



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PHILADELPHIA STATE OFFICE BUILDING
1400 SPRING GARDEN STREET
PHILADELPHIA, PENNSYLVANIA 19130

(215) 560-2105

IN REPLY PLEASE
REFER TO OUR FILE

May 28, 1997

SEE ATTACHED SERVICE LIST

Re: Application of Butchco, Inc., t/d/b/a
Thomas Gerrity Moving & Storage
Docket Number A-00113673

Dear Participants and Counsel:

I am the Administrative Law Judge assigned to preside in the above-referenced case.

Enclosed please find a copy of a Prehearing Order issued in this case.

One matter that I want to raise at this time deals with the registration of the Fictitious Name "Thomas Gerrity Moving & Storage." Through LEXIS research, I have determined that the Fictitious Name is currently registered to Paul and Leanne Bobersky, as individuals, rather than as a corporate fictitious name for Butchco, Inc. As the applicant here is the corporate entity, I assume this will be corrected prior to the scheduled hearing.

Very truly yours,

Wayne L. Weismandel
Administrative Law Judge

Enclosure

cc: Acting Chief ALJ Robert A. Christianson (with enclosure)



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PHILADELPHIA STATE OFFICE BUILDING
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REFER TO OUR FILE

May 28, 1997

RECEIVED

JUN - 2 1997

SEE ATTACHED SERVICE LIST

Re: Application of Butchco, Inc., t/d/b/a
Thomas Gerrity Moving & Storage
Docket Number A-00113673

OFFICE OF C.A.L.J.
PUBLIC UTILITY COMMISSION

Dear Participants and Counsel:

I am the Administrative Law Judge assigned to preside in the above-referenced case.

Enclosed please find a copy of a Prehearing Order issued in this case.

One matter that I want to raise at this time deals with the registration of the Fictitious Name "Thomas Gerrity Moving & Storage." Through LEXIS research, I have determined that the Fictitious Name is currently registered to Paul and Leanne Bobersky, as individuals, rather than as a corporate fictitious name for Butchco, Inc. As the applicant here is the corporate entity, I assume this will be corrected prior to the scheduled hearing.

Very truly yours,

Wayne L. Weismandel
Administrative Law Judge

Enclosure

cc: Acting Chief ALJ Robert A. Christianson (with enclosure)

RECEIVED
97 JUN - 3 AM 9:24
FALJUC
PROTHONOTARY'S OFFICE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Butchco, Inc., t/d/b/a : Docket No.
Thomas Gerrity Moving & Storage : A-00113673

PREHEARING ORDER

The above captioned matter is scheduled for a hearing on Friday, July 25, 1997, at 10:00 a.m. in Room 318, Scranton State Office Building, Scranton, Pennsylvania. The parties are directed to comply with the following:

1. Pursuant to 52 Pa. Code §§1.21 and 1.22, you may represent yourself, if you are an individual, or you may have an attorney represent you. However, if you are a partnership, corporation, trust, association or governmental agency or subdivision, you must have an attorney represent you in this proceeding. Unless you are an attorney, you may not represent someone else.

2. If you wish to offer into evidence at the hearing material in the form of documents (letters, bills, cancelled checks and the like), you should bring with you the required number of copies (an original and two copies for the Commission, one copy for every other party in the case, and a copy for yourself). 52 Pa. Code §5.409. Documents should be properly pre-marked for identification.

3. Be aware that there often is a delay in my receiving documents filed in Harrisburg. Therefore, serve me directly with any documents that you file in this proceeding.

4. In order to facilitate the conduct of the hearing, on or before Friday, July 18, 1997, counsel for applicant and for protestant(s) are directed to confer in person or by telephone and to exchange in writing the names, addresses, and telephone numbers of all witnesses they intend to have

testify. In the course of conferring, counsel also shall informally request copies of any documents deemed relevant so that any such document(s) may be reviewed prior to, rather than during, the hearing.

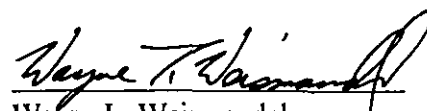
5. If you need to subpoena witnesses for the hearing, you should review 52 Pa. Code §5.421. You should submit your written application for subpoenas sufficiently in advance of the hearing so that the other parties will have the requisite ten days' notice to answer or object to your application, and so that you will have enough time to receive the subpoenas and serve them.

6. Protestants should be prepared to begin presentation of their direct case immediately upon the conclusion of the presentation of the applicant's direct case.

7. A request for a change of the scheduled hearing date must be submitted in writing no later than five (5) days prior to hearing. Requests for changes of initial hearings must be sent to the Chief Administrative Law Judge, P.O. Box 3265, Harrisburg, PA 17105-3265. Only the Chief Administrative Law Judge may grant a request for a change of an initial hearing. Such changes are granted only in rare situations where good cause exists. Requests for changes of subsequent hearings, if any, should be served directly on me.

8. It is the Commission's policy to encourage settlement. 52 Pa. Code §5.231(a). You are urged to discuss among yourselves the possible settlement of this case at least one week before the hearing. If you are unable to settle this case, you may still resolve as many questions or issues as possible during your informal discussion.

Dated: May 28, 1997


Wayne L. Weismandel
Administrative Law Judge

**Application of Butchco, Inc., t/d/b/a Thomas Gerrity Moving & Storage
Docket Number A-00113673**

For the right to begin to transport, as a common carrier, by motor vehicle, 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; which is to be a transfer of all of the rights issued to Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, under the certificate issued at A-00109996, subject to the same limitations and conditions.

SERVICE LIST

Butchco, Inc.
t/a Thomas Gerrity Moving & Storage
1252 Philo Street
Scranton, PA 18508

Joseph J. Notarianni, Jr., Esquire
Myers Brier & Kelly LLP
108 North Washington Avenue, Suite 700
Scranton, PA 18503
(717) 342-6100
Fax Number: (717) 342-6147

Fratco, Inc.
230 Northern Boulevard
Clarks Summit, PA 18411

Christopher B. Jones, Esquire
406 Jefferson Avenue
Scranton, PA 18510
(717) 342-9295
Fax Number: (717) 342-6011

ORIGINAL

LAW OFFICES OF

STEVENS & LEE

A PROFESSIONAL CORPORATION

PLEASE RESPOND TO HARRISBURG

000246

June 6, 1997

97 JUN -9 PM 10:01

RECEIVED
PROTHONOTARY'S OFFICE

James J. McNulty
Acting Prothonotary
PA Public Utility Commission
P.O. Box 3265
North Office Building
Harrisburg, PA 17105-3265

Re: Application of Butchco, Inc., t/d/b/a Thomas Gerrity
Moving and Storage, Docket No. A-00113673

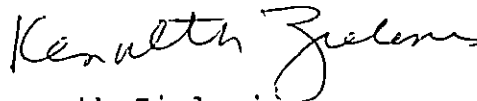
Dear Acting Prothonotary McNulty:

Please find enclosed an original and three copies of the Notice of Appearance of the undersigned counsel for filing on behalf of the Applicant, Butchco, Inc., t/d/b/a Thomas Gerrity Moving and Storage in the above captioned proceeding. As indicated by the attached Certificate of Service, all parties of record have been served a copy hereof.

Should you have any questions or comments, please feel free to contact my office.

Sincerely,

STEVENS & LEE



Kenneth Zielonis

/dle
Attachment

DOCUMENT
FOLDER

BTL

63

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Butchco, Inc.
t/d/b/a Thomas Gerrity Moving
and Storage

:
: Docket No. A-00113673
:

NOTICE OF APPEARANCE

Please enter my appearance in the above designated matter on behalf of the Applicant, Butchco, Inc., t/d/b/a Thomas Gerrity Moving and Storage. I am authorized to accept service on behalf of said participant in this matter. On the basis of this notice, I request a copy of each document hereafter issued by the Commission in this matter.

Respectfully submitted,

Kenneth Zielonis
Kenneth Zielonis, Esquire
STEVENS & LEE
208 North Third Street
Suite 310
P.O. Box 12090
Harrisburg, PA 17108-2090
(717) 234-1250

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PROTHONOBY'S OFFICE
97 JUN -9 PM 10:01

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JUN 11 1997

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RECEIVED
PROTHONOTARY'S OFFICE

**IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of June, 1997, I have served true and correct copies of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code Section 1.54:

The Honorable Wayne L. Weismandel
Administrative Law Judge
Office of Administrative Law Judge
1302 Philadelphia State Office Bldg.
Broad and Spring Garden Streets
Philadelphia, PA 19130

Joseph J. Notarianni, Jr., Esquire
Myers Brier & Kelly, LLP
108 North Washington Avenue, Suite 700
Scranton, PA 18503

Christopher B. Jones, Esquire
406 Jefferson Avenue
Scranton, PA 18510


Kenneth Zielonis, Esquire

MYERS, BRIER & KELLY, L.L.P.

ATTORNEYS AT LAW
SUITE 700
108 NORTH WASHINGTON AVENUE
SCRANTON, PENNSYLVANIA 18503

717-342-6100
FAX: 717-342-6147

June 13, 1997

Wayne L. Weismandel
Administrative Law Judge
Pennsylvania Public Utility Commission
Philadelphia State Office Bldg.
1400 Spring Garden St.
Philadelphia, PA 19130

DOCUMENT
FOLDER

RECEIVED
97 JUN 23 AM 9:28
PA.P.U.C.
PROTHONOTARY'S OFFICE

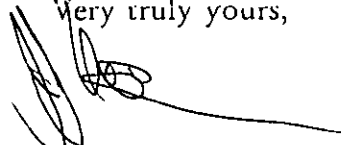
Re: *Application of Butchco, Inc. t/d/b/a Thomas Gerrity Moving & Storage; Docket No. A-00113673*

Dear Judge Weismandel:

In response to your letter of May 28, 1997 regarding the current registration of the fictitious name "Thomas Gerrity Moving & Storage", enclosed please find a filed Application for Amendment, Cancellation or Withdrawal of Fictitious Name registering the name "Thomas Gerrity Moving & Storage" to Butchco, Inc., the applicant in the above-referenced matter.

Of course, if you should have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,



Joseph J. Notarianni, Jr.

BTL

JJN:tjk
Enc.

cc: Paul and Leanne Bobersky
Ken Zielonis, Esq.

RECEIVED

JUN 17 1997

PUBLIC UTILITY COMMISSION
PHILADELPHIA OFFICE
ADMINISTRATION LAW JUDGE

9783-421

JUN 04 1997

Microfilm Number _____

Filed with the Department of State on _____

Entity Number 2068044

[Handwritten Signature]

Secretary of the Commonwealth

**APPLICATION FOR AMENDMENT, CANCELLATION OR WITHDRAWAL
FICTITIOUS NAME
DSCB:54-312/313 (Rev 90)**

Indicate type of transaction (check one):

- Application for Amendment of Fictitious Name Registration (54 Pa.C.S. § 312)
- Application for Cancellation of Fictitious Name Registration (54 Pa.C.S. § 313)
- Application for Withdrawal from Fictitious Name Registration (54 Pa.C.S. § 313)

DOCKETED

JUN 24 1997

In compliance with the requirements of 54 Pa.C.S. Ch.3 (relating to fictitious names), the undersigned entity or entities, desiring to amend, cancel or to withdraw from a fictitious name registration, hereby state(s) that:

1. The fictitious name as heretofore registered is: Thomas Gerrity Moving & Storage

2. The address of the principal place of business of the business or other activity carried on under or through the fictitious name, including number and street, if any, is (the Department is authorized to conform to the records of the Department):

<u>629 Wheeler Ave.</u>	<u>Scranton</u>	<u>PA</u>	<u>18508</u>	<u>Lackawanna</u>
Number and Street	City	State	Zip	County

3. The last preceding filing with respect to this fictitious name was made in the Department of State on: December 17, 1996
(Date)

at _____
(Roll and Film)

4. (Check one or more of the following, as appropriate):

A. The fictitious name has been changed to: _____

**DOCUMENT
FOLDER**

B. The principal place of business set forth in paragraph 2 has been changed to (P.O. Box alone is not acceptable):

Number and Street	City	State	Zip	County
-------------------	------	-------	-----	--------

C. The following party(ies) has (have) been added to the registration and their signature(s) appear(s) at the end of this application:

Name	Number and Street	City	State	Zip
<u>Burchco, Inc.</u>	<u>1252 Philo St.</u>	<u>Scranton</u>	<u>PA</u>	<u>18508</u>

97 JUN -6 AM 10:15

PA DEPT OF STATE

97147-422

D. The following party(ies) has (have) withdrawn from the business or other activity carried on under or through the fictitious name and their signature(s) appear(s) at the end of this application:

Name	Number and Street	City	State	Zip
Paul Bobersky	1252 Philo St.	Scranton	PA	18508
Leanne Bobersky	1252 Philo St.	Scranton	PA	18508

E. The fictitious name registration is cancelled.

5. A brief statement of the character or nature of the business or other activity to be carried on under or through the fictitious name is: moving and storage of household furniture

6. (Strike out if a withdrawal or cancellation): This amendment, without reference to any other filing, sets forth all information with respect to the fictitious name which would be required in an original filing under the Fictitious Names Act.

7. (Strike out if a withdrawal or cancellation): The applicant is familiar with the provisions of 54 Pa.C.S. § 332 (relating to effect of registration) and understands that filing under the Fictitious Names Act does not create any exclusive or other right in the fictitious name.

8. (Optional-See Instruction F): This application has been executed by an agent heretofore designated for that purpose in a prior filing in this registration.

IN TESTIMONY WHEREOF, the undersigned has (have) caused this Application for Amendment, Cancellation or Withdrawal -Fictitious Name to be executed this 3rd day of June, 19 97.

Withdrawing parties signature(s)

Paul Bobersky
Leanne Bobersky

Adding parties signature(s)

All current parties signature(s)

(Name of Entity)

BY: _____
(Signature)

TITLE: _____

Butcher, Inc.

(Name of Entity)

BY: Paul Bobersky
(Signature)

TITLE: President



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

REP
IN REPLY PLEASE
REFER TO OUR FILE

DOCKETED
JUL 28 1997

July 8, 1997

In Re: A-00113673

DOCUMENT
FOLDER

(See letter dated 05/22/97)

Butcho, Inc., t/d/b/a Thomas Gerrity Moving & Storage

For the right to begin to transport, as a common carrier, by motor vehicle, 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; which is to be a transfer of all of the rights issued to Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, under the certificate issued at A-00109996, subject to the same limitations and conditions.

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: **Initial**
Date: **Friday, July 25, 1997**
Time: **10:00 a.m.**
Location: **Room 318
Scranton State Office Building
100 Lackawanna Avenue
Scranton, Pennsylvania**

This is to inform you that the presiding officer has been changed from Administrative Law Judge Wayne L. Weismandel to Administrative Law Judge Richard M. Lovenwirth. Judge Lovenwirth will preside over the hearing. Judge Lovenwirth can be contacted as shown below:

RECEIVED
PROTHONARY'S OFFICE
97 JUL -9 PM 2:56

005149

Presiding Officer:

**Administrative Law Judge Richard M. Lovenwirth
Room 318
Scranton State Office Building
100 Lackawanna Avenue
Scranton, Pennsylvania 18503
telephone number: (717) 963-4818**

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence **must** be submitted to the reporter. An additional copy **must** be furnished to the Presiding Officer. A copy **must** also be provided to each party of record.

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

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

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

pc: Judge Lovenwirth
Judge Weisman
Norma Lewis
Judy E. Weaver, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

ALJ APPEARANCE SHEET

ALJ Hearing Report

RECEIVED

Docket No. A-00113673

Case Name Butcho, Inc. t/d/b/a Thomas Gerrity Moving & Storage

Location Scranton

Date July 25, 1997

ALJ Richard M. Lovenwirth

Reporting Firm

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing Held YES NO

Hearing Held YES NO

Testimony Taken YES NO

Transcript Due YES NO

Hearing Concluded YES NO

Further Hearing Needed YES NO

Estimated Add'l Days ONE

RECORD CLOSED YES NO

DATE _____

Briefs to be Filed YES NO

DATE _____

BENCH DECISION YES NO

DOCUMENT FOLDER

RECEIVED

JUL 28 1997

REMARKS: Please schedule telephonic further hearing for 9/16/97.

OFFICE OF C.A.L. 7
PUBLIC UTILITY COMMISSION

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

Incomplete Information may Result in Delay of Processing

Name and Telephone Number	Address			Appearing for
Kenneth Zielon Stevens & Lee Telephone No. 717-234-1250	Suite 310 208 N. Third St City Hbg State Pa Zip 17101			Butcho, Inc. t/a Thomas A. Gerrity Moving & Storage
Christopher B. Jones 406 Jefferson Ave. Scranton PA 18510 Telephone No. 717 3424295	City _____ State _____ Zip _____			Santoro Enterprises Inc.
Telephone No. _____	City _____ State _____ Zip _____			RECEIVED 97 JUL 30 AM 9:12 P.A.P.U.C. PROTHONOTARY'S OFFICE
Telephone No. _____	City _____ State _____ Zip _____			

DOCKETED
JUL 30 1997

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

Jenna B. Strayer
REPORTER



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

IN REPLY PLEASE
REFER TO OUR FILE

July 29, 1997

In Re: A-00113673

(See letter dated 07/08/97)

MEM

Butcho, Inc., t/d/b/a Thomas Gerrity Moving & Storage

For the right to begin to transport, as a common carrier, by motor vehicle, 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; which is to be a transfer of all of the rights issued to Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, under the certificate issued at A-00109996, subject to the same limitations and conditions.

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Further Telephone Hearing
Date: Tuesday, September 16, 1997
Time: 10:00 a.m.
Presiding Officer: Administrative Law Judge Richard M. Lovenwirth
Room 318
Scranton State Office Building
100 Lackawanna Avenue
Scranton, Pennsylvania 18503
telephone number: (717) 963-4818

DOCKETED
JUL 30 1997

DOCUMENT
FOLDER

At the above date and time, the Presiding Officer will contact the parties as follows:

Joseph J. Notarianni, Jr., Esquire (717) 342-6100
Christopher B. Jones, Esquire (717) 342-9295

PROTHOTARY'S OFFICE
97 JUL 30 AM 9:10
RECEIVED

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

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

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

pc: Judge Lovenwirth
Norma Lewis
Judy E. Weaver, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

A-00113673

Butcho, Inc., t/d/b/a Thomas Gerrity Moving & Storage

For the right to begin to transport, as a common carrier, by motor vehicle, 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; which is to be a transfer of all of the rights issued to Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, under the certificate issued at A-00109996, subject to the same limitations and conditions.

BUTCHCO INC
T/A THOMAS GERRITY MOVING & STORAGE
1252 PHILO STREET
SCRANTON PA 18508

BOCKETED
AUG 21 1997

JOSEPH J NOTARIANNI JR ESQUIRE
MYERS BRIER & KELLY LLP
108 NORTH WASHINGTON AVENUE SUITE 700
SCRANTON PA 18503
(717) 342-6100
Fax Number: (717) 342-6147
(Representing applicant)

DOCUMENT
FOLDER

002963

FRATCO INC
230 NORTHERN BOULEVARD
CLARKS SUMMIT PA 18411
(Representing transferor)

CHRISTOPHER B JONES ESQUIRE
406 JEFFERSON AVENUE
SCRANTON PA 18510
(717) 342-9295
Fax Number: (717) 342-6011
(Representing Santoro Enterprises, Inc.)

RECEIVED
PROTHONOTARY'S OFFICE

97 AUG 20 AM 10:47

KENNETH ZIELONIS ESQUIRE
SUITE 310
208 NORTH THIRD STREET
PO BOX 12090
HARRISBURG PA 17108-2090
(717) 234-1250
Fax Number: (717) 234-1939
(Representing Applicant)

APPEARANCE SHEET

ALJ HEARING REPORT

Docket No. A-00113673

Case Name Butcho, Inc., t/d/b/a Thomas Gerrity Moving & Storage

Location Scranton

Date September 16, 1997

ALJ Richard M. Lovenwirth

Reporting Firm Holbert Assoc.

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held YES NO

Hearing held YES NO

Testimony taken YES NO

Transcript due YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days _____

RECORD CLOSED YES NO

DATE _____

Briefs to be Filed YES NO

DATE _____

BENCH DECISION YES NO

REMARKS: **DOCKETED**
SEP 26 1997

9/16/97
Richard M. Lovenwirth
 RECEIVED
 SEP 18 11 31 AM '97
 PA PUC
DOCUMENT FOLDER

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

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
Kenneth Zielinski, Esq. Telephone No. 717 34-1250	Suite 310, 207 N. 3rd St. City: Hbs State: PA Zip: 17101	Butcho, Inc. t/a Thomas A. Gerrity Moving & Storage
Christopher B. Jones Telephone No. 717 342 9295	406 Jefferson Ave City: Scranton State: PA Zip: 18570	Santoro Enterprises, Inc.
Telephone No.	City State Zip	

CHECK THIS BOX IF ADDITIONAL PARTIES

[Handwritten Signature]

LAW OFFICES OF
STEVENS & LEE
A PROFESSIONAL CORPORATION

PLEASE RESPOND TO HARRISBURG

November 7, 1997

RECEIVED
97 NOV -7 PM 3:02
PA P.U.C. OFFICE
PROTHONOTARY'S OFFICE

James J. McNulty
Prothonotary/Acting Secretary
PA Public Utility Commission
P.O. Box 3265
North Office Building
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

Re: Application of Butchco, Inc., t/d/b/a Thomas Gerrity
Moving and Storage, Docket No. A-00113673

Dear Prothonotary McNulty:

Please find enclosed an original and nine copies of the Main Brief for filing on behalf of the Applicant, Butchco, Inc., t/d/b/a Thomas Gerrity Moving and Storage, in the above captioned proceeding. As indicated by the attached Certificate of Service, all parties of record have been served a copy hereof. I also enclose a diskette containing this document. It is formatted in Word Perfect 5.1.

Should you have any questions or comments, please feel free to contact my office.

Sincerely,

STEVENS & LEE

Kenneth Zielonis
Kenneth Zielonis

/dle
Attachment

ORIGINAL

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Butchco, Inc. :
t/d/b/a Thomas Gerrity Moving : Docket No. A-00113673
and Storage :

MAIN BRIEF OF APPLICANT,
BUTCHCO, INC., t/d/b/a
THOMAS GERRITY MOVING AND STORAGE

DOCUMENT
FOLDER

DOCKETED
NOV 10 1997

RECEIVED
97 NOV -7 PM 3:02
P.A.U.C.
PROTHONOTARY'S OFFICE

Kenneth Zielonis, Esquire
STEVENS & LEE
208 North Third Street
Suite 310
P.O. Box 12090
Harrisburg, PA 17108-2090
(717) 234-1250

Dated: November 7, 1997

Attorneys for Butchco, Inc.,
t/d/b/a Thomas Gerrity Moving
and Storage

1 I. STATEMENT OF THE CASE

2 On January 21, 1997, Butchco, Inc., t/d/b/a Thomas
3 Gerrity Moving and Storage, ("Applicant" or "Butchco"), filed an
4 Application to transfer the existing certificate rights of Fratco,
5 Inc., t/d/b/a, Thomas Gerrity Moving and Storage, ("Transferor" or
6 "Fratco"). The Application was published in the February 8, 1997
7 edition of the Pennsylvania Bulletin. Subsequently, on March 1,
8 1997, a Protest was filed by Santoro Enterprises, Inc.,
9 ("Protestant").

10 An Initial Hearing was held in the matter on July 25,
11 1997 with a further hearing held on September 16, 1997. The record
12 consists of approximately 150 pages of transcript and several
13 exhibits. The presiding Administrative Law Judge, ("ALJ"), has
14 required Main Briefs to be filed on or before November 7, 1997.
15 Applicant files this Main Brief in accordance with that
16 requirement.

1 II. STATEMENT OF THE QUESTIONS INVOLVED

2 1. Does an Applicant which has significant
3 experience in the moving and storage business,
4 has sufficient employees and motor vehicle
5 equipment available to render service, has an
6 office and warehouse, has the requisite office
7 equipment and has adequate levels of
8 insurance, met its burden of proving it is
9 technically fit to render service and thus
10 should receive a certificate of public
11 convenience?

12 Suggested Answer:

13 Yes.

14 2. Does an Applicant which has earned a net
15 profit operating as General Manager of a
16 moving company and has a positive net worth
17 met its burden of proving it is financially
18 fit to render service?

19 Suggested Answer:

20 Yes.

1 III. SUMMARY OF TESTIMONY

2 Paul Bobersky is President of Butchco, Inc. (Tr. 12.)
3 Mr. Bobersky's company, Butchco, Inc., is also General Manager of
4 Fratco, Inc., the Transferor in this proceeding. Id.
5 Mr. Bobersky's company currently manages the business operations of
6 the Transferor. (Tr. 13.) Mr. Bobersky also has a storage
7 business. (Tr. 13.) Butchco, Inc. also owns a storage warehouse.
8 Id. As general manager of Fratco, Mr. Bobersky runs the storage
9 business: he books moving jobs, he oversees the operations of the
10 trucks, he oversees the drivers, and he oversees the office staff.
11 (Tr. 14.) Mr. Bobersky is also responsible for the financial
12 matters of Butchco, Inc. (Tr. 15.) He also supervises the billing
13 operations for Butchco, Inc. Id.

14 Mr. Bobersky supervises the office staff of Butchco, Inc.
15 (Tr. 16.) He oversees the actions of a secretary and the treasurer
16 of Butchco, Inc. (Tr. 17.) Butchco, Inc. has one office staff
17 person. Id.

18 Butchco, Inc has six employees. (Tr. 43.) Included in
19 that employee complement are three full time furniture workers and
20 one part time summer help furniture worker. Id. Butchco has one
21 foreman. Id. The foreman drives the trucks and also oversees all
22 jobs when Mr. Bobersky is on the road. Id. The foreman also
23 supervises the other workers at a job site when Mr. Bobersky is
24 unavailable. Id.

25 The other workers move furniture for Butchco. (Tr. 18.)
26 Those workers also work in the warehouse. Id. Such workers also

1 pack and unpack the moving van vehicles. Id.

2 Mr. Bobersky was foreman for Fratco, Inc. for 5-¹/₂ years.
3 Id. As foreman he assisted in moving clients, he drove trucks for
4 Fratco, he compiled the bills, he handled the storage of furniture
5 and other items, he acted as collection agent, he handled damage
6 claims, and he reviewed truck inspection reports. (Tr. 19.) As
7 foreman, he also supervised three employees. Id.

8 He worked for a predecessor of Fratco, Inc., Frank and
9 Shirley Fratzola, t/a, Thomas Gerrity Moving and Storage.
10 (Tr. 20.) He worked as a mover for this company. (Tr. 21.) This
11 meant loading and unloading, and driving the truck. Id. He also
12 oversaw the storage operations of this company. (Tr. 22.)

13 Mr. Bobersky's company, Butchco, Inc., has storage
14 operations which he oversees. (Tr. 22.) This storage operation
15 has both short term and long term storage customers. Id. He
16 maintains insurance on items in storage. Id. He also maintains
17 the storage bins. Id. He has managed another storage company for
18 5 years. Id.

19 Butchco, Inc. has employees whose moving experience
20 ranges from 2 to 25 years. Id. Three employees have 2 to 10 years
21 of experience in the moving business. (Tr. 23.) One employee has
22 approximately 25 years experience in the moving business. Id. If
23 Butchco, Inc. is granted a certificate, he will use these employees
24 to render service to the public under the certificate. Id. His
25 employees include three full time employees and one part time
26 summer help. Id.

1 Butchco, Inc. will maintain a local office at 629 Wheeler
2 Avenue, Scranton, Pennsylvania. This is also where Butchco, Inc.'s
3 storage facility is now located. Id.

4 Butchco, Inc. has the following office equipment:
5 computers, a copier, a printer, two telephone lines, a facsimile
6 machine on order, desk and chairs. (Tr. 23-24.) Butchco, Inc.
7 also has a copy of the PUC's regulations. (Tr. 24.) Communication
8 equipment owned by Butchco, Inc. include a cellular phone in one
9 truck as well as the two telephone lines. (Tr. 24.) There is also
10 communication equipment at the office. Id.

11 Butchco, Inc. also has the necessary moving accessories
12 such as moving pads, specialized moving equipment for furniture
13 such as pianos, dollies, and hand trucks. (Tr. 24.)

14 Butchco, Inc. now owns a 24 foot double axle moving van.
15 (Tr. 25.) It is a 1984 GMC product. Id. This vehicle has an
16 eleven foot ceiling. Id. Butchco, Inc. also owns a 1989 Ford
17 diesel which is 18 feet in length with a 10 foot 8 inch ceiling.
18 Id.

19 Butchco, Inc. considers these standard moving vans for
20 city use where there are a lot of trees and narrow streets.
21 (Tr. 25-26.) If necessary, Butchco, Inc. will buy new vehicles.
22 (Tr. 26.)

23 Butchco, Inc. will create a standard employment
24 application to be used for hiring drivers. (Tr. 26.) Currently
25 when interviewing for drivers, Butchco, Inc. sends away for
26 information on drivers from the Pennsylvania Department of

1 Transportation. Id. Its drivers also will have the necessary
2 physicals required by state and federal regulations. Id. He will
3 also create an employment application for non-driver personnel.
4 (Tr. 27.) He also will review a potential applicant's driving
5 record. Id.

6 Butchco, Inc. intends to advertise in the local Yellow
7 Pages. (Tr. 28.) He also intends to create a complaint/claims
8 procedure. Id. This would include alleged overcharges and damage
9 claims. Id. He handled customer complaints for his former
10 employers. (Tr. 29.)

11 One of his prior responsibilities as foreman for his
12 prior employers was to provide job estimations and cost
13 estimations. (Tr. 29.) Included in calculating the cost of a
14 move, is the length of time necessary which is a function of the
15 location of furniture in a building, i.e., the floor level, and the
16 number of pieces of furniture and moving boxes. Id. Based on this
17 information, he provides cost estimates. Id. He also gives
18 customers price quotes. (Tr. 30.)

19 Applicant's Exhibit No. 1 represents Butchco's Balance
20 Sheet and Income Statement. (Tr. 31.) The balance sheet shows a
21 \$36,702 net worth as of June 30, 1997 for Butchco, Inc. Id. The
22 income statement shows the revenue and expenses of Butchco, Inc.
23 for the six-month time period that it has acted as General Manager
24 of Fratco, Inc. (Tr. 31.) Butchco, Inc.'s had an operating profit
25 of \$7,655 for the six-month time period ended June 30, 1997.

26 Butchco, Inc. has a Management Agreement with Fratco,

1 Inc. (Tr. 32.) Under the Management Agreement, Butchco, Inc. acts
2 as General Manager of Fratco, Inc. and is obligated to operate the
3 business. Id. The Agreement has a provision for compensating
4 Butchco, Inc. as the general manager of Fratco, Inc. (Tr. 33.)
5 The compensation provision requires Butchco, Inc. to receive 99% of
6 the total income of Fratco, Inc. as compensation. Id. This means
7 after all expenses are paid by Butchco, Inc. (Tr. 33.)

8 Butchco, Inc. has two stockholders, Paul Bobersky and
9 Leanne Bobersky. (Tr. 35.) Distributions of profits are paid to
10 the two shareholders. Id.

11 A fictitious name registration for Butchco, Inc. has been
12 filed with the Pennsylvania Department of State. Id.

13 Fratco, Inc. has been owned by Frank Fratzola for about
14 14 years. (Tr. 42.) That company has had a PUC certificate for
15 approximately the same time period. Id. Mr. Bobersky was foreman
16 for half of the personnel which were employed in Mr. Fratzola's
17 business. Id. His employment stopped with Fratco, Inc. in
18 November of 1996. Id.

19 Butchco, Inc. has six employees. (Tr. 43.) Fratco, Inc.
20 currently operates as Thomas Gerrity Moving and Storage, the PUC
21 certificate holder. (Tr. 43.) Butchco, Inc. operates as the
22 General Manager of that entity. Id.

23 Mr. Bobersky has no ownership interest in Fratco, Inc.
24 t/a Thomas Gerrity Moving and Storage. (Tr. 44.) Mr. Bobersky's
25 company simply acts as General Manager of Fratco, Inc. (Tr. 47.)
26 Butchco, Inc. started functioning as General Manager and operating

1 the business between November 1996 and January 1997. (Tr. 48.)
2 Fratco, Inc. has had 400 moves since Butchco, Inc. has become the
3 General Manager in November of 1996. (Tr. 49.) Checks are made
4 payable to the certificate holder, Thomas Gerrity Moving and
5 Storage. (Tr. 50.) Thomas Gerrity Moving and Storage also
6 advertises. (Tr. 50.) Butchco, Inc. writes any checks for payment
7 of Fratco, Inc.'s bills. Id.

8 Protestant's Cross-Examination Exhibit No. 1 was a Bell
9 Telephone advertisement. (Tr. 52.) It is likely the same Bell
10 Telephone advertisement for Thomas Gerrity Moving and Storage for
11 the last 2 years. (Tr. 52.) Mr. Bobersky was unsure if Butchco,
12 Inc. or Fratco, Inc. placed the advertisement. (Tr. 52.) When the
13 telephone book advertisements were to be placed, Fratco, Inc. was
14 still doing everything for Thomas Gerrity Moving and Storage. Id.
15 Butchco, Inc. is now responsible for paying the advertising fees
16 for Thomas Gerrity Moving and Storage. (Tr. 54.)

17 Mr. Bobersky had a DUI citation approximately 10 to 15
18 years ago. (Tr. 56.) Mr. Bobersky went through an ARD program.
19 Id. He has no other problems with the law since age 22. Id.

20 Mr. Bobersky is familiar with the entity Thomas
21 Gerrity, Jr. moving and storage. (Tr. 57.)

22 The written Management Agreement executed between
23 Butchco, Inc. and Fratco, Inc. was signed May 30, 1997. (Tr. 81.)
24 It was signed by Frank Fratzola, President, on behalf of Fratco,
25 Inc. Id. Paul Bobersky signed on behalf of Butchco, Inc. Id.
26 Butchco, Inc. had a verbal agreement to manage the business

1 starting in November 1996. Id. Butchco, Inc. began to operate as
2 General Manager of Fratco, Inc. after reaching the verbal
3 management agreement in November 1996 but before the written
4 Management Agreement was executed in May 1997. (Tr. 82.)

5 Butchco, Inc. filed with the Department of State for a
6 fictitious name on December 14, 1996. Id. An amended fictitious
7 name request was filed on June 4, 1997. (Tr. 84-85.) In the
8 amendment for a fictitious name, Leanne and Paul Bobersky were
9 withdrawn as parties operating the fictitious name and the name was
10 transferred to Butchco, Inc. (Tr. 84.)

11 Butchco, Inc. now carries \$500,000 of liability coverage.
12 (Tr. 86.) It also carries \$35,000 of both uninsured and
13 underinsured insurance coverage limits. (Tr. 86.) Butchco, Inc.
14 insures a 1984 GMC truck and a 1989 Ford diesel truck. (Tr. 86.)
15 The GMC is a 24 foot moving van. Id.

16 Butchco, Inc. is in good standing with the Pennsylvania
17 Corporation Bureau of the Department of State. (Tr. 92.) All
18 taxes due the Commonwealth and federal taxing authorities have been
19 paid. Id.

20 Since July 25, 1997, Mr. Bobersky has not encountered an
21 instance that he perceives to be confusion by a customer who
22 thought they were dealing with Protestant. (Tr. 95.)

23 Butchco, Inc. is still consulting and managing the
24 operations currently owned by Fratco, Inc. (Tr. 96.) He has
25 regular dealings with Mr. Frank Fratzola at Fratco, Inc. Id.
26 Mr. Bobersky spoke with Mr. Fratzola about two weeks before the

1 September 16, 1997 hearing regarding the operations of the
2 business. Id. His business dealings with Mr. Fratzola sometimes
3 occur twice a week, sometimes once a month. (Tr. 96.) The times
4 he deals with Mr. Fratzola vary. (Tr. 96.)

5 TESTIMONY OF CHRISTOPHER SANTORO

6 Mr. Santoro operates Thomas Gerrity, Jr. Moving and
7 Storage. (Tr. 104.) He has a PUC certificate. Id. He also has
8 proper insurance. Id. He has \$1,000,000 in liability insurance.
9 (Tr. 105.)

10 Mr. Santoro handles all operations of this company.
11 (Tr. 106.) He purchased the business operations from Thomas
12 Gerrity, Jr. in 1991. (Tr. 110.) He had a Management Agreement
13 with Thomas Gerrity, Jr. starting in 1991. (Tr. 110.) He operated
14 under that Management Agreement for approximately 4 months.
15 (Tr. 110.)

16 Mr. Santoro believes that the similar name that the
17 Applicant is attempting to seek PUC approval for has caused
18 confusion for the public. (Tr. 113.) He advertises in the Bell
19 Atlantic Yellow Pages. (Tr. 114.)

20 In 1996 Mr. Santoro changed his business location twice.
21 (Tr. 117.) Since 1992 the Scranton Bell Yellow Pages has had one
22 advertisement for Thomas Gerrity, Jr. and another advertisement for
23 Thomas Gerrity Moving and Storage. (Tr. 119.)

1 IV. PROPOSED FINDING OF FACT

2 1. Paul Bobersky is President of Butchco, Inc.
3 (Tr. 12.).

4 2. Butchco, Inc. is General Manager for Fratco, Inc.,
5 the Transferor. Id.

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

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

11 5. As General Manager of Fratco, Butchco runs the
12 storage and moving business. (Tr. 14.)

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

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

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

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

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

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

1 13. The employees of Butchco, Inc. move furniture, work
2 in a warehouse, unpack and pack trucks and drive the trucks. (Tr.
3 18.)

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

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

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

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

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

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

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

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

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

1 21.)

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

4 24. Three employees have two to ten years experience in
5 the moving industry. (Tr. 23.) Another employee has approximately
6 25 years experience. Id.

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

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

12 27. Butchco, Inc. has a local office currently at
13 629 Wheeler Avenue, Scranton, Pennsylvania. Id.

14 28. Butchco's storage facilities are also located at
15 629 Wheeler Avenue, Scranton, Pennsylvania.

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

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

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

23 32. Butchco, Inc. has the necessary moving accessories
24 such as moving pad, specialized equipment for furniture such as
25 pianos, dollies, and handtrucks. Id.

26 33. Butchco, Inc. owns a 24-foot double axle moving van.

1 (Tr. 25.) It is a 1984 GMC product. Id. It has an eleven foot
2 ceiling. Id.

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

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

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

11 37. Butchco, Inc. has the necessary equipment and
12 facilities to render service. (Findings of Fact Nos. 27-36.)

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

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

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

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

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

26 43. Mr. Bobersky has handled customer complaints for his

1 former employers. (Tr. 29.)

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

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

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

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

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

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

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

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

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

21 53. Butchco, Inc. receives 99% of the total income of
22 Fratco, Inc. as compensation. Id. This means after all expenses
23 are paid by Butchco, Inc. Id.

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



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

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

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

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

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

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

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

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

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

20 64. Fratco, Inc. has made 400 moves since Butchco, Inc.
21 became the General Manager sometime in November 1996 - January
22 1997. (Tr. 49.)

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

26 66. Butchco, Inc. has, as of June 30, 1997, total assets

1 of \$99,914. (App. Ex. No. 1.)

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

3 Id.

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

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

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

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

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

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

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

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

25 76. Mr. Bobersky began to manage the business after
26 reaching a verbal agreement in November 1996 but before the written

1 agreement was executed in May 1997. (Tr. 82.)

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

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

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

8 80. Butchco, Inc. now insures the 1984 GMC truck and the
9 1989 Ford truck. Id.

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

12 82. All taxes due the Commonwealth and federal taxing
13 authorities have been paid by Butchco, Inc. Id.

14 83. Since July 25, 1997, Mr. Bobersky has not
15 encountered an instance that he perceives to be representing
16 confusion by a customer who thought he/she were dealing with
17 Protestant's business. (Tr. 95.)

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

21 85. Mr. Bobersky has been dealing with Frank Fratzola at
22 Fratco, Inc. Id.

23 86. Mr. Bobersky spoke with Mr. Fratzola approximately
24 two weeks before the prior hearing regarding the operations of the
25 business. Id.

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

1 V. SUMMARY OF ARGUMENT

2 In proceedings involving a transfer of an existing
3 Certificate of Public Convenience, the applicant or transferee only
4 carries the burden of proving its financial and technical fitness.
5 A presumption of continuing public necessity for the transferor's
6 service is presumed. Protestants in such cases carry a heavy
7 burden of proof to rebut that presumption of continuing public
8 necessity.

9 In this proceeding, the lone Protestant does not rebut
10 the presumption. Indeed, the evidence shows that the Transferor
11 continues to render service to the public. Indeed, Protestant's
12 primary argument appears to be that the public, when needing moving
13 service, "appears" to confuse Protestant with Applicant and vice
14 versa. This is an admission of a continuing public need for the
15 Transferor's services which Applicant seeks to provide. Protestant
16 does not dispute the existence of continuing public need; rather it
17 fears that the public will be confused when they attempt to select
18 a carrier.

19 A lack of public necessity can be evidenced by external
20 acts of the transferor such as abandonment of service. Such
21 external acts have not been shown in this proceeding. The
22 Transferor continues to render service through the management
23 services of Applicant. The public continues to be served by the
24 Transferor. Protestant considers Applicant a competitive threat
25 for the public's need for moving services in the Scranton area.

26 Applicant has shown it is fit to render service. One of

1 its shareholders has over 10 years experience in the moving
2 business. Such experience includes loading/unloading; driving
3 vehicles; inspection/maintenance of vehicles; supervising
4 employees; operation of a warehouse; supervising office staff;
5 billing/estimation/collection; resolution of customer complaints;
6 and advertising. In other words, one shareholder has operated the
7 entire range of functions related to the moving and storage
8 industry.

9 Applicant has the necessary means ready to render service
10 to the public. It has employees who possess the necessary
11 experience in the moving and storage field. Applicant has the
12 necessary motor vehicle equipment to render service. Such
13 equipment is fully insured as required by Commission regulations.
14 Applicant possesses the necessary office equipment and office space
15 through which it may render service. Applicant owns a warehouse
16 for storage of materials and items. This warehouse is available
17 for use in the moving and storage needs of the public.

18 Applicant possesses the financial competence to render
19 service. It's balance sheet shows a positive net worth. It has
20 earned income for the six month period ended June 30, 1997, during
21 which it managed the Transferor's moving and storage business. In
22 sum, Applicant has met the requirements of technical and financial
23 capability of rendering service.

1 VI. ARGUMENT

2 A. In Transfer Proceedings
3 The Applicant Need Only
4 Prove That It Is Fit To
5 Render Service To The
6 Public

7 Unlike initial applications proceedings, in proceedings
8 involving the transfer of existing certificate rights, it is not
9 necessary to prove public need:

10 In transfer of certificate cases, the
11 principle has evolved that it is not necessary
12 for the transferor or transferee to show that
13 the certificate under review is necessary for
14 the public convenience.

15 In re Byler, 440 Pa. 521, 525, 270 A 2d 186, 187 (1970)

16 Thus once public necessity has been found, the presumption exists
17 that it continues until the contrary is shown. Mobilfone of
18 Northeastern Pa., Inc. v. Pa.P.U.C., 67 Pa. Commonwealth Ct. 219,
19 446 A.2d 1001 (1982) and South Hills Movers, Inc. v. Pa.P.U.C., 144
20 Pa. Commonwealth Ct. 505, 601 A.2d 1308 (1992). In this
21 proceeding, it is clear the Transferor (Fratco, Inc.) continues to
22 render service to the public.

23 In such transfer cases, the Applicant need only prove its
24 fitness to render service. Mobilfone, supra.; South Hills, supra.

1 B. Applicant Has Shown By
2 Substantial Evidence That
3 It Is Fit To Render
4 Service To The Public

5 There are various standards utilized by the Commission
6 when examining whether an applicant has met its standard of proof
7 concerning the ability to render service. As indicated earlier,
8 there are several items that the Commission examines when
9 determining whether an applicant can be considered fit to render
10 service.

11 Section 41.14(b) of the Commission's Transportation
12 Policy requires a motor carrier applicant to prove its technical
13 and financial fitness to provide the proposed transportation
14 services. Section 41.14(b) also states, however, that an Applicant
15 may be denied by the Commission if the record evidence shows that
16 the applicant lacks the propensity to operate safely and legally.
17 52 Pa. Code § 41.14(b). Where an applicant already possesses
18 current certificated authority and is seeking approval to expand
19 its certificated territory, the applicant is presumed to be
20 technically and financially fit. Bluebird, supra, Freidman, supra,
21 re: V.I.P. Travel Service, Inc., 56 Pa. P.U.C. 625 (1982). Since
22 the instant case concerns an initial grant of authority, the above
23 legal principal is inapplicable.

24 The Commission has delineated a tripartite definition of
25 fitness:

26 (1) Technical expertise - Applicant must
27 have technical capacity to meet the need in a
28 satisfactory fashion.... Applicant must
29 possess sufficient staff and facilities or

1 operating skills to make the proposed service
2 feasible, profitable, and a distinct service
3 to the public;

4 (2) Financial capacity - Applicant
5 should possess the financial ability to give
6 reliable and respectable service to the
7 public.... Applicant should own or should
8 have sufficient financial resources to obtain
9 the equipment needed to perform the proposed
10 service.

11 (3) Propensity to operate safely and
12 legally - In this regard, lack of fitness is
13 demonstrated by persistent disregard for,
14 flouting, or defiance of the public utility
15 law and the Commission's orders and
16 regulations...; and by violations in matters
17 affecting the safety of operations....

18 Re: Perry Hauseman, 55 Pa. P.U.C. 661, 662-63 (1982), as modified
19 by Application of Adegbola Ige, t/a Globe Limousine Service, Docket
20 No. A-108943 (Order entered August 7, 1991).

21 As stated previously, supra, the Commission has examined
22 three items in determining whether an Applicant is fit to provide
23 the proposed transportation service. The criteria examined by the
24 Commission include whether Applicant is technically fit to provide
25 the service, whether Applicant is financially fit to provide the
26 service, and finally, whether Applicant possesses a proclivity to
27 violate the Public Utility Code or operates in an unsafe manner.
28 Applicant submits that it has met all of the Commission's
29 evidentiary requirements to determine the fitness of the Applicant.
30 Indeed, all the evidence conclusively reveals that Applicant is fit
31 to render its moving service.

1 1. Technical Fitness

2 a. Applicant's Officers' Experience

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

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

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

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

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

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

1 b. The personnel, facilities
2 and equipment to be used
3 to render service.

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

11 The Applicant currently owns and maintains an office at
12 629 Wheeler Avenue, Scranton, PA. Id. The Applicant also has a
13 storage warehouse at this locations. Id. Butchco has the
14 following equipment at its office available for PUC work: a
15 computer, a copier, a printer, two telephone lines and several
16 desks and chairs. Tr. 23-24. It has a facsimile machine on order.
17 Tr. 24. It also now retains a PUC regulation book. Id.

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

26 Butchco also possesses the necessary moving accessories.
27 They include moving pads, specialized equipment for moving bulky

1 items such as pianos, dollies and hand trucks. Tr. 24.

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

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

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

18 Butchco is in good standing with the Pennsylvania
19 Department of State Corporation Bureau. Tr. 92. It has a
20 fictitious name registration on file with the Corporation Bureau.
21 Tr. 82-85. An original fictitious name registration was filed for
22 Paul and Leanne Bobersky trading as Thomas Gerrity Moving & Storage
23 on December 14, 1996. Tr. 82. This was subsequently amended by a
24 filing with the Corporation Bureau on June 4, 1997. Tr. 84-85.
25 This latter filing added Butchco to the fictitious name filing and
26 deleted Paul and Leanne Bobersky. Tr. 85; App. Ex. No. 2. All

1 taxes due and payable to the state and federal taxing authorities
2 have been paid. Tr. 92.

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

8 2. Financial Fitness

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

19 C. An Explanation Of The
20 Origin Of The Trade Name
21 "Thomas Gerrity Moving
22 and Storage"

23 Your Honor has requested Applicant to explain the date
24 upon which the trade name "Thomas Gerrity Moving and Storage" was
25 first used in public utility service. The first instance of the

1 name Thomas Gerrity appearing in Commission records is 1978. On
2 March 29, 1978, the Commission issued an Order granting a
3 Certificate of Public Convenience to Thomas Gerrity. Application
4 of Thomas Gerrity, Docket No. A-00100754 (Order entered March 29,
5 1978). Attached as Appendix A hereto. This authority was
6 subsequently transferred to the predecessor of Fratco, Inc., Frank
7 J. Fratzola and Shirley Fratzola, copartners, t/a Thomas Gerrity
8 Moving and Storage. Application of Frank J. Fratzola and Shirley
9 Fratzola, copartners, t/a Thomas Gerrity Moving and Storage, Docket
10 No. A-00104423 (Order entered March 1, 1983). Attached as Appendix
11 B hereto. These individuals subsequently incorporated and
12 transferred the certificate right to Fratco, Inc. Application of
13 Fratco, Inc., t/d/b/a Thomas Gerrity Moving and Storage, Docket No.
14 A-00109996 (Order entered February 6, 1992). Attached as Appendix
15 C hereto.

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

19 The Protestant has been operating its business since 1992
20 and does not claim it is insolvent. Thus, it would appear that the
21 public has been required to distinguish the trade names of the
22 Applicant and the Protestant, and the public has done so
23 successfully so as to provide work to the Protestant.

24 The Commission, however, has no jurisdiction over the
25 issuance of fictitious name registrations. The power and authority
26 of the Commission is statutory and the legislative grant of

1 authority to act in any particular case must be clear. City of
2 Philadelphia v. Philadelphia Electric Company, 504 Pa. 312, 473
3 A.2d 997 (1984). NFGD v. Pa. P.U.C., 76 Pa. Commonwealth Ct. 102,
4 464 A.2d 546 (1983). The Commission may not interfere in the
5 management decisions of a public utility. NFGD, Supra.; PECO v.
6 Pa. P.U.C., 71 Pa. Commonwealth Ct. 424, 455 A.2d 1244 (1983),
7 reversed on other grounds 501 Pa. 153, 460 A.2d 734 (1983);
8 Metropolitan Edison Co. v. Pa. P.U.C., 62 Pa. Commonwealth Ct. 460,
9 437 A.2d 76 (1981). This includes the managerial decision to
10 select a trade name and to have such trade name approval by the
11 Department of State. Thus, the Commission possesses no authority
12 to order a motor carrier to modify its trade name.

1 VII. PROPOSED CONCLUSIONS OF LAW

2 1. The Commission has jurisdiction over the subject matter
3 and the parties.

4 2. The Applicant has carried its burden of demonstrating
5 that it is technically and financially fit to render service to
6 receive a Certificate of Public Convenience and necessity
7 evidencing a transfer of authority from Fratco, Inc., t/d/b/a
8 Thomas Gerrity Moving and Storage.

9 3. The presumption of continuing public need for the
10 Transferor's services has not been rebutted in this proceeding.

11 4. The Commission has no jurisdiction over the issue of
12 trade name "confusion."

1 VIII. PROPOSED ORDERING PARAGRAPHS

2 1. That the application of Butchco, Inc., t/d/b/a Thomas
3 Gerrity Moving and Storage at Docket No. A-00113673 is granted in
4 its entirety.

5 2. That a certificate be issued to the Applicant granting
6 the following rights:

7 a. To transport household goods in use between points
8 in the city of Scranton, Lackawanna County, and
9 within three (3) miles of the limits of said city.

10 b. To transport household goods in use, from points in
11 the city of Scranton, Lackawanna County, and within
12 three (3) miles of the limits of said city to other
13 points in Pennsylvania, and vice versa.

14 3. That upon compliance with an Order of the Commission,
15 that the Certificate of Public Convenience issued to Fratco, Inc.,
16 t/d/b/a Thomas Gerrity Moving and Storage at Docket No. A-00109996
17 be cancelled and the record be marked closed.

1 IX. CONCLUSION

2 WHEREFORE, Applicant, Butchco, Inc., t/d/b/a Thomas
3 Gerrity Moving and Storage, respectfully requests this Commission
4 to grant its Transfer Application in its entirety.

5 Respectfully submitted,

6 STEVENS & LEE



7 Kenneth Zielonis, Esq.

8 208 N. 3rd Str., Suite 310
9 P.O. Box 12090
10 Harrisburg, PA 17108-2090

11 Dated: November 7, 1997

12 Attorneys for Butchco, Inc.,
13 t/d/b/a Thomas Gerrity Moving
and Storage

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: 00100754 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.

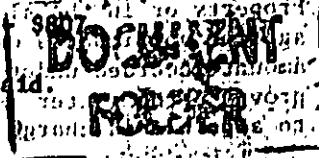
Applicant shows assets of \$62,500, subject to liabilities of \$5,000, or net assets of \$57,500.

Transferor's gross intrastate carrier revenues as per annual reports were:
1974 - \$29,637, 1975 - \$553 and 1976 - \$807

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

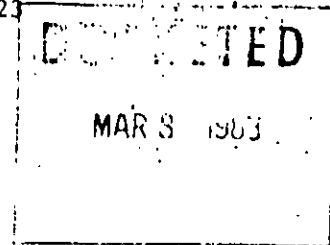
Public Meeting held February 18, 1983

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



ORDER

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 black ink, appearing to read "Jerry Rich", written over a horizontal line.

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

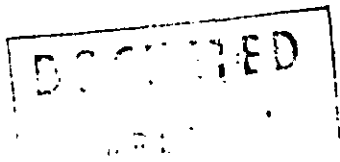
A. 00104423
Folder 1

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:



John Lich
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

ORDER

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 Pennsylvania 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: Beverly, 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

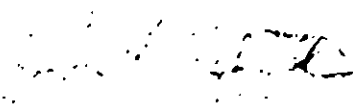
BY THE COMMISSION:

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. Klford
Secretary

APR 15 1994

(SEAL)

ORDER ADOPTED: January 30, 1992

ORDER ENTERED: March 28, 1994

DOCUMENT
FOLDER

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of November, 1997, I have served true and correct copies of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code Section 1.54:

The Honorable Richard M. Lovenwirth
Administrative Law Judge
Office of Administrative Law Judge
Pa. Public Utility Commission
Scranton State Office Bldg., Room 318
100 Lackawanna Avenue
Scranton, PA 18503

Christopher B. Jones, Esquire
406 Jefferson Avenue
Scranton, PA 18510


Kenneth Zielonis Esquire

ORIGINAL

CHRISTOPHER B. JONES

ATTORNEY AT LAW
406 JEFFERSON AVENUE
SCRANTON, PENNSYLVANIA 18510

(717) 342-9295
FAX (717) 342-9100
020820

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RECEIVED
PROTHONOTARY'S OFFICE
November 24, 1997

James J. McNulty
Prothonotary/Acting Secretary
PA Public Utility Commission
P.O. BOX 3265
North Office Building
Harrisburg, PA 17105-3265

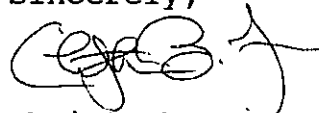
**RE: Application of Butchco, Inc., t/d/b/a Thomas Gerrity
Moving and Storage, Docket No. A-00113673**

Dear Prothonotary McNulty:

Please find enclosed an original and nine copies of the Reply Brief for filing on behalf of the Protestant, Santoro Enterprises, Inc., t/d/b/a Thomas Gerrity, Jr. Moving and Storage Company, in the above captioned proceedings. As indicated by the attached Certificate of Service, all parties of record have been served a copy hereof.

Should you have any questions or concerns, please feel free to contact my office.

Sincerely,



Christopher B. Jones, Esquire

CBJ/ltj

DOCUMENT
FOLDER

100

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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RECEIVED
SECTIONARY'S OFFICE

Application of Butchco, Inc.
t/d/b/a Thomas Gerrity Moving
and Storage

:
:
Docket No. A-00113673
:

REPLY BRIEF OF PROTESTANT,
SANTORO ENTERPRISES, INC., t/d/b/a
THOMAS GERRITY JR. MOVING AND STORAGE COMPANY

Christopher B. Jones, Esquire
406 Jefferson Avenue
Scranton, PA 18510
(717) 342-9295

Dated: November 24, 1997

Attorney for
Santoro Enterprises, Inc.
t/d/b/a Thomas Gerrity Jr.,
Moving and Storage Company

DOCKETED
DEC 04 1997

DOCUMENT
FOLDER

I. STATEMENT OF THE CASE

On January 21, 1997, Butchco, Inc., t/d/b/a Thomas Gerrity Moving and Storage, ("Applicant" or "Butchco"), filed an Application to transfer the existing certificate rights of Fratco, Inc., t/d/b/a, Thomas Gerrity Moving and Storage, ("Transferor" or "Fratco"). The Application was published in the February 8, 1997 edition of the Pennsylvania Bulletin. Subsequently, on March 1, 1997, a Protest was filed by Santoro Enterprises, Inc., ("Protestant").

An Initial Hearing was held in the matter on July 25, 1997 with a further hearing held on September 16, 1997. The record consists of approximately 150 pages of transcript and several exhibits. The presiding Administrative Law Judge, ("ALJ"), has required Main Briefs to be filed on or before November 7, 1997 and the Reply Brief of the Protestant on or before November 24, 1997.

II. STATEMENT OF THE QUESTIONS INVOLVED

1. Has the Applicant met its burden of proving it is technically fit to render service and thus should receive a certificate of public convenience?

Suggested Answer:

No.

2. Has the Applicant met its burden of proving it is financially fit and in compliance with all requirements of the Commission

Suggested Answer:

No.

III. SUMMARY OF TESTIMONY PAUL

TESTIMONY OF PAUL BOBERSKY

Paul Bobersky is president of Butchco, Inc. (Tr. 12.) Mr. Bobersky's company, Butchco, Inc., is also General Manager of Fratco, Inc., the Transferor in this proceeding.

As general manager of Fratco, Mr. Bobersky runs the storage business: he books moving jobs, he oversees the operations of the trucks, he oversees the drivers, and he oversees the office staff. (Tr. 14.)

Mr. Bobersky's company, Butchco, Inc., has storage operations which he also oversees. (Tr. 22.) This storage operation has both short term and long term storage customers. Id.

Butchco, Inc. will maintain a local office at 629 Wheeler Avenue, Scranton, Pennsylvania. This is also where Butchco, Inc.'s storage facility is now located. (Tr. 23.)

Butchco, Inc. now owns a 24 foot double axle moving van. It is a 1984 GMC product. Butchco, Inc. also owns a 1989 Ford diesel. (Tr. 25.)

Butchco, Inc. intends to advertise in the local Yellow Pages (Tr. 28.) and does currently maintain such advertising.

Applicant's Exhibit No. 1 represents Butchco's Balance Sheet and Income Statement. (Tr. 31.) The balance sheet shows a \$36,702 net worth as of June 30, 1997 for Butchco, Inc. Id. Butchco, Inc. had an operating profit of \$7,655 for the six-month time period ended June 30, 1997. Id.

Butchco, Inc. has a Management Agreement with Fratco, Inc.

(Tr. 32.) Under the Management Agreement, Butchco, Inc. acts as General Manager of Fratco, Inc. and is obligated to operate the business. Id. The Agreement has a provision for compensating Butchco, Inc. as the general manager of Fratco, Inc. (Tr. 33.) The compensation provision requires Butchco, Inc. to receive 99% of the total income of Fratco, Inc. as compensation.

A fictitious name registration for Butchco, Inc. has been filed with the Pennsylvania Department of State. Id.

Fratco, Inc. currently operates as Thomas Gerrity Moving and Storage, the PUC certificate holder. (Tr. 43.) Butchco, Inc. operates as the General Manager of that entity. Id.

Butchco, Inc. started functioning as General Manager and operating the business between November 1996 and January 1997. Fratco, Inc. has had 400 moves since Butchco, Inc. has become the General Manager in November of 1996 (Tr. 49.) Thomas Gerrity Moving and Storage also advertises. (Tr. 50.) Mr. Bobersky has no knowledge of whose PUC number is contained on his advertisement in the Bell Atlantic Yellow Pages. (Tr. 98.) Butchco, Inc. writes any checks for payment of Fratco, Inc.'s bills. Id.

The written Management Agreement executed between Butchco, Inc. and Fratco, Inc. was signed May 30, 1997. Butchco, Inc. had a verbal agreement to manage the business starting in November 1996. Id. Butchco, Inc. began to operate as General Manager of Fratco, Inc. after reaching the verbal management agreement in November 1996 and before the written Management Agreement was executed in May 1997. (Tr.82.)

Butchco, Inc. filed with the Department of State for a fictitious name on December 14, 1996. Id. An amended fictitious name request was filed on June 4, 1997. (Tr. 92.)

Butchco, Inc. is in good standing with the Pennsylvania Corporation Bureau of the Department of State. (Tr. 92.) Mr. Bobersky testified that on December 16, 1996, a fictitious name registration was filed on behalf of Paul and LeeAnne Bobersky which by a June 4, 1997 amendment, was for Butchco, Inc. to receive the fictitious name because that is when Butchco became a corporation. (Tr. 97-98.)

Mr. Bobersky has a DUI citation approximately 10 to 15 years ago. Mr. Bobersky went through an ARD program. (Tr. 56.)

TESTIMONY OF CHRISTOPHER SANTORO

Mr. Santoro operates Thomas Gerrity, Jr. Moving and Storage. (Tr. 104.) He has a PUC certificate. Id. He also has proper insurance. Id. He has \$1,000,000 in liability insurance. (Tr. 105.)

Mr. Santoro handles all operations of this company. He purchased the business operations from Thomas Gerrity, Jr. in 1991. (Tr. 110.) He initially operated under a Management Agreement for approximately 4 months which was on file with the Commission as of December, 1991, when he commenced his business operation. (Tr. 110.) Mr. Santoro has been operating the business continuously since that date. (Tr. 114.)

Mr. Santoro believes that the similar name that the Applicant is attempting to seek PUC approval for has caused confusion for the

public. (Tr. 113.) He advertises in the Bell Atlantic Yellow Pages which he contracts for on an annual basis in the month of February, each and every year, whether he decides to change his ad or keep it the same. (Tr. 114.)

TESTIMONY OF NICHOLAS CORRIDONI

Mr. Corridoni is employed by Thomas Gerrity, Jr. Moving and Storage. (Tr. 122.) He is foreman for this Company. (Tr. 123.) He has knowledge of the business operations of Protestant. He has first hand knowledge of confusion caused to the general public by the similarity in names utilized by both the applicant and the protestant and is also aware of great confusion that the name similarity has caused his employer.

PROPOSED FINDING OF FACT

1. Paul Bobersky is President of Butchco, Inc. (Tr. 12.)
2. Butchco, Inc. is General Manager for Fratco, Inc., the Transferor. Id.
3. As General Manager, Butchco, Inc. operates the moving and storage business for Fratco, Inc. t/a Thomas Gerrity Moving and Storage and has done so since November 1996. (Tr. 13.)
4. Applicant's Exhibit No. 1 provides a balance sheet and income statement for Butchco, Inc.
5. As of June 30, 1997, Butchco, Inc. had a net worth of \$36,702.
6. 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.)

7. Butchco, Inc. has a written Management Agreement with Fratco, Inc. which was not executed until May 30, 1997. (Tr. 32.)

8. The Management Agreement has a provision for compensating Butchco, Inc. (Tr. 33.)

9. The Management Agreement has a provision for compensating Butchco, Inc. as General Manager. Id.

10. Butchco, Inc. receives 99% of the total income of Fratco, Inc. as compensation. Id.

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

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

13. A fictitious name registration has been filed for Butchco, Inc., however the application is not in the precise name of the applicant, but is rather listed as Thomas A. Gerrity Moving & Storage. Id. The fictitious name application for amendment on behalf of Butchco, Inc. is dated June 4, 1997.

14. Butchco, Inc. started functioning as General Manager and operating the business of Fratco between November 1996 and January 1997. Id.

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

16. Mr. Bobersky has had problems with legal authorities and has been convicted of Driving Under the Influence.

17. Butchco, Inc. made an original fictitious name

registration on December 17, 1996. (Tr. 85.)

18. 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.)

19. A written Management Agreement was executed by Fratco, Inc. and Butchco, Inc. on May 30, 1997.

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

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

22. 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.

23. The written management agreement was not filed by the applicant with the Commission prior to the applicant commencing its business operation.

V. SUMMARY OF ARGUMENT

Precedent involving the transfer of existing operating rights pursuant to a Certificate of Public Convenience, requires the prior approval of the Commission. Case law is quite clear that the operating rights may not be transferred to a public utility without first obtaining approval of the commission. As set forth in Snyder v. Pa. P.U.C., 144 A2d 468, 187 Pa. Super. 147 (1958) the Court

stated that a certificate, permit or license is not a chattel which the holder may sell at will, or which a purchaser may acquire independent of P.U.C. approval.

Where a public utility is to be acquired by a person or corporation through a stock acquisition, or where operating rights are to be acquired, the commissions chief concern is the financial fitness of the acquiring person or corporation. A protest to such a transfer may be filed pursuant to Section 1102 of the code. Case law is quite clear that a protest may raise issues of the transferees fitness, the abandonment of the operating rights being transferred and other issues. In re: Quality Transportation Service, Inc., 67 Pa. P.U.C. 505 (1988).

In transfer matters, the legal standards for issuing a certificate or permit to the transferee are initially the same for granting a new certificate; however, there is a significant distance in the underlying presumptions and burden of proof. Re. Francis J. Palumbo II, 49 Pa. P.U.C. 736 (1976). Although there is a rebuttable presumption of continuing necessity for every certificate or permit issued by the commission, the applicant carries a heavy burden of proving its financial and technical fitness. Moreover, the transferor, has abandoned its operating rights and has allowed the applicant to completely oversee its business operation without first obtaining the approval of the Commission. In this proceeding, the applicant has failed to satisfy its burden of proving its financial and technical fitness. In addition, the protestant has offered evidence to establish

public confusion concerning the similarity of trade names utilized by both the applicant and the protestant. Moreover, the protestant disputes the existence of a continuing public need for two separate moving companies with virtually identical operating names.

ARGUMENT

I. WHETHER THE APPLICANT MET ITS BURDEN OF PROVING IT IS TECHNICALLY FIT TO RENDER SERVICE AND THUS SHOULD RECEIVE A CERTIFICATE OF PUBLIC CONVENIENCE.

The applicant has not shown that it is fit to render service. First and foremost, the application fails on its face as the only documentation that was required to be attached to the application that was offered into evidence by the applicant was a Statement of Financial Conditions of the applicant for the six month ending June 30, 1997 in its capacity as general manager for the transferor, Fratco, Inc.. There was no sales agreement, or list of equipment to be used in service, statement of unpaid business debts of transferor, statement of safety program and statement of transferee's experience offered into evidence as required by the Commission. In addition there was not a Certificate of Incorporation for the applicant, Butchco, Inc. offered into evidence nor was there an application for a trade name registration certificate offered into evidence by the applicant for use of the trade name, Thomas Gerrity Moving & Storage which is the fictitious name that the applicant is attempting to transfer and continue to utilize in its business operation.

Moreover, attached as Exhibit "A" is the Application for

Amendment of the Fictitious Name that was filed by the applicant on June 4, 1997 which incorrectly states the fictitious name as heretofore registered as being Thomas A. Gerrity Moving & Storage. As such, the entity that is seeking to transfer this right to the applicant differs from the name filed by the applicant on its Application for Amendment to Fictitious Name. Therefore, the applicant is not properly filed with the Department of State as required by P.U.C. Rules and Regulations.

In further support of the applicant's confusion concerning its own trade name, please see Exhibit "B" which is a yellow page ad for Thomas A. Gerrity which again differs from the Thomas Gerrity Moving & Storage that the current transferor now trades to do business as in the Commonwealth of Pennsylvania. The applicant has further been operating illegally within the Commonwealth of Pennsylvania as it has admittedly been operating the business of the transferor since November of 1996 under what was first described as a oral management agreement that was later reduced to writing and executed by the parties on May 30, 1997. The management agreement was not on file with the Public Utility Commission to authorize the transfer of the business by the applicant which supports the protestants position that the applicant has been operating illegally since November of 1996 and has admittedly involved itself in over 400 illegal moves. Snyder, Supra. states that such a transfer of rights requires prior approval of the Commission.

Essentially, the applicant has acted as if the commission has

previously approved the transfer of the Certificate of Public Convenience and the operating rights of Fratco, Inc. as they were engaged in business for at least seven (7) months before they made any overt attempts to properly file an Application for Fictitious Name which was not filed until June 4, 1997; nor a Certificate of Incorporation as the applicant did not file Articles of Incorporation with the Department of State until December 19, 1996. Moreover, the financial statement that was offered as the applicant's Exhibit "1" indicates that Butchco, Inc. is doing business as "the original Thomas A. Gerrity Moving & Storage of Scranton" and illegally generated total revenues from January 1, 1997 to June 30, 1997 in the amount of \$96,017.00. This figure does not include the revenue generated by the applicants since it commenced business operations of the transferor for the months of November and December, 1996. As such, the applicant has clearly been providing service to the public without properly transferring the Certificate issued to the transferor and therefore never received the approval of the commission as required under P.U.C. Rules and Regulations and case law.

The protestant offered evidence as to the confusion that the similarity of the business and/or trade name utilized by both companies has caused to the general public. The similarity in name was never a problem for the original certificate holder as they were father and son, not separate competing entities as the Court now has before it. The protestant through it's owner and operator, Christopher Santoro offered evidence as to the confusion that the

similarity of name has caused to his business which was further substantiated by his Company Foreman, Nicholas Corridoni.

In this proceeding, it is clear that the transferor (Fratco, Inc.) no longer renders service to the public as the applicant admittedly stated that it conducts all business operations for Fratco and retains 99% of all commissions. Thus, the continuation of the open public necessity requirement set forth in Mobilfone of Northeastern Pa., Inc. v. Pa. P.U.C., 67 Pa. Commonwealth Ct. 219, 446 A.2d 1001 (1982) has not been satisfied. In addition, the transferor, Fratco, Inc. has abandoned its business operation and certificate by allowing the applicant complete control and operation of its business without the prior approval of the Commission.

A motor carrier applicant is required to prove its technical and financial fitness to provide the proposed transportation services pursuant to Section 41.14(b) of the Commission's Transportation Policy, which also provides that an Applicant may be denied by the Commission if the applicant lacks the propensity to operate safely and legally. Clearly, this applicant has been operating illegally.

II. WHETHER THE APPLICANT MET ITS BURDEN OF PROVING THAT IT IS FINANCIALLY FIT AND IN COMPLIANCE WITH ALL REQUIREMENTS OF THE COMMISSION.

In Application Adegbola Ige, t/a Globe Limousine Service, Docket No. A-108943 (1991), The Commission has set forth a three prong standard, all of which must be satisfied to determine the fitness

of an applicant. 1. Technical expertise; 2. Financial Capacity; and 3. Propensity to act safely and legally. It is the position of the protestant that the applicant has failed to satisfy the dual prong of technical expertise and financial capacity as the only offer of proof concerning same was the financial statement of the applicant for the period January 1, 1997 through June 30, 1997, when the applicant was solely conducting this business without any prior approval of the Commission.

The third prong, of the Adegbola Ige standard, the propensity to operate safely and legally, the evidence is quite clear that the applicant lacks the requisite propensity to operate safely and legally as evidenced by it's willful assumption of the existing business operation of the transferor without any prior approval of the Commission. As the Court in Snyder v. Pa. P.U.C., 144 A.2d 468, 187 Pa. Supra 147 (1958), stated, such a transfer requires prior approval by the commission. It is certainly obvious that the applicant has never received the prior approval of the commission before it commenced it's business operation. Moreover, the carelessness with which the applicant has caused to file it's fictitious name registration and the inconsistent use of various yet similar business names of the applicant, along with the inaccurate Yellow Page advertisement certainly establishes the fact that the applicant lacks the requisite propensity to operate in compliance with all requirements of the Commission within the Commonwealth of Pennsylvania.

HISTORY OF THOMAS GERRITY, JR. MOVING & STORAGE COMPANY

On March 5, 1986, the Commission granted the application of Thomas Gerrity, Jr., A-00100754, as a transfer of rights held under the certificate issued to Clarence Heil t/d/b/a Henry Heil & Son at A-00082603. Mr. Gerrity, Jr. operated the moving company continuously until he entered into a transfer of rights under his existing certificate to the protestant herein and/or it's predecessor, in March, 1992. Mr. Santoro has operated his business continuously since receiving his P.U.C. authority in 1992 which serves as his primary and/or only source of income.

SANTORO ENTERPRISES, INC. t/d/b/a

THOMAS GERRITY, JR. MOVING AND STORAGE COMPANY

OPERATING RIGHTS

See Certificate Number A-00113019 attached hereto as Exhibit "C"

VII. PROPOSED CONCLUSIONS OF LAW

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

2. The applicant has failed to satisfy it's burden of demonstrating that it is technically and financially fit to render service to receive a Certificate of Public Convenience and Necessity evidencing a transfer of authority from Fratco, Inc. t/d/b/a Thomas Gerrity Moving & Storage.

3. The presumption of a continuing public need for the transferors services has been rebutted in this proceeding by evidence of abandonment of the certificate by the transferor and

confusion to the general public by way of the name similarity.

VIII. PROPOSED ORDER IN PARAGRAPHS

1. The Application of Butchco, Inc., t/d/b/a Thomas Gerrity Moving & Storage at Docket No. A-00113673 is denied in it's entirety.


2. The Applicant is immediately ordered to seize and desist all business operations it is currently conducting under the name Butchco, Inc. t/d/b/a Thomas Gerrity Moving & Storage.

3. The rights of the transferor, if any, shall remain with the transferor, Fratco, Inc.

IX. CONCLUSION

WHEREFORE, Protestant, Santoro Enterprises, Inc. t/d/b/a Thomas Gerrity, Jr., Moving & Storage Company, respectfully requests this Commission deny the transfer application in it's entirety.

Respectfully submitted,



Christopher B. Jones, Esq.,
406 Jefferson Avenue
Scranton, PA 18510
(717) 342-9295
Attorney for
Pocono Enterprises, Inc.
t/d/b/a Thomas Gerrity Jr.,
Moving & Storage Company

DATED: November 24, 1997

9783-421

Microfilm Number _____

Filed with the Department of State on _____

JUN 04 1997

Entity Number 2068044

[Signature]
Secretary of the Commonwealth

**APPLICATION FOR AMENDMENT, CANCELLATION OR WITHDRAWAL
FICTITIOUS NAME**
OSC# 94-312/313 Rev 89

Indicate type of transaction (check one):

- Application for Amendment of Fictitious Name Registration (54 Pa.C.S. § 312)
- Application for Cancellation of Fictitious Name Registration (54 Pa.C.S. § 313)
- Application for Withdrawal from Fictitious Name Registration (54 Pa.C.S. § 313)

In compliance with the requirements of 54 Pa.C.S. Ch.3 (relating to fictitious names), the undersigned entity or entities, desiring to amend, cancel or to withdraw from a fictitious name registration, hereby state(s) that:

1. The fictitious name as heretofore registered is: Thomas Gerrity Moving & Storage

2. The address of the principal place of business of the business or other activity carried on under or through the fictitious name, including number and street, if any, is (the Department is authorized to conform to the records of the Department):

<u>629 Wheeler Ave.</u>	<u>Scranton</u>	<u>PA</u>	<u>18508</u>	<u>Lackawanna</u>
Number and Street	City	State	Zip	County

3. The last preceding filing with respect to this fictitious name was made in the Department of State on: December 17, 1996
at _____ (Date)
(Roll and Film)

4. (Check one or more of the following, as appropriate):

A. The fictitious name has been changed to: _____

B. The principal place of business set forth in paragraph 2 has been changed to (P.O. Box alone is not acceptable):

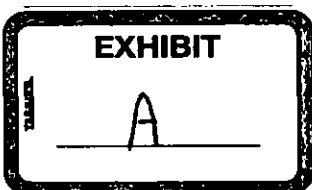
Number and Street	City	State	Zip	County
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C. The following party(ies) has (have) been added to the registration and their signature(s) appear(s) at the end of this application:

Name	Number and Street	City	State	Zip
<u>Buechco, Inc.</u>	<u>1252 Philo St.</u>	<u>Scranton</u>	<u>PA</u>	<u>18508</u>

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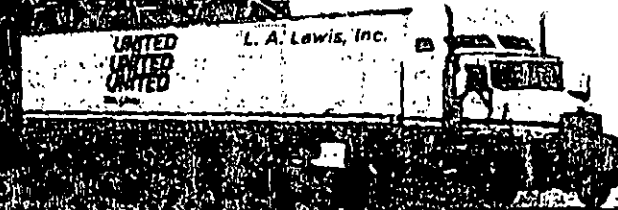
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- ▣ LOCAL & LONG DISTANCE MOVING
- ▣ SKILL IN PACKING & CRATING
- ▣ CONTAINERIZE STORAGE-Short/Long Term
- ▣ EFFICIENCY IN OFFICE MOVING & PIANOS
- ▣ SPECIAL PADDING FOR FURNITURE SAFETY

FREE PHONE ESTIMATES

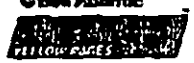
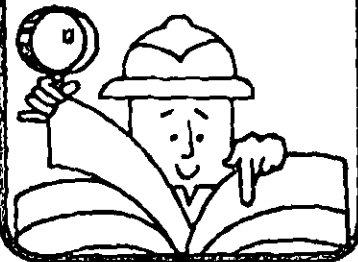
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EXHIBIT

B

Santoro Enterprises, Inc.
t/d/b/a
THOMAS GERRITY, JR. MOVING AND STORAGE COMPANY

LOCAL MOTOR FREIGHT TARIFF

NAMING

RATES, RULES AND REGULATIONS

GOVERNING

THE RIGHT

To transport, as a common carrier:

- (1) household goods in use, between points in the city of Scranton, Lackawanna County, and within three (3) miles of the limits thereof, and from said points, to points in Pennsylvania, and vice versa; and
- (2) property, excluding household goods in use, between points in Pennsylvania.

For rates, rules, regulations and provisions applicable on the transportation of HOUSEHOLD GOODS IN USE, see Tariff Freight Pa. P.U.C. No. 53 (Carrier Directory), loose-leaf revisions thereto and successive issues thereof, issued by Tristate Household Goods Tariff Conference, Inc., Agent.

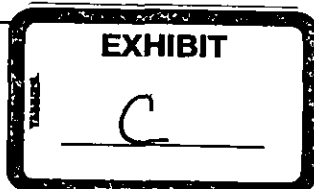
ISSUED: AUGUST 27, 1996

EFFECTIVE: AUGUST 28, 1996

Issued on 1 day's notice under authority of PA Code, Title 52, Section 23.42.

Issued By:

Christopher Santoro, President
P. O. Box 280
Taylor, PA 18517-0280



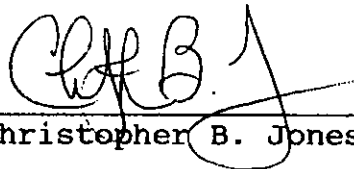
IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of November, 1997, I have served true and correct copies of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code Section 1.54:

The Honorable Richard M. Lovenwirth
Administrative Law Judge
Office of the Administrative Law Judge
Pa. Public Utility Commission
Scranton State Office Bldg., Room 318
100 Lackawanna Avenue
Scranton, PA 18503

Kenneth Zielonis
STEVENS & LEE
208 North Third Street
Suite 310
PO BOX 12090
Harrisburg, PA 17108



Christopher B. Jones, Esquire

LAW OFFICES OF
STEVENS & LEE
A PROFESSIONAL CORPORATION

PLEASE RESPOND TO HARRISBURG

December 12, 1997

RECEIVED
97 DEC 11 PM 4:17
PROTHONOTARY'S OFFICE

James J. McNulty
Prothonotary/Acting Secretary
PA Public Utility Commission
P.O. Box 3265
North Office Building
Harrisburg, PA 17105-3265

Re: Application of Butchco, Inc., t/d/b/a Thomas Gerrity
Moving and Storage, Docket No. A-00113673

Dear Prothonotary McNulty:

Please find enclosed an original and nine copies of the Reply Brief for filing on behalf of the Applicant, Butchco, Inc., t/d/b/a Thomas Gerrity Moving and Storage, in the above captioned proceeding. As indicated by the attached Certificate of Service, all parties of record have been served a copy hereof. I also enclose a diskette containing this document. It is formatted in Word Perfect 5.1.

Should you have any questions or comments, please feel free to contact my office.

Sincerely,

STEVENS & LEE

Kenneth Zielonis
Kenneth Zielonis

/dle
Attachment

DOCUMENT
FOLDER

ORIGINAL

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

3 Application of Butchco Inc. :
4 t/d/b/a Thomas Gerrity : Docket No. A-00113673
5 Moving and Storage :

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REPLY BRIEF OF APPLICANT,
BUTCHCO INC.,
t/d/b/a THOMAS GERRITY MOVING AND STORAGE

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Kenneth Zielonis, Esquire
STEVENS & LEE
Suite 310
208 North Third Street
P.O. Box 12090
Harrisburg, PA 17108-2090
(717) 234-1250

18 Dated: December 12, 1997

19 Attorneys for Butchco Inc.,
20 t/d/b/a Thomas Gerrity Moving
and Storage

DOCKETED
DEC 16 1997

DOCUMENT
FOLDER

1 I. STATEMENT OF THE CASE

2 On November 7, 1997, the Applicant, Butchco Inc.,
3 t/d/b/a Thomas Gerrity Moving and Storage, filed its Main Brief
4 in this proceeding. Applicant incorporates by reference the
5 Statement of the Case contained in that Main Brief. On
6 November 24, 1997, Protestant, Santoro Enterprises, Inc., t/d/b/a
7 Thomas Gerrity, Jr. Moving and Storage filed what has been styled
8 as a Reply Brief. Applicant received permission to file a reply
9 to that Reply Brief. Applicant submits this Reply Brief in
10 accordance with that directive.

1 argument that there is no public need for two companies with
2 similar names is ludicrous. The Pennsylvania Department of State
3 has issued two fictitious names. (It is emphasized that the
4 Protestant never entered a copy of its fictitious name
5 registration into the evidentiary record.) Those filed
6 registrations are the end of the matter.

1 **III. ARGUMENT**

2 **A. Applicant is Financially and Technically Fit to**
3 **Receive a Certificate.**

4 Protestant argues that Applicant is unfit to render
5 service. It claims Applicant did not offer a list of equipment
6 to be used in service, a statement of its proposed safety program
7 or a statement of the Applicant's experience. Nothing could be
8 further from the truth. There is extensive discussion, as
9 described in the Applicant's Main Brief and its Proposed Findings
10 of Fact, regarding: Applicant's extensive experience in the
11 moving and storage business, a description of equipment and
12 facilities to be used in that business, and statements regarding
13 the experience of Applicant's employees. Finally, Applicant's
14 witness testified extensively regarding its safety program.

15 Protestant argues that Exhibit "A" attached to its
16 Reply Brief incorrectly states Applicant's fictitious name as
17 "Thomas A. Gerrity Moving & Storage." It should be noted that
18 someone has handwritten an "A" on that official document. The
19 correct fictitious name, as described by Applicant's witness
20 Bobersky, is on file with the Commission. Protestant's
21 Exhibit "B," a Yellow Page advertisement, also is used by
22 Protestant to support an allegation of fictitious name
23 impropriety. Applicant's witness Bobersky testified that he did
24 not know who created that advertisement and that his company did
25 not create the advertisement. In addition, he agreed that he

1 would have to correct the advertisement in the next published
2 edition of the telephone book.

3 The Transferror has not transferred illegally its
4 authority to Applicant. The Transferror still possesses the
5 certificate authority. Applicant simply has managed the business
6 operations of the Transferror. Transferror could have employed
7 Applicant's president to run and supervise the business.
8 Instead, Applicant created a corporation which acts as the
9 "employee" of the Transferror. There is nothing illegal in such
10 an arrangement. Finally there is no requirement that the
11 Management Agreement be filed with the Commission.

12 Protestant's ludicrous argument regarding similarity of
13 names is wholly without merit. Protestant claims that the
14 similarity in names was never a problem when a father and son
15 were operating the businesses since, Protestant implies, they
16 never competed for business. Of course, there is no record
17 evidence to support or confirm that competition allegation. Nor
18 is the issue of customer confusion even established in the
19 record. The only evidence is a discussion of two separate moving
20 jobs performed by two separate moving companies at separate time
21 periods. Furthermore, it is apparent that if confusion exists
22 Protestant did not provide any financial substantiation of its
23 claim of harm to its business. The claim of public confusion is
24 without merit.

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2 edition of the telephone book.

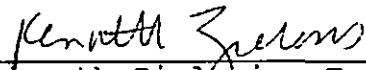
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20 jobs performed by two separate moving companies at separate time
21 periods. Furthermore, it is apparent that if confusion exists
22 Protestant did not provide any financial substantiation of its
23 claim of harm to its business. The claim of public confusion is
24 without merit.

1 **IV. CONCLUSION**

2 WHEREFORE, Applicant, Butchco, Inc., t/d/b/a Thomas
3 Gerrity Moving and Storage, respectfully requests the adoption of
4 each and every recommendation contained herein.

5 Respectfully submitted,

6 
7 Kenneth Zielonis, Esquire
8 STEVENS & LEE
9 Suite 310
10 208 North Third Street
11 P.O. Box 12090
12 Harrisburg, PA 17108-2090
13 (717) 234-1250

14 Dated: December 12, 1997

15 Attorneys for Butchco Inc.
16 t/d/b/a Thomas Gerrity Moving
and Storage

PROTHONOTARY'S OFFICE

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IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
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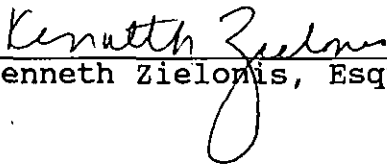
Application of Butchco, Inc. :
t/d/b/a Thomas Gerrity Moving : Docket No. A-00113673
and Storage :

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 1997, I have served true and correct copies of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code Section 1.54:

The Honorable Richard M. Lovenwirth
Administrative Law Judge
Office of Administrative Law Judge
Pa. Public Utility Commission
Scranton State Office Bldg., Room 318
100 Lackawanna Avenue
Scranton, PA 18503

Christopher B. Jones, Esquire
406 Jefferson Avenue
Scranton, PA 18510


Kenneth Zielonis, Esquire

PROCTOR & KENNEDY'S OFFICE

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