it in July, 1995. (N.T. 82) Glamour continued to operate during this time period. (N.T. 83) On redirect, Glamour's witness explained that its insurance carrier had not filed proof of insurance with FMCSA. (N.T. 92) According to the witness, Glamour was not aware at first that the insurance carrier failed to file the proof of insurance. (N.T. 92) When it did become aware of this omission, it took steps to correct the situation. (N.T. 92-93) I accord little weight to this evidence because it occurred more than ten years ago, was an isolated incident and appears to have been inadvertent.

The Protestants next point out that one of Glamour's drivers had a positive reading on a random drug test and the FMCSA fined Glamour \$3,000 for the violation. (N.T. 84) Glamour continues to employ the driver. (N.T. 84) On redirect, Glamour's witness stated that the driver was a long time employee. (N.T. 94) The driver had entered a drug rehabilitation program after the positive drug test, had successfully completed the rehabilitation program, and had remained drug free ever since. (N.T. 93-94)

I accord little weight to this evidence since it again was an isolated incident. In addition, the driver has successfully completed a rehabilitation program and has remained drug free. I am not aware of any FMCSA regulation that requires a motor carrier to terminate an employee who tests positive on a random drug test. Glamour appears to have given the driver the opportunity to enter rehabilitation instead of simply terminating him. This decision is within the discretion of Glamour's management.

The Protestants also used Applicant's Ex. A-8 to demonstrate that several of Glamour's drivers have been cited for traffic violations. (N.T. 85) In particular, the Protestants point out that Jack Dill has been cited four times between 2003 and 2005, including three moving violations. (N. T. 85) Applicant's Ex. A-8 does not state whether any of the violations occurred while the drivers were operating Glamour's trucks. (N.T. 40-41)

I accord some weight to this evidence because several drivers have multiple violations in the past thirty-six months rather than isolated incidents. Several of these violations are for exceeding the maximum speed limit. While the evidence does not state that the drivers were operating Glamour's trucks when the violations occurred, it is an indication that some of Glamour's drivers have violated traffic laws while operating motor vehicles. The violations constitute some evidence that the drivers have operated motor vehicles illegally or unsafely in the past.

The Protestants assert that the Commission has imposed civil penalties on Glamour on three different occasions for operating between points in Pennsylvania without authority. (N.T. 85-86) In 1995, the Commission levied a civil penalty of \$1,000 against Glamour in the proceeding at C-00956799. (N.T. 86) In 1996, the Commission levied a civil penalty of \$4,000 against Glamour in the proceeding docketed at A-00112271C9601. (N.T. 86) In 2002, the Commission levied a civil penalty of \$3,000 against Glamour in the proceeding docketed at A-00112271C0201. (N.T. 86)

On redirect, Glamour's witness stated that it was not aware in 1995 that it had violated the Public Utility Code. (N.T. 94) In 1996 and 2002, it admitted the violations and paid the civil penalties. (N.T. 94-95) I accord some weight to this evidence because it involves multiple incidents. The 1995 civil penalty appears to be the result of ignorance of the Public Utility Code. The 1996 civil penalty occurred ten years ago but involves multiple violations. The 2002 civil penalty occurred four years ago and also involves multiple violations. As a result of the civil penalties, Glamour has now applied for Commission authority to operate between

points in Pennsylvania. The civil penalties constitute some evidence that Glamour operated illegally in the past.

Taking the above evidence of past violations, I must now determine whether the evidence, taken as a whole demonstrates that Glamour lacks the propensity to operate safely and legally. In Application of ATM Corporation of America, t/d/b/a Classic Limousine Transportation (ATM Corporation), Docket No. A-00112166, (Order entered September 24, 1996), the Commission indicated that it had in numerous instances found an applicant to be fit even though the applicant had violated the Commission's regulations a number of times. In regard to prior illegal operation, the Commission stated as follows:

It is well settled that in order for the Commission to conclude that an Applicant lacks a propensity to operate legally, the evidence of record, taken as a whole, must demonstrate that an Applicant has a persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders and regulations of the Commission. Application of Central Transport, Inc., Docket No. A-00108155 (Order entered June 26, 1992).

I conclude that the evidence of record, taken as a whole, does not demonstrate that Glamour has a persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders or regulations of the Commission. There is evidence of several violations of the Public Utility Code by providing service between points in Pennsylvania without Commission authority but I cannot characterize these violations as a persistent disregard, flouting or defiant attitude toward the Public Utility Code. Some of these violations are ten years old and the most recent violations are now four years old. This does not constitute persistent disregard. Glamour has filed this application with the Commission to obtain authority so that it can operate legally between points in portions of the Commonwealth. In the meantime, Glamour informs potential customers that it cannot provide household goods move between points in Pennsylvania.

While there is evidence that some of Glamour's drivers have been issued citations for traffic violations, I do not characterize them as demonstrating a persistent disregard for, flouting or defiant attitude toward the Public Utility Code, or orders or regulations of the Commission. There is no indication that Glamour directed or encouraged its employees to violate traffic laws. The nature of the citations for traffic violations simply do not support a finding that Glamour or its employees have demonstrated persistent disregard for, flouting or defiant attitude. Neither the state of Maryland nor the FMCSA has taken any action to revoke or suspend the authority they have granted to Glamour as a result of the drivers' violations.

To the contrary, Glamour received a satisfactory safety rating from FMCSA as a result of a review it completed on August 21, 2006. (Applicant's Ex. A-4) This review occurred after the drivers were issued citations for the traffic violations. Presumably the review included consideration of those violations. The resultant satisfactory rating demonstrates not only that Glamour has the propensity to operate safely but that the FMCSA did not believe that the violations were sufficient to justify actions to revoke or suspend Glamour's authority.

The evidence presented by the Protestants fails to demonstrate that Glamour lacks the propensity to operate safely and legally. The evidence does not outweigh or negate the evidence that Glamour presented that it possesses the technical and financial ability to provide the proposed service. For the foregoing reasons, I conclude that the evidence establishes that Glamour possesses the technical and financial ability to provide the proposed household goods moving service by a preponderance of the evidence.

III. Impairment of the Protestants.

According to 52 Pa. Code §41.14(c), the Commission will grant an application to a motor carrier that has demonstrated that its proposed service will serve a useful public purpose, responsive to a public demand or need, that it possesses the technical and financial ability to provide the proposed service, and that it has the propensity to operate safely and legally, commensurate with the demonstrated public need unless existing carriers show that the entry of a

new carrier into the field would endanger or impair their operations to such an extent that, on balance, the granting of authority would be contrary to the public interest. Morgan Drive Away, Inc. v. Pennsylvania Pub. Util. Comm'n., 512 A.2d 1359 (Pa. Cmwlth. 1986). The amount of competition which will best serve the public interest is a matter within the discretion of the Public Utility Commission. Pennsylvania Pub. Util. Comm'n. v. Purolator Courier Corp., 355 A.2d 850 (Pa. Cmwlth.1976).

The burden placed upon Protestants by Section 41.14(c) is quite heavy. Re: Myers Chemical Transport, Ltd. 73 Pa. P.U.C. 24 (1990) Only the threat of unrestrained and destructive competition contrary to the public interest will preclude the Commission from granting an application pursuant to subsection 41.14(c). The mere potential for diversion of traffic volume from existing carriers to an applicant is insufficient to sustain the protesting carriers' burden of proof. Re: Richard L. Kinard, Inc., 58 Pa. P.U.C. 548 (1984) In short, it is not enough for the Protestants to show that their operations may be endangered or impaired, they must also show that such endangerment or impairment is so great as to implicate the public interest.

Shelly's witness testified that it has household goods authority in York, Lancaster and Adams Counties. (Protestant's Ex. 1, N.T. 122) Shelly's witness stated that there are already numerous competitors in those counties. (N.T. 124-125) According to the witness, there are too many competitors and not enough revenues. (N.T. 125)

On cross examination, the witness admitted that during its peak season from May through September, it sometimes has to turn away business and refer that business to other carriers. (N.T. 127) Shelly also indicated that it was not in any financial distress. (N.T. 128) Its intrastate revenues for 2005 were \$1.8 million according to the annual assessment report it filed with the Commission. (N.T. 128-129)

Zeigler's witness testified that it has household goods authority in portions of Cumberland, Dauphin, York, Adams and Franklin Counties. (Protestant's Ex. 2, N.T. 135) Zeigler's witness agreed with Shelly's that there are already numerous competitors. (N.T. 137)

The witness testified that 90% of its business is intrastate moving of household goods. (N.T. 136) Zeigler's is a small company, employing only sixteen full time employees, and an additional competitor will cause it financial difficulty. (N.T. 136-137)

On cross examination, the witness admitted that it has turned away business at the end of June, during its peak season. (N.T. 143) The witness also stated that in recent years it has experienced a business increase of 2% per year in Franklin and Adams Counties. (N.T. 144)

Gastley's witness testified that it has household goods authority in portions of York and Adams Counties. (Protestant's Ex. 3, N.T. 147) The witness agreed with Shelly's and Zeigler's witnesses that there are already numerous competitors. (N.T. 148) Gastley's is a small company, employing only fifteen full time employees, and an additional competitor will cause it financial difficulty. (N.T. 148-149)

On cross examination the witness admitted that in recent years it has experienced a business increase of 7% in its intrastate revenues. (N.T. 153-154) The witness noted that there has been growth in the number of housing units in its service territory in the last five years. (N.T. 154)

Finally, the Protestants also presented copies of the intrastate household goods authority the Commission has granted to Groff's, Trier's and Warners. (Protestant's Exs. 4-6) Groff's, Trier's and Warners did not present any testimony.

After reviewing the evidence, I conclude that the Protestants have failed to show that Glamour's entry into the field would endanger or impair existing operations so that, on balance, the granting of authority would be contrary to the public interest. The only evidence submitted by the Protestants is that they might lose some business and revenue. A mere diversion of traffic volume is not sufficient to meet the standards of 52 Pa. Code §41.14(c).

This evidence is contradicted by the admissions of Gastley's and Zeigler's that their business has increased in the recent past. It is also contradicted by testimony from Shelly's

and Zeigler's witnesses that they have had to turn business away during the peak season. The Franklin, Adams, York and Lancaster County areas are growing both as to the number of housing units and population. This growth has undoubtedly, in part, lead to this increase in business. If the moving industry in Franklin, Adams, York and Lancaster Counties were in such dire straits that a new household goods carrier would be sufficient to endanger one or more of the existing carriers, one would not expect the existing carriers to turn away business or see their business increase. For these reasons, I conclude that the Protestants have not demonstrated by a preponderance of the evidence that their operations will be endangered or impaired to such an extent that, on balance, the granting of this authority is contrary to the public interest.

To summarize, I conclude that Glamour established by a preponderance of the evidence that Commission approval of its application will serve a useful public purpose, responsive to a public demand or need and that Glamour possesses the technical and financial ability to provide the proposed household goods moving service. The Protestants have failed to demonstrate by a preponderance of the evidence that Glamour lacks the propensity to operate safely and legally or that the Protestants' operations will be endangered or impaired to such an extent that, on balance, the Commission granting Glamour's application is contrary to the public interest. I will therefore approve Glamour's application.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding by virtue of 66 Pa. C.S. §1102(a)(1).
2. The evidence of record establishes that the proposed service will serve a useful public purpose, responsive to a public demand.

3. The evidence of record establishes that Glamour possesses the requisite financial and technical fitness to provide the proposed service.

4. The evidence of record does not establish that Glamour lacks the propensity to operate safely and legally.

5. A grant of authority to Glamour will not endanger or impair the Protestants' operations to such an extent that the public interest would be affected.

6. This application should be approved.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the application of Glamour Moving Company, Inc, at Docket No. A-00112271, F0002 is approved and the certificate issued to applicant granting the following right:

To transport household goods in use from points in the Counties of Franklin, Adams, York and Lancaster to points in Pennsylvania

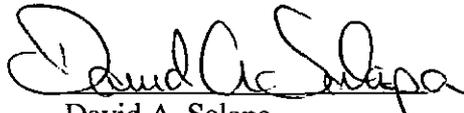
2. That Glamour Moving Company, Inc. shall not engage in any transportation authorized herein until it has complied with the requirements of the Pennsylvania Public Utility Code and the regulations of this Commission relating to the filing and acceptance of a tariff establishing just and reasonable rates and evidence of insurance.

3. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to Glamour Moving Company, Inc., shall not be construed as conferring more than one operating right.

4. That Glamour Moving Company, Inc. shall not engage in any transportation granted herein until it shall have paid all outstanding Public Utility Commission annual assessments and/or civil penalties.

5. That if Glamour Moving Company, Inc., has not, on or before 60 days from receipt of the Commission's Order, complied with the requirements set forth above, this application shall be dismissed without further proceedings.

Date: January 9, 2007


David A. Salapa
Administrative Law Judge

Act 294

Case Identification: A-00112271F0002; Application of Glamour Moving Company, Inc.

Initial Decision By: ALJ David A. Salapa

Deadline for Return to OSA: February 1, 2007

This decision has not been reviewed by OSA.

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Commissioner

Date

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Dendell J. Hillard

Commissioner

1/31/07

Date

Act 294

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Glamour Moving Company, Inc.

Initial Decision By: ALJ David A. Salapa

Deadline for Return to OSA: February 1, 2007

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Act 294

Case Identification: A-00112271F0002; Application of
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Initial Decision By: ALJ David A. Salapa

Deadline for Return to OSA: February 1, 2007

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Commissioner

2-1-07

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Act 294

Case Identification: A-00112271F0002; Application of
Glamour Moving Company, Inc.

Initial Decision By: ALJ David A. Salapa

Deadline for Return to OSA: February 1, 2007

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Lawrence J. Fitzgerald 1/23/07

Commissioner Date

DATE: February 7, 2007

SUBJECT: A-00112271 F0002

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary
nvl

DOCKETED
FEB 07 2007

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APPLICATION OF GLAMOUR MOVING COMPANY, INC.

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.