



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

ISSUED: February 12, 1998

REFER TO OUR FILE
 IN REPLY PLEASE
 A-00113673

JOSEPH N NOTARIANNI JR ESQUIRE
 MYERS BRIER & KELLP LLP
 108 NORTH WASHINGTON AVENUE
 SUITE 700
 SCRANTON PA 18503

DOCUMENT
 FOLDER

Application of Butchco, Inc. . .

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Richard M. Lovenwirth. 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.

law
 Encls.

Certified Mail
 Receipt Requested

cc: ALJ LOVENWIRTH/ OFFICE OF ALJ/ OSA/ PIO/ LAW/ T&S-WAGGONER/ T&S-LEGAL/ NEW FILING/ OUR FILE/
 CHAIRMAN/ COMMISSIONERS

FRATCO INC
 230 NORTHERN BOULEVARD
 CLARKS SUMMIT PA 18411

CHRISTOPHER B JONES ESQ
 406 JEFFERSON AVENUE
 SCARNTON PA 18510

KENNETH ZIELONIS ESQ
 208 NORTH THIRD STREET
 P O BOX 12090
 HARRISBURG PA 17108-2090

Very truly yours,

James J. McNulty
 Secretary

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Application of Butchco, Inc.
for approval of the transfer
and to exercise the right as a
common carrier, described at
Docket No.A-00109996 issued to
Fratco, Inc. for the transportation
of property

A-00113673

INITIAL DECISION

DOCUMENT
FOLDER

Before
Richard M. Lovenwirth
Administrative Law Judge

DOCKETED
FEB 18 1998

I. HISTORY OF THE PROCEEDINGS

On January 17, 1997 Butchco, Inc. (hereinafter Applicant) filed an application for a certificate of public convenience seeking Commission approval of the transfer of the operating rights of Fratco, Inc. to it. More specifically, and as advertised on February 8, 1997 in the Pennsylvania Bulletin (along with notice of the last date set by the Commission for the filing of protests: March 3, 1997) the application is an:

"Application of Butchco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, a corporation of the Commonwealth of Pennsylvania, for the right to begin to transport, as a common carrier, by motor vehicle, household goods in use, from points in the City of Scranton, Lackawanna County, and points within three (3) miles of the limits of said City to other points in Pennsylvania, and vice versa; which is to be a transfer of all of the rights issued to Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, under certificate issued at A-00109996, subject to the same limitations and conditions."

A protest was filed by Santoro Enterprises, Inc., a Pennsylvania corporation, t/d/b/a Thomas Gerrity, Jr. Moving and Storage Company (hereinafter Protestant) on March 1, 1997.

A prehearing Order was issued by Administrative Law Judge

Wayne L. Weismandel on May 28, 1997.

Hearings were held and presided over by the undersigned on July 25, 1997 and September 16, 1997. Applicant moved two exhibits into the record and Protestant moved one exhibit into the record. The transcript of testimony consists of 132 typewritten pages. Briefs were filed by the parties subsequent to the closure of the evidentiary record.

II. FINDINGS OF FACT¹

1. Applicant is Butchco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, a corporation of the Commonwealth of Pennsylvania, which by this application seeks the right:

"To transport, as a common carrier, by motor vehicle, household goods in use, from points in the City of Scranton, Lackawanna County, and points within three (3) miles of the limits of said City to other points in Pennsylvania, and vice versa; which is to be a transfer of all of the rights issued to Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, under certificate issued at A-00109996, subject to the same limitations and conditions."

2. Butchco, Inc. is General Manager for Fratco, Inc., the Transferor. (Tr. 12; Applicant's Exhibit 2).

3. As General Manager, Butchco, Inc. operates the moving and storage business for Fratco, Inc. t/a Thomas Gerrity Moving and Storage. (Tr. 13.)

4. Butchco, Inc. has a storage business and owns a storage warehouse. (Tr. 13.)

5. As General Manager of Fratco, Butchco runs the

¹ Because the findings of fact which follow coincide, in major respects, with the discussion which will succeed these findings, this presiding officer has, in large part, extracted them from the main brief of Applicant.

storage and moving business. (Tr. 14.)

6. Mr. Bobersky, as General Manager of Applicant, books moving jobs for Fratco, Inc., he oversees the operations of the trucks, he oversees and supervises the drivers, he oversees and supervises the office staff, and is responsible for financial matters for Butchco, Inc. (Tr. 14-15.)

8. Mr. Bobersky oversees the actions of a secretary and treasurer of Butchco, Inc. (Tr. 17.)

9. Butchco, Inc. has one office staff person. Id.

10. Butchco, Inc. employs three full time furniture movers and one part-time summer help. (Tr. 17.)

11. Butchco, Inc. has a foreman. (Tr. 17.)

12. The foreman drives the trucks and oversees all jobs when Mr. Bobersky is on the road. He also supervises other workers. (Tr. 17.)

13. The employees of Butchco, Inc. move furniture, work in a warehouse, unpack and pack trucks and drive the trucks. (Tr. 18.)

14. For five and a half years, Mr. Bobersky was formerly foreman for Fratco, Inc. (Tr. 18.)

15. As foreman he assisted in moving clients, he drove trucks, he composed and compiled bills, handled storage functions, he acted as collection agent, he handled damage claims, and reviewed truck inspection reports. (Tr. 19.)

16. As foreman he also supervised three employees. (Tr. 19.)

17. Prior to that position he worked for a predecessor of Fratco, Inc. That predecessor PUC entity was known as Frank and Shirley Fratzola t/a Thomas Gerrity Moving and Storage. (Tr. 20.)

18. Mr. Bobersky also worked as a mover for Frank Fratzola. This meant loading and unloading trucks as well as driving the vehicles. (Tr. 21.)

19. Mr. Bobersky also oversees the storage and warehouse operations of Butchco, Inc. (Tr. 22.) It has short term and long term storage contracts. (Tr. 22.)

20. Butchco, Inc. maintains insurance on the storage facilities. (Tr. 22.)

21. Mr. Bobersky previously managed a storage company for five years. (Tr. 22.)

22. Mr. Bobersky has the requisite experience to operate properly a moving and storage business. (Findings of Fact Nos. 1-21.)

23. Butchco, Inc. has employees whose moving experience ranges from 2 to 25 years. (Tr. 22.)

24. Three employees have two to ten years experience in the moving industry. (Tr. 23.) Another employee has approximately 25 years experience. Id.

25. If Butchco, Inc. is granted a certificate of public convenience and necessity, it will use these employees to render service to the public. Id.

26. Butchco, Inc. has the necessary experienced employees to render service. (Findings of Fact Nos. 23-25.)

27. Butchco, Inc. has a local office currently at 629 Wheeler Avenue, Scranton, Pennsylvania. Id.

28. Butchco's storage facilities are also located at 629 Wheeler Avenue, Scranton, Pennsylvania.

29. Butchco, Inc. has the following office equipment: computers, a copier, a printer, two phone lines and telephone equipment, a fax machine on order, and desk and chairs. (Tr. 24.)

30. Butchco, Inc. also possesses current PUC regulations. Id.

31. One truck owned by Butchco, Inc. contains a cellular phone. (Tr. 24.)

32. Butchco, Inc. has the necessary moving accessories such as moving pads; specialized equipment for heavy furniture, including pianos; dollies; and handtrucks. Id.

33. Butchco, Inc. owns a 24-foot double axle moving van. (Tr. 25.) It is a 1984 GMC product. Id. It has an eleven foot ceiling. Id.

34. Butchco, Inc. also owns a 1989 Ford diesel moving van. Id. It is 18 feet in length with a ten foot, eight inch ceiling. Id.

35. The two moving vans owned by Butchco, Inc. are standard moving vans for city use where there are a significant number of trees and narrow streets. (Tr. 25-26.)

36. If necessary, Butchco, Inc. will purchase new vehicles. (Tr. 26.)

37. Butchco, Inc. has the necessary equipment and

facilities to render service. (Findings of Fact Nos. 27-36.)

38. Butchco, Inc. has a standard application for hiring drivers. (Tr. 26.) Butchco, Inc. sends away for information on drivers from the Department of Transportation. (Tr. 26.) Butchco, Inc. will also ensure that drivers have the necessary physical examinations required by state and federal regulations. Id.

39. Butchco, Inc. also will create an employment application for non-driver employees. (Tr. 27.)

40. Butchco, Inc. will hire competent employees. (Findings of Fact Nos. 37-39.)

41. Butchco, Inc. intends to advertise in the local yellow pages. (Tr. 28.)

42. Butchco, Inc. intends to create a complaint/claims procedure, including alleged overcharge and damage claims. Id.

43. Mr. Bobersky has handled customer complaints for his former employers. (Tr. 29.)

44. One of Mr. Bobersky's prior responsibilities as a foreman was to provide job estimations and cost estimations. Id.

45. Mr. Bobersky has experience in calculating the cost of a move and has provided estimates in the past. Id.

46. Butchco, Inc. has the necessary experience to bill clients and to handle complaints. (Findings of Fact Nos. 42-45.)

47. Applicant's Exhibit No. 1 provides a balance sheet and income statement for Butchco, Inc.

48. As of June 30, 1997, Butchco, Inc. had a net worth of \$36,702.

49. The income statement shown in Applicant's Exhibit No. 1 shows revenue and expenses for the six months that Butchco, Inc. has acted as General Manager of Fratco, Inc. (Tr. 31.)

50. Butchco, Inc. has a written Management Agreement with Fratco, Inc. (Tr. 32.)

51. Under the Management Agreement, Butchco, Inc. acts as General Manager of Fratco, Inc.

52. The Management Agreement has a provision for compensating Butchco, Inc. as General Manager. (Tr. 33.)

53. Butchco, Inc. receives 99% of the total income of Fratco, Inc. as compensation (revenues received less expenses paid by Butchco, Inc.). Id.

54. Butchco, Inc. had an operating profit of \$7,655 for the six months ended June 30, 1997.

55. Butchco Inc. possesses the financial ability to render service. (Findings of Fact Nos. 47-54.)

56. Butchco, Inc. has two stockholders, Paul Bobersky and Leanne Bobersky. (Tr. 35.)

57. Distributions of profits by Butchco, Inc. are made to the two shareholders. Id.

58. A fictitious name registration has been filed for Butchco, Inc. Id.

59. Paul Bobersky curtailed his employment with Fratco, Inc. in November 1996. (Tr. 42.)

60. Fratco, Inc. currently operates the PUC certificated business known as Thomas Gerrity Moving and Storage. (Tr. 43.)

61. Butchco, Inc. is the General Manager of Fratco, Inc. (Tr. 43.)

62. Paul Bobersky has no ownership interest in Fratco, Inc. (Tr. 44.)

63. Butchco, Inc. started functioning as General Manager and operating the business of Fratco between November 1996 and January 1997. (Tr. 48.)

64. Fratco, Inc. has made 400 moves since Butchco, Inc. became the General Manager sometime in November 1996 - January 1997. (Tr. 49.)

65. Other than a DUI citation 10-15 years ago, which was resolved through an ARD program, Mr. Bobersky has not had any other problems with the legal authorities. (Tr. 56.)

66. Butchco, Inc. has, as of June 30, 1997, total assets of \$99,914. (App. Ex. No. 1.)

67. Butchco, Inc. has stockholders' equity of \$36,702. Id.

68. Butchco, Inc. had net operating income of \$7,655 for the six months ended June 30, 1997. Id.

69. Butchco, Inc., for the same time period, had retained earnings of \$3,390. Id.

70. Butchco, Inc. made an original fictitious name registration on December 17, 1996. (Tr. 84-85.)

71. This fictitious name registration had Leanne and Paul Bobersky as those persons utilizing the fictitious name. (Tr. 84-85.)

72. On or about June 4, 1997, Leanne and Paul Bobersky filed an amended fictitious name registration withdrawing themselves as parties operating the fictitious name and declaring Butchco, Inc. as the entity using the fictitious name. (App. Ex. No. 2. and Tr. 85.)

73. A written Management Agreement was executed by Fratco, Inc. and Butchco, Inc. on May 30, 1997. (Tr. 80.)

74. Frank Fratzola signed on behalf of Fratco, Inc. as its President. Paul Bobersky signed on behalf of Butchco, Inc. as its President. (Tr. 80.)

75. Butchco, Inc. had a verbal agreement to manage Fratco, Inc. starting in November 1996. (Tr. 81.)

76. Mr. Bobersky began to manage the business after reaching a verbal agreement in November 1996 but before the written agreement was executed in May 1997. (Tr. 82.)

77. Butchco, Inc. now carries \$500,000 of liability coverage. (Tr. 86.)

78. Butchco, Inc. carries \$35,000 of both uninsured and underinsured liability coverages. (Tr. 86.)

79. Butchco, Inc. has the necessary insurance coverage as required by PUC regulations. (Findings of Fact Nos. 77-78.)

80. Butchco, Inc. now insures the 1984 GMC truck and the 1989 Ford truck. Id.

81. Butchco, Inc. is in good standing with the Corporation Bureau. (Tr. 92.)

82. All taxes due the Commonwealth and federal taxing

authorities have been paid by Butchco, Inc. Id.

83. Butchco, Inc., through Mr. Bobersky, is still consulting and managing the operations currently owned by Fratco, Inc. (Tr. 96.)

84. Mr. Bobersky has been dealing with Frank Fratzola at Fratco, Inc. Id.

85. Mr. Bobersky spoke with Mr. Fratzola approximately two weeks before the first hearing regarding the operations of the business. Id.

86. Mr. Bobersky has business conversations with Mr. Fratzola sometimes twice a week, sometimes once a month. Id. Such conversations vary throughout the month. Id.

III. DISCUSSION

Before receiving authority to transport persons or property between points in Pennsylvania, an applicant must first obtain a Certificate of Public Convenience from the Pennsylvania Public Utility Commission. Section 1103 of the Public Utility Code (66 Pa. C.S.A. Section 1103) states:

"...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...."

Pursuant to this statutory authority, the Commission has put into effect its regulations applicable to burden of proof and evidentiary criteria affecting the issuance of Certificates of Public Convenience to motor carriers. That regulation appears at 52 Pa. Code Section 41.14. The Commission's interpretation of the

statute and regulation mentioned above appears in a Commission Order entered April 27, 1990 regarding Application of Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262 (1990) (hereinafter "Blue Bird"). In "Blue Bird", supra, the Commission delineated the three broad issues attendant upon every motor vehicle application proceeding: (1) whether the applicant is fit; (2) whether there is a public need for the applicant's proposed service; and (3) whether the new competition with existing common carriers which would be created by the grant of the application will be injurious to the public.

Concerning the first broad issue (fitness) the Commission stated ("Blue Bird", supra (72 Pa. P.U.C. 262 at 285)):

"Subsection 41.14(b) requires a motor carrier applicant to prove its technical and financial ability to provide the proposed service. In addition, subsection 41.14(b) states that a motor carrier application may be denied if the record shows that the applicant lacks a propensity to operate safely and legally. In Re Perry Hassman, 55 Pa. P.U.C. 661 (1982), the Commission elucidated the tripartite definition of fitness:

- "1. Technical expertise - applicant must have technical capacity to meet the need in a satisfactory fashion.... Applicant must possess sufficient staff, facilities, and operating skills, to make the proposed service feasible, profitable, and a distinct service to the public....
- "2. Financial capacity - applicant should possess the financial ability to give reliable and respectable service to the public.... Applicant should own or should have sufficient financial resources to obtain the equipment needed to perform the proposed service.

"3. Propensity to operate safely and legally - in this regard, lack of fitness is demonstrated by persistent disregard for, flouting, or defiance of the Public Utility Law and the commission's orders and regulations...; and by violations in matters affecting the safety of operations...."

"Where...a motor carrier applicant already possesses a certificate of public convenience issued by this Commission and is seeking merely to expand its certificated authority, the applicant is presumed to be technically and financially fit...The presumption of a certificated carrier's continuing fitness is rebuttable by appropriate evidence of record...."

With regard to the second issue (concerning public need), the Commission (in "Blue Bird", supra) said:

"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'.... (72 Pa. P.U.C. 262 at 274)

...

"...The existence of adequate service by extant carriers does not, by itself, preclude the granting of a certificate to an applicant...." (72 Pa. P.U.C. 262 at 286)

Finally, regarding the third broad issue concerning the burden placed upon a protestant to show that new competition will become detrimental to the public interest, the Commission further stated in "Blue Bird ", supra (72 Pa. P.U.C. 262 at 286):

"Subsection 41.14(c) emphasizes the advantages of healthy competition in the motor carrier industry and recognizes that '(t)he legislature in enacting

the Public Utility Code did not intend to benefit established carriers by erecting artificial barriers to the entry of new competitors. It is the public interest and convenience which the law seeks to protect.'...To prevent the Commission's approval of an application, existing common carriers/protestants must carry a heavy burden of proof under subsection 41.14(c); they must show that the entry of a new carrier into the transportation field would endanger or impair their existing operations to such an extent that, on balance, the granting of the requested authority would contravene the public interest....

"...Thus, the mere potential for diversion of traffic volume from existing carriers to an applicant is insufficient to sustain the protesting carriers' burden of proof under subsection 41.14(c)...In some instances, an increase in competition will tend to improve the service and efficiency of other carriers in the market....

"Only the threat of unrestrained and destructive competition which is inimical to the public interest precludes the grant of an application pursuant to subsection 41.14(c)....

"The amount of intrastate competition which will benefit the public interest is a matter legislatively entrusted to the Commission's sound judgment and discretion...."

In the instant case an additional issue has been brought into focus by Protestant: the granting of the application will not, allegedly, be in the public interest because the continuation of the trade name of Applicant (Thomas Gerrity Moving & Storage) is one which the public confuses with that of Protestant (Thomas Gerrity, Jr. Moving and Storage Company).

A. PROOF OF NEED RESPONSIVE TO A PROPER PUBLIC PURPOSE

Concerning cases where the Applicant for a certificate of public convenience is seeking to have transferred to it the existing rights of another, a body of law has evolved stating that

if the Transferor has not abandoned the rights in question, then the Applicant who proves its fitness is entitled to a certificate of public convenience unless the Protestant can rebut the presumption that there is a continuing public need for the service. See Byerly v. Pa. P.U.C., 440 Pa. 521, 270 A.2d 186 (1970); Morgan Drive-A-Way, Inc. v. Pa. P.U.C., 6 Pa. Cmwlth. Ct. 229, 293 A.2d 895 (1972); In re: Edward R. Simpson, 50 Pa. P.U.C. 655 (1977); and Application of Clarks Summit Taxi, Inc., Commission Order entered April 4, 1989 at docket number A-00085288, Folder 500 (which, by operation of law, adopted the Initial Decision of the Administrative Law Judge dated February 15, 1989).

Protestant, in its excellent Main/Reply Brief, argues that Fratco, Inc. (hereinafter Transferor) abandoned providing service when, in 1996, it turned over the reigns of management to Applicant, the latter retaining 99 percent of the profits as compensation for its managerial services. Thus, Protestant concludes, there was an abandonment of service by the Transferor, and the presumption of continuing public need is not in place.

Protestant's legal conclusion is correct: the presumption of continuing need is only operable when there has been no abandonment by the Transferor. This Commission has recognized that transportation privileges are not chattels which the holder thereof may sell at will or which a purchaser may acquire independent of Commission approval. See 66 Pa.C.S.A. 1102 and Snyder v. Pennsylvania Public Utility Commission, 144 A.2d 468 (1958). Thus, where a carrier discontinued its operations and transferred same

to a third party, the certificate became null and void. In Slater v. Pennsylvania Public Utility Commission, 98 A.2d 743 (1953), it was held that where a partnership was dissolved, the former partner wishing to continue its operations proceeded correctly in seeking a new certificate rather than transferring a partnership certificate.

What Protestant fails to distinguish, however, is that a corporation (such as Transferor) can only operate a business through its agents, being, as it is, an artificial person. Thus, continued operation of the transportation business of the Transferor by Applicant proves continued operation of the household goods moving business, and fails to prove abandonment.

In Yellow Cab Company v. Pennsylvania Public Utility Commission, Pa. Commwlth. Ct., 431 A.2d 1106 (1981) there was a lapse in service because of the ill health of the transferor's manager and the transferor went so far as to file an Application to discontinue operations. As is commonly the case, the transferor hoped that an offer to purchase the authority would result from publication of the transfer notice in the Pennsylvania Bulletin. Such, in fact, occurred, and the Discontinuance Application was withdrawn, several years after there had been no operations under the certificate. The Commonwealth Court found that the evidence of transferor's intentions was at best conflicting and, therefore, the Commission acted properly in approving the transfer (without proof of continuing need) over the claims of Protestants that the rights had been abandoned.

We have concluded, accordingly, that Applicant is clothed with the presumption of continuing need responsive to a proper public purpose.

B. FINANCIAL FITNESS

We quote with approval the assertion set forth on page 30 of Applicant's Main Brief:

"2. Financial Fitness

"Butchco, Inc. has the requisite financial capability to render service. As of June 30, 1997, it has a positive net worth of \$36,702. App. Ex. No. 1. It earned a net profit of \$7,655 for the six months it was functioning as General Manager of the Transferor, Fratco, Inc. Id. and Tr. 33. It maintains the requisite levels of insurance. Tr. 22; 86. It is a going concern fully capable of rendering service. Its vehicles are new so it should be unnecessary to purchase additional equipment to render service. Tr. 26. The Applicant has met its burden of proof that it is capable of providing service to the public."

C. TECHNICAL FITNESS

Finding that this ALJ is unable to improve upon the analysis set forth in Applicant's Main Brief (pages 26 - 30), we again quote therefrom:

"a. Applicant's Officers' Experience

"Mr. Bobersky is President of Butchco, Inc., the Applicant. Tr. 12. The Company has two stockholders. Tr. 35. He has responsibility for the financial affairs of Butchco. Tr. 15. He supervises an office staff. Tr. 16. He oversees the actions of a secretary and a treasurer of the company. Tr. 17. His job duties include booking moving jobs, overseeing the operation of the vehicle fleet, overseeing the operation and control of the drivers and overseeing the operation and control of the office. Tr. 14.

"Mr. Bobersky has significant experience in the moving and storage business. He was the foreman of the Transferor, Fratco, Inc. Tr. 18. He held this position for 5 1/2 years. Id. As foreman, he assisted in moving clients; he drove moving vans; he calculated and compiled bills; he handled storage business; he handled damage claims; and he reviewed truck inspection reports. Tr. 19. As foreman, he supervised three employees of the company. Id.

"Prior to this position, he worked for the predecessor company of Fratco, Inc., Frank and Shirley Fratzola, t/a Thomas Gerrity Moving & Storage. Tr. 20. He worked as a mover for this company. Tr. 21. This meant loading and unloading trucks, and driving the moving van. Id. He also managed the storage business of this entity for five years. Tr. 22.

"In his prior positions, Mr. Bobersky handled customer complaints. Tr. 29. He also provided job estimations and price quotations. Id. He has experience calculating such price quotes based upon the number of pieces to be moved and the location of such items on the floor of the house.

"Butchco now functions as the General Manager of the Transferor. Tr. 18 and 32-33. Butchco had a verbal agreement to manage the affairs of Fratco, Inc. starting in November, 1996. Tr. 82. Subsequently, the two entities executed a written Management Agreement on May 30, 1997 memorializing the verbal agreement. Tr. 80. This Management Agreement provides for the duties of Butchco as General Manager. Tr. 81. As compensation, Butchco receives 99% of the net profits generated by the business. Tr. 33. Under the agreement, Butchco is responsible for paying all the bills necessary to operate the business. Tr. 50.

"Mr. Bobersky has business dealings with Fratco's President on a regular basis. Tr. 95. His last discussion regarding the business operations of Fratco were two weeks before the last hearing held on September 16, 1997. Tr. 96. His business dealings with Mr. Fratzola sometimes occur twice a week and sometimes once a month. Tr. 96. He calls Mr. Fratzola on an as needed basis which may vary in any given month. Id.

"b.The personnel, facilities and equipment to be used to render service.

"The Applicant has six employees including Mr. Bobersky. Tr. 43. It currently employs three full time moving workers. Tr. 23. It also employs one summertime helper. Id. The three full time employees have 2-25 years of experience in the moving industry. Id. If Butchco is granted a certificate, it will utilize these employees in its PUC operations. Id. It also has two office workers, including Mr. Bobersky.

"The Applicant currently owns and maintains an office at 629 Wheeler Avenue, Scranton, PA. Id. The Applicant also has a storage warehouse at this locations. Id. Butchco has the following equipment at its office available for PUC work: a computer, a copier, a printer, two telephone lines and several desks and chairs. Tr. 23-24. It has a facsimile machine on order. Tr. 24. It also now retains a PUC regulation book. Id.

"Butchco owns two vehicles. One vehicle is a 24 foot double axle GMC moving van. Tr. 25. This vehicle has an 11 foot ceiling. Butchco also owns a 1989 Ford diesel moving van. Id. This vehicle has a 10 foot 8 inch ceiling. Id. These are standard moving vans for city moving jobs where the streets are narrow and the trees are many. Tr. 25-26. One truck has a cellular phone. Tr. 24. The Applicant would buy additional equipment if necessary. Tr. 26.

"Butchco also possesses the necessary moving accessories. They include moving pads, specialized equipment for moving bulky items such as pianos, dollies and hand trucks. Tr. 24.

"The Applicant will create a standard job application for use in hiring drivers. Tr. 26. The Applicant now sends away for driver record information to the Pennsylvania Department of Transportation and will continue this process in the future. Id. All drivers will have the necessary physicals required by state or federal regulations. Id. The Applicant also will create a standard employment application for non-driver employees. Tr. 27.

"Mr. Bobersky intends to advertise in the local telephone book Yellow Pages. Tr. 28. He also will create a complaint/claims procedure. Id. This will include alleged overcharge claims and damage claims. Id.

"The Applicant currently has insurance on its facilities, including its storage facility. Tr. 22. It also has \$500,000 of liability insurance on its two motor vehicles. Tr. 86. It also has \$35,000 of both underinsured and uninsured liability coverage on its two motor vehicles. Id.

"Butchco is in good standing with the Pennsylvania Department of State Corporation Bureau. Tr. 92. It has a fictitious name registration on file with the Corporation Bureau. Tr. 82-85. An original fictitious name registration was filed for Paul and Leanne Bobersky trading as Thomas Gerrity Moving & Storage on December 14, 1996. Tr. 82. This was subsequently amended by a filing with the Corporation Bureau on June 4, 1997. Tr. 84-85. This latter filing added Butchco to the fictitious name filing and deleted Paul and Leanne Bobersky. Tr. 85; App. Ex. No. 2. All taxes due and payable to the state and federal taxing authorities have been paid. Tr. 92.

"It is clear that Butchco, Inc. is technically fit to render moving service to the public. Its President has significant experience in the business. It possesses the necessary employees, facilities and equipment with which to render service. It has functioned as the General Manager of a moving and storage business."

D. PROPENSITY TO OPERATE LAWFULLY

Protestant skillfully argues (Protestant's Brief, page 14) that Applicant has been providing common carrier service without a proper certificate, and, therefore, it lacks a propensity to operate lawfully. As we have previously opined, however, Applicant has not been acting as a common carrier: it has, rather, been acting as the general manager for Transferor's common carrier business during the pendency of this application proceeding. Consequently, we conclude that there is no evidence upon this record from which one could infer that Applicant lacks a propensity to operate lawfully.

E. WILL THE GRANTING OF THE APPLICATION DETRIMENTALLY AFFECT THE PUBLIC INTEREST?

Protestant does not argue that it has presented evidence of a detrimental affect which would inure to the public by the granting of the application. We agree.

F. SIMILARITY OF THE TRADE NAMES OF APPLICANT AND PROTESTANT

Protestant has proven to our satisfaction that the evidence preponderates a finding that the similarity of the trade names used by both parties has caused confusion amongst shippers who desire to transact business with the "Gerrity" company.

The denial of this application, however, will not undo the confusion: the Transferor will still trade under the fictitious name of "Thomas Gerrity Moving and Storage" in competition with the Protestant, which will still trade under the fictitious name of

"Thomas Gerrity, Jr. Moving and Storage Company".

The record, moreover, reveals that Applicant's predecessor traded under its said fictitious name prior to the use of the similar name by Protestant's predecessor. Perhaps, therefore, if this Commission elected to undo the confusion, it should do so by eliminating the trade name of Protestant. We have been persuaded by the argument advanced by Applicant concerning this issue (Main Brief 30 -32):

C. An Explanation Of The Origin Of The Trade Name "Thomas Gerrity Moving and Storage"

"Your Honor has requested Applicant to explain the date upon which the trade name "Thomas Gerrity Moving and Storage" was first used in public utility service. The first instance of the name Thomas Gerrity appearing in Commission records is 1978. On March 29, 1978, the Commission issued an Order granting a Certificate of Public Convenience to Thomas Gerrity. Application of Thomas Gerrity, Docket No. A-00100754 (Order entered March 29, 1978). Attached as Appendix A hereto.² This authority was subsequently transferred to the predecessor of Fratco, Inc., Frank J. Fratzola and Shirley Fratzola, copartners, t/a Thomas Gerrity Moving and Storage. Application of Frank J. Fratzola and Shirley Fratzola, copartners, t/a Thomas Gerrity Moving and Storage, Docket No. A-00104423 (Order entered March 1, 1983). Attached as Appendix B hereto. These individuals subsequently incorporated and transferred the certificate right to Fratco, Inc. Application of Fratco, Inc., t/d/b/a Thomas Gerrity Moving and Storage, Docket No. A-00109996 (Order entered February 6, 1992). Attached as Appendix C hereto.

"Thus, even assuming the Commission has authority to review the issue of alleged "customer confusion" in the Scranton area, the "confusion" has existed since at least 1986...."³

² All appendices to the Protestant's Main Brief which contain copies of Commission Orders are also annexed to this Initial Decision, and official notice is taken of said Commission Orders.

³ We reject the argument of Protestant that this Commission lacks jurisdiction to approve the application upon condition that Applicant must change its trade name (or upon any other condition). See 66 Pa. C.S.A. section 1103 (a), which allows the Commission to impose conditions for the granting of an application.

G. Conditional Approval

Approval of this application is conditioned upon Applicant and/or Transferor satisfying all obligations due and outstanding for payment of assessments and/or fines to this Commission by either of them.

IV. Conclusions of Law

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

2. There are three broad issues attendant upon every motor vehicle application proceeding: (1) whether the applicant is fit; (2) whether there is a public need for the applicant's proposed service; and (3) whether the new competition with existing common carriers which would be created by the grant of the application will be injurious to the public.

3. Concerning cases where the Applicant for a certificate of public convenience is seeking to have transferred to it the existing rights of another, a body of law has evolved stating that if the Transferor has not abandoned the rights in question, then the Applicant who proves its fitness is entitled to a certificate of public convenience unless the Protestant can rebut the presumption that there is a continuing public need for the service. See Byerly v. Pa. P.U.C., 440 Pa. 521, 270 A.2d 186 (1970); Morgan Drive-A-Way, Inc. v. Pa. P.U.C., 6 Pa. Cmwlth. Ct. 229, 293 A.2d 895 (1972); and in re: Edward R. Simpson, 50 Pa. P.U.C. 655 (1977).

V. Order

THEREFORE, IT IS ORDERED:

1. That the Application of Butchco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, a corporation of the Commonwealth of Pennsylvania, filed on January 17, 1996 and assigned docket number A-00113673, for the transfer of all of the rights issued to Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, under certificate issued at A-00109996, be and is hereby approved and that a certificate be issued to Applicant granting the following rights:

To transport, as a Class D carrier, by motor vehicle, household goods in use, from points in the City of Scranton, Lackawanna County, and points within three (3) miles of the limits of said City to other points in Pennsylvania, and vice versa.

Subject to the following general conditions:

A. That the approval hereby given is not to be understood as committing this Commission, in any proceedings that may be brought before it for any purpose, to fix an evaluation on the rights to be acquired by Applicant from the present certificate holder equal to the consideration to be paid therefore, or equal to any value that may be placed thereon by Applicant, or to approve or prescribe rates sufficient to yield a return thereon.

B. That Applicant shall not record in its utility accounts any amount representing the rights herein granted, in excess of the actual cost of such rights to the original holder thereof.

C. That the Applicant charge to Account 1550, "Other Intangible Property", five hundred dollars, being the amount of the consideration paid or payable by it for the rights and going

concern value attributable thereto; thus, any amount recorded under condition B above.

2. That the Applicant shall not engage in any transportation granted herein until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing of proof of insurance and acceptance of a tariff establishing just and reasonable rates.

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


4. That the Applicant shall not transfer, sell or in any way convey any of its outstanding capital stock to any individual, partnership, corporation or any entity, without the prior filing of an application and approval thereof by this Commission under section 1102 (3) of the Public Utility Code, 66 Pa. C.S.A. section 1102(3).

5. That in the event said Applicant has not, on or before sixty (60) days from the date of service of this order, complied with the requirements set forth above, the application shall be dismissed without further proceedings.

6. That upon compliance with this Order the rights granted to the transferor, Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, under certificate issued at A-00109996, be cancelled and the record be marked closed.

7. That the applicant shall not engage in any transportation granted herein until it and/or the Transferor shall have paid all outstanding Public Utility Commission assessments and/or fines due by either of them.

Dated: February 3, 1998


RICHARD M. LOVENWIRTH
Administrative Law Judge

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Public Meeting held March 15, 1978 in
Harrisburg, PA 17120

Commissioners Present:

Louis J. Carter, Chairman
Robert K. Bloom
Helen B. O'Bannon
Michael Johnson
W. Wilson Goode, Not Voting

Application Docket Nos. C0100754 and 93684 - Application of Thomas Gerrity at A-00100754 for approval of the transfer to applicant of all the rights held by Lottie E. Greggs at A. 93684.

ORDER

BY THE COMMISSION:

By application docketed December 22, 1977, Thomas Gerrity seeks approval of the transfer to applicant of all the rights granted to Lottie E. Greggs under the certificate issued at A. 93684.

Application was published on January 7, 1978 in the Pennsylvania Bulletin. No protests were filed and no hearing held.

Applicant proposes to purchase all of the transferor's motor carrier trucking rights at A. 93684, no vehicles or other assets being included, for a total consideration of \$2,500.

This consideration will be paid as follows: \$1,000 has been paid down and the balance of \$1,500 to be paid within 30 days of Commission's approval of the instant application.

Applicant shows assets of \$62,500, subject to liabilities of \$5,000, or net assets of \$57,500.

Transferor's gross intrastate carrier revenues as per annual reports were:

1974 - \$29,637, 1975 - \$553 and 1976 - \$907

All due assessments have been paid.

FINDINGS

Applicant appears to be financially fit to operate as a common carrier. Transferor is presently operating, has insurance in effect and tariff on file. It appears the

certificate is in good standing and therefore subject to being transferred.

We find the applicant to be fit to hold a certificate of public convenience and that approval of the application is necessary and proper for the continuation of service to the public; THEREFORE,

IT IS ORDERED: That the application filed by Thomas Gerrity at A-00100754 be approved and that a certificate be issued to the applicant granting the following rights:

1. To transport, as a Class B carrier, household goods in use, between points in the city of Scranton, Lackawanna County, and within three (3) miles of the limits of said city.
2. To transport, as a Class D carrier, household goods in use from points in the city of Scranton, Lackawanna County, and within three (3) miles of the limits of said city to other points in Pennsylvania, and vice versa;

subject to the following conditions:

1. That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on the rights to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by applicant, or to approve or prescribe rates sufficient to yield a return thereon.
2. That applicant shall not record in his utility accounts any amount representing the rights herein granted, in excess of the actual cost of such rights to the original holder thereof.
3. That the \$2,500 consideration paid by applicant for the rights and going concern value of the business be capitalized by applicant in Account 1550 - Other Intangible Property or in the alternative be charged off against applicant's ownership equity less any amount recorded under condition 2 above; provided the latter is sufficient in amount to absorb said charge off.

4. That the operating authority granted herein to the extent that it is duplicatory shall not be construed as conferring more than one operating right.
5. That the certificate holder shall comply with all of the provisions of the Public Utility Law as now existing or as may hereafter be amended, and Pa. Code Title 52, Chapter 31, as now existing or as may hereafter be amended, and any other rules and regulations as may hereafter be prescribed by the Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate.

IT IS FURTHER ORDERED: That upon compliance with the requirements of the Public Utility Law relating to insurance and the filing and acceptance of a tariff establishing just and reasonable rates, a certificate of public convenience issue evidencing the Commission's approval of the right to operate as above determined.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before thirty days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with this order the rights granted the transferor Lottie E. Greggs, at A. 93684 be canceled and the record be marked closed.

BY THE COMMISSION,



C. J. McElwee
Secretary

(SEAL)

ORDER ADOPTED: March 15, 1978

ORDER ENTERED:

MAR 29 1978

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

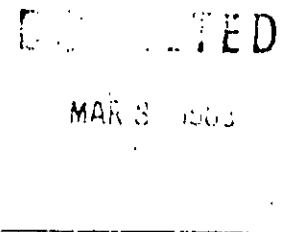
Public Meeting held February 18, 1983

Commissioners Present:

Susan M. Shanaman, Chairman
Michael Johnson
James H. Cawley
Linda C. Taliaferro
Clifford L. Jones

Application of Frank J. Fratzola and Shirley Fratzola, copartners, t/a Thomas Gerrity Moving & Storage for approval of the transfer to it of all of the operating rights held by Thomas Gerrity at A-00100754.

A-00104423



O R D E R

BY THE COMMISSION:

By application docketed November 24, 1982, Frank J. Fratzola and Shirley Fratzola, copartners, t/a Thomas Gerrity Moving & Storage, seeks approval of the transfer to it of all the rights granted to Thomas Gerrity, under the certificate issued at A-00100754.

We find the applicant to be fit to hold a certificate of public convenience and that approval of the application is necessary and proper for the continuation of service to the public; THEREFORE,

IT IS ORDERED: That the application for the transfer of rights held by Thomas Gerrity at A-00100754 be approved and that a certificate be issued to the applicant granting the following rights:

1. To transport, as a Class B carrier, household goods in use, between points in the city of Scranton, Lackawanna County, and within three (3) miles of the limits of said city.
2. To transport, as a Class D carrier, household goods in use from points in the city of Scranton, Lackawanna County, and within three (3) miles of the limits of said city to other points in Pennsylvania, and vice versa;

subject to the following conditions:

1. That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before

it for any purpose, to fix a valuation on the property and rights to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by applicant, or to approve or prescribe rates sufficient to yield a return thereon.

2. That the accounts of the transferee shall reflect the same book values as the records of the transferor at the effective date of the transfer, any previously recorded appreciation having been deleted therefrom; provided that the applicant shall not record in its utility accounts any amounts representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.
3. That the operating authority granted herein, or subsequently granted to the applicant to the extent that it is duplicative shall not be construed as conferring more than one operating right.
4. That the certificate holder shall comply with all of the provisions of the Public Utility Law as now existing or as may hereafter be amended, and Pa. Code Title 52, Chapter 31, as now existing or as may hereafter be amended, and any other rules and regulations as may hereafter be prescribed by the Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate.

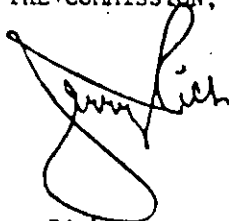
IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it has complied with the requirements of the Pennsylvania Public Utility Law and the rules and regulations of this Commission relative to the filing and acceptance of evidence of insurance and a tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That issuance of the certificate be withheld pending submission of proof of compliance with the provisions of the Fictitious Names Act.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with this order, the rights granted the transferor Thomas Gerrity at A-00100754 be cancelled and the record be marked closed.

BY THE COMMISSION,

A handwritten signature in cursive script, appearing to read "Jerry Rich". The signature is written in dark ink and is positioned above the typed name.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: February 18, 1983

ORDER ENTERED: March 1, 1983

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE APPLICATION OF

FRANK J. PRATZOLA and SHIRLEY PRATZOLA,
copartners, trading as THOMAS GERRITY
MOVING & STORAGE

CERTIFICATE
OF
PUBLIC CONVENIENCE

A. 00104423
Folder 1

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing had on the above entitled application, it has, by its report and order made and entered, a copy of which is attached hereto and made a part hereof, found and determined that the granting of said application is necessary or proper for the service, accommodation, convenience and safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

In Testimony Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 27th day of APRIL 1983.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Attest:

RECORDED


Secretary

A-00104423

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 30, 1992

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner

UN-
OLDER

Application of Fratco, Inc., t/d/b/a
Thomas Gerrity Moving & Storage, for the
transfer of all of the operating rights
of Frank J. Fratzola and Shirley Fratzola,
copartners, t/d/b/a Thomas Gerrity Moving &
Storage, under the certificate issued at
A-00104423, subject to the same limitations
and conditions.

A-00109996

SC H

Shirley Fratzola, Pro se. for the applicant.

DOCKETED
FEB 07 1992

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed
November 1, 1991. Public notice of the application was given in the Penn-
sylvania Bulletin of December 21, 1991. The unopposed application is
certified to the Commission for its decision without oral hearing.

Fratco, Inc. is domiciled at 230 Northern Blvd., Clarks Summit,
Lackawanna County. Frank Fratzola is president, Shirley Fratzola is
treasurer and majority stockholder. Applicant owns one 1984 Chevrolet with
an 18 foot body and one 1988 Ford with a 12 foot body and miscellaneous
moving equipment. An unaudited balance sheet submitted by the applicant
shows total assets of \$777,413 with total liabilities of \$474,984 leaving
stockholder's equity of \$302,429.

The total consideration for the rights is \$1.00. No tangible
assets are involved. The sales agreement requires the consideration to be
paid as follows: upon consummation of the sales agreement, October 9, 1990.

A review of the record before us indicates that the applicant
possesses the requisite experience, equipment and financial capacity to
provide the proposed service.

The authority to be transferred has been operated by the transferor, therefore, it is presumed that there is a continuing public need, which may be overcome only by evidence to the contrary. In re: Bverly, 440 Pa. 521 (1970); Hostetter v. Pa. P.U.C., 160 Super. Ct. 94 (1947). Since the record is void of any such evidence, this presumption of continuing public need applies in this transfer proceeding.

We find:

1. The applicant is fit, willing and able to provide the service proposed.

2. Transfer of the authority is in the public interest and is necessary for the continued accommodation and convenience of the public;
THEREFORE,

IT IS ORDERED: That the transfer application be and is hereby approved and that a certificate be issued granting the following right:

To transport, as a Class D carrier, household goods in use, between points in the city of Scranton, Lackawanna County, and within three (3) miles of the limits of said city; and household goods in use, from points in the city of Scranton, Lackawanna County, and within three (3) miles of the limits of said city to other points in Pennsylvania, and vice versa;

subject to the following general conditions:

1. That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on the property and rights to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by applicant, or to approve or prescribe rates sufficient to yield a return thereon.
2. That applicant shall not record in its utility accounts any amount representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.
3. That the applicant charge to Account 1550, Other Intangible Property, \$1.00, being the amount of the consideration payable by it for the rights and going concern value attributable thereto; less any amount recorded under condition 2 above; and subject to further adjustment due to any normal

interim transactions to the date of actual transfer.

4. That the accounts of the transferee shall reflect the same book values as the records of the transferor at the effective date of the transfer, any previously recorded appreciation having been deleted therefrom; provided that the applicant shall not record in its utility accounts any amounts representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.
5. That the operating authority granted herein, or now held or subsequently granted to the applicant to the extent that it is duplicative shall not be construed as conferring more than one operating right.

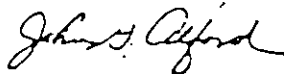
IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it has complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing and acceptance of evidence of insurance and a tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That upon compliance with the requirements above set forth, a certificate issue evidencing the Commission's approval of the right to operate as above-determined.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with this order, the rights granted the transferor Frank J. Fratzola and Shirley Fratzola, copartners, t/d/b/a Thomas Gerrity Moving & Storage, at A-00104423 be cancelled and the record be marked closed.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: January 30, 1992

ORDER ENTERED: FEB 06 1992

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held January 30, 1992

Application Docket No. A-00104423, Frank J. Fratzola and Shirley Fratzola,
copartners, t/d/b/a Thomas Gerrity Moving & Storage

SUPPLEMENTAL ORDER CANCELLING
CERTIFICATE OF PUBLIC CONVENIENCE


BY THE COMMISSION:

It appearing that all the rights granted to Frank J. Fratzola and Shirley Fratzola, copartners, t/d/b/a Thomas Gerrity Moving & Storage, under the certificate of public convenience issued at A-00104423 have been transferred to Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage at A-00109996, and are now contained under the certificate of public convenience issued to it, and that Frank J. Fratzola and Shirley Fratzola, copartners, t/d/b/a Thomas Gerrity Moving & Storage has no other operating authority; and the matters and things involved having been duly considered by the Commission; THEREFORE,

IT IS ORDERED: That upon compliance with the conditions and requirements as set forth in the order at A-00109996, all the operating rights and the certificate of public convenience at A-00104423, be and are hereby cancelled, and all rights, powers and privileges granted thereby shall forthwith cease and terminate.

IT IS FURTHER ORDERED: That a copy of this supplemental order at A-00104423 be forwarded to Mr. George R. Otto, Regional Audit Supervisor, Department of Revenue, 10th Floor, Strawberry Square, Harrisburg, Pennsylvania.

BY THE COMMISSION,


John G. Kiford
Secretary

APR 15 1994

(SEAL)

ORDER ADOPTED: January 30, 1992

ORDER ENTERED: March 28, 1994

DOCUMENT
FOLDER

Act 294

RECEIVED

98 MAR 13 AM 9:23

Case Identification:

A-00113673; Application of
Butcher, Inc.'S OFFICE

Initial Decision By:

ALJ Richard M. Lovenwirth

Deadline for Return to OSA:

February 25, 1998

This decision has not been reviewed by OSA.

RECEIVED

FEB 26 1998

* * * * *

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

X *Richard M. Lovenwirth*
Commissioner

2-26-98
Date

DOCKETED

MAR 13 1998

DOCUMENT
FOLDER

Act 294

Case Identification: A-00113673; Application of Butchco, Inc...

Initial Decision By: ALJ Richard M. Lovenwirth

Deadline for Return to OSA: February 25, 1998

This decision has not been reviewed by OSA.

RECEIVED

FEB 26 1998

* * * * *

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Robert K. Bloom GKJ
Commissioner

2/19/97
Date

Act 294

Case Identification: A-00113673; Application of Butchco, Inc...

Initial Decision By: ALJ Richard M. Lovenwirth

Deadline for Return to OSA: February 25, 1998

This decision has not been reviewed by OSA.

RECEIVED

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MAR 11 1998

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

John Hanger

Commissioner

FEB 25 1998

Date

Act 294

Case Identification: A-00113673; Application of Butchco, Inc...

Initial Decision By: ALJ Richard M. Lovenwirth

Deadline for Return to OSA: February 25, 1998

This decision has not been reviewed by OSA.

RECEIVED

FEB 27 1998

* * * * *

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

David W. Kolka /js
Commissioner

2-26-98
Date

Act 294

Case Identification: A-00113673; Application of Butchco, Inc...

Initial Decision By: ALJ Richard M. Lovenwirth

Deadline for Return to OSA: February 25, 1998

This decision has not been reviewed by OSA.

RECEIVED

MAR 04 1998

* * * * *

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Nora Moad Brownell
Commissioner

2-25-98
Date

DATE: March 23, 1998

SUBJECT: A-00113673

TO: Office of Administrative Law Judge
Annette Shelley

FROM: James J. McNulty
Secretary
JVM

APPLICATION OF BUTCHCO, 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.

DOCKETED

MAR 24 1998

DOCUMENT
FOLDER