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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Stacia H. Grove :  
t/d/b/a Central Pennsylvania :  
Limousine Service :

: DOCKET NO.  
: A-00114058  
:  
:

BRIEF AND PROPOSED FINDINGS OF FACT  
AND CONCLUSION OF LAW OF  
KEYSTONE LIMOUSINE, INC.  
SALGALS INC., t/d/b/a VILLA LIMOUSINE SERVICE  
UNIQUE LIMOUSINE SERVICE INC.  
WHITE ROSE LIMOUSINE INC.

Respectfully Submitted,

By 

Scott W. Pohlman, Esquire  
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Attorney for Protestant

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF STACIA H. GROVE : DOCKET NO. A-00114058  
t/d/b/a CENTRAL PENNSYLVANIA :  
LIMOUSINE SERVICE :  
:

BEFORE: Wayne L. Weismandel, Administrative Law Judge

HEARING DATES: Friday, October 17, 1998  
Tuesday, December 16, 1997,  
Tuesday, February 24, 1998  
North Office Building  
North Street and Commonwealth Ave.  
Harrisburg, Pennsylvania

APPEARANCES: Protestant's Counsel  
Scott W. Pohlman, Esquire  
Robinson & Gerald  
4407 North Front Street  
Harrisburg, PA 17110

Applicant's Counsel  
Benjamin Dunlap Jr., Esquire  
Nauman Smith Shissler & Hall  
18th Floor 200 N. 3rd St.  
P.O Box 840  
Harrisburg, PA 17108-0804

WITNESSES: For Protestant:  
James Salinger

For Applicant:  
Stacia H. Grove  
Priscilla I. Hoffman  
Donald P. Gill  
Barbara Ann Lepley  
Mark Stephen King, Jr.  
Margaret Mary Bayliss  
Todd G. Grove  
Frank E. King  
Philip R. Wenger  
Kevin M. Deller  
Todd J. Shreve  
Edward W. Emswiler  
John Edward Johns, Jr.  
Gena Liane Dwyer

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I. STATEMENT OF THE CASE

1. Whether Applicant has demonstrated a need for the proposed service?

Suggested Answer: No.

2. Whether Applicant has demonstrated the financial fitness and technical expertise to operate the proposed service?

Suggested Answer: No.

II. PROPOSED FINDINGS OF FACTS

1. The Applicant has applied for a certificate of public convenience for limousine authority in the counties of York, Dauphin, and Lancaster.

2. The Protestants all filed timely appeals.

3. The Applicant has not prepared a business or financial plan for her company. (N.T. 254).

4. The Applicant has not established the tariffs that she will charge her patrons, only that it will be lower than the Protestants. (N.T. 257).

5. The Applicant does not have any price estimates for maintenance, storage, insurance, advertising, or driver salaries. (N.T. 89-92).

6. The Applicant herself will be the main driver, scheduler, and manager. (N.T. 43, 85).

7. The Applicant does not have experience driving commercially with passengers. (N.T. 83).

8. The Applicant has proposed to offer a unique service of hunting trips or ski vacations, however there are no known or identified customers. (N.T. 65).

9. The Applicant has not investigated the costs of maintaining her vehicles. (N.T. 91).

10. The Applicant plans to use the suburban as the primary vehicle for her company. (N.T. 43).

11. The Applicant plans to use the suburban as a family vehicle and will still lease the vehicle if her authority is not approved. (N.T. 153).

12. The Applicant plans to lease or purchase a Ford Superwagon for use under her limousine authority, the seating capacity of the vehicle is up to fifteen people. (N.T. 92).

13. The Applicant has not presented any witnesses who need limousine service.

14. The Applicant has not presented any witnesses who would use her proposed unique service, hunting trips or ski trips.

15. The Applicant's witnesses did not testify to a specific personal need either now or in the future.

16. The Applicant's witnesses did not identify specific pickups, destination points or events for limousine service.

17. The Applicant's witnesses testified to past use. Those who used limousine services were satisfied with the service. (N.T. 136).

18. Protestant Keystone Limousine Inc. has a Certificate of Public Convenience for Limousine Service in the State of Pennsylvania, A-00110279.

19. Protestant Unique Limousine Service Inc, has a Certificate of Public Convenience for Limousine Service in the State of Pennsylvania, A-00104709.

20. Protestant White Rose Limousine Inc., has a Certificate of Public Convenience for Limousine Service in the State of Pennsylvania, A-00114058.

21. Protestant Salgals, Inc. t/d/b/a Villa Limousine Service has a Certificate of Public Convenience for Limousine Service in the State of Pennsylvania, A-00110608.

22. There is not a sufficient need for limousine service in the requested counties.

23. The Applicant has not demonstrated financial feasibility or technical fitness.

### III. ARGUMENT

#### PROCEDURAL HISTORY

The Applicant Stacia H. Grove t/d/b/a Central Pennsylvania Limousine Service, filed for Certificate of Public Convenience for limousine authority on June 5, 1997. She applied for authority to operate in the counties of Dauphin, York, and Lancaster to points in Pennsylvania and return.

Protests were filed by Unique Limousine Service Inc. (Unique), Salgals Inc. t/d/b/a Villa Limousine Service (Villa), Superior

Transportation Service, Inc. t/d/b/a Superior Limousine Service of Harrisburg (Superior), Keystone Limousine, Inc. (Keystone), and White Rose Limousine, Inc. (White Rose) all collectively know as "Protestants" were filed before the July 21, 1997 protest date.

Pursuant to an initial decision of Judge Wayne Weismandel dated December 1, 1997 and issued on December 12, 1997, Superior was dismissed from the case for lack of standing to protest.

Hearings for the application were held on December 16, 1997 and February 24, 1998 in Harrisburg, Pennsylvania. During those hearings the Judge took oral testimony from the Applicant, her witnesses and the Protestants.

#### LEGAL CRITERIA

The protest of an application for certificate of authority may only be brought by a party with standing to protest. The ultimate question to be answered when determining standing is whether the plaintiff is the proper person to challenge the alleged illegality. Wm. Penn. Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975). "Standing of a Protestant is dependent on having an immediate and direct interest in the matter..." Application of K-Cab, Inc., Dkt. No. A-00111416 F0004, 1995 Pa. PUC Lexis 135. Section 1.8 of the Commission Rules of Administrative Practice and Procedure 52 Pa. Code Section 1.8 defines "Protestants" as: Persons objecting on the grounds of private or public interest to the approval of an application or other matter which the Commission may have under consideration.

"There is no requirement that a protest must be based on existing competing certificate of authority" Application of K-Cab, Inc. supra. p 8.

Standing requires that an aggrieved party have an interest which is substantial, direct and immediate. To have a substantial interest means that there must be a discernible adverse effect to some interest of the complaining party other than the abstract interest of all citizens in having others comply with the law. To have a direct interest means that the aggrieved party must show causation of the harm to his interest by the matter of which he complains. To have an immediate interest means that the nature of the causal connection between the action complained of and the injury to the person challenging it, is sufficiently close to present a justiciable controversy.

Application of Dorinda Nolan, t/d/b/a Puddle Jumper's, Docket No. A-00113708, 1997 Pa. PUC LEXIS 33, page 8, Initial Decision dated July 24, 1997, Administrative Law Judge Weisman del citing, In Re Francis Edward McGillick Foundation, 537 Pa. 194, 642 A.2d 467 (1994).

Administrative Law Judge Robert P. Meehan, reviewed the issue and determined that it appears a Protestant must have some operating authority in actual, or potential conflict, with the authority sought by an Applicant, to have the requisite standing to protest the application. Application of Carriage Limousine Services, Inc., Docket No. A-00108361, F.1, Am-B, Initial Decision dated October 12, 1994, final by operation of law (order entered December 23, 1994). A party must possess a greater interest in this Application than any other member of the general public in having others comply with the law. Application of Dorinda Nolan, t/d/b/a Puddle Jumper's,

supra. The protest of an application requires that the Applicant meet the regulations as set forth in the Public Utility Code. The Protestants all possess an interest in this Application which is greater than members of the general public. The Protestants possess authority allowing them to operate a limousine service in conflict with the territory applied for by the Applicant. The addition of a carrier that is not serving an identifiable need will adversely impact all authorized carriers in the requested counties. The Protestants all have a direct interest in their respective counties. The Protestants all maintain an interest which is greater than that of the individual concerned with forcing others to uphold the law. The Protestants maintain the Applicant has not met the requirements as outlined below.

The basis for the granting or denial of a Certificate of Public Convenience is set forth in Section 1103 of the Public Utility Code, 66 Pa. C.S. Sections 1103, which provides, in pertinent part as follows:

"(a) General Rule -- Every Applicant for a Certificate of Public Convenience shall be made to the commission, in writing, be verified by oath or affirmation, and be in such form, and contain such information as the commission may require by its regulations. A certificate of Public Convenience shall be granted by order of the commission only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public."

A series of cases have interpreted this section to be a mandate for the Commission to protect the public interest by preventing unrestrained and destructive competition among motor carriers,

consistent with the necessity to assure availability of transportation commensurate with the demonstrated public need for transportation services: Seaboard Tank Lines, Inc. v. Pennsylvania Public Utility Commission, 93 Pa. Commonwealth Ct. 601, 611, 502 A.2d 762, (1985); Pennsylvania Public Utility Commission v. Purolator Courier Corp., 24 Pa. Commonwealth Ct. 301, 355 A.2d 850 (1976); McNaughton Brothers, Inc. v. Pennsylvania Public Utility Commission, 2 Pa. Commonwealth Ct. 319, 278 A.2d 186 (1971); Zurcher v. Pennsylvania Public Utility Commission, 173 Pa. Super Ct. 143, 98 A.2d 218 (1953); Re Ben Franklin Carriages, Inc., 54 Ap PUC 74 (1980).

In applying this legislative mandate, the Commission has, through a series of cases, adopted certain criteria to be utilized in its evaluation of whether approval of an application is "necessary or proper for the service, accommodation, convenience, or safety of the public." A thorough review of these cases led to the adoption of the Commission Policy Statement appearing at 52 Pa. Code Sections 41.14, which provides as follows:

- "41.14 Evidentiary criteria used to decide motor common carrier application - statement of policy:
- (a) An Applicant seeking motor carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.
  - (b) An Applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service and, in addition, authority may be withheld if the record demonstrates that the Applicant lacks a propensity to operate legally and safely.
  - (c) The commission will grant motor common carrier

authority commensurate with the demonstrated public need unless it establishes that the entry of a new carrier into the field would endanger or impair the operations of existing carriers to an extent that, on balance, the granting of authority would be contrary to the public interest."

It is firmly established that these criteria apply to the transportation of passengers as well as freight: Yellow Cab Company v. Pennsylvania Public Utility Commission, 105 PA. Commonwealth Ct. 513, 524, A.2d 1069 (1987). The criteria were explained in the Application of Bluebird Coach Lines, Inc., 72 Pa. PUC 262 (1990), the Commission stated: "Under the new criteria at Section 41.14, a motor common carrier Applicant now has a bipartite burden of proof. Section 41.14(a) places upon the Applicant the "burden of demonstration that the approval of the application will serve a useful public purpose, responsive to a public demand or need.' Subsection (b) places upon the Applicant the "burden of demonstrating that it possesses the technical and financial ability to provide the proposed service.' Together, the evidentiary criteria at Subsection 41.14(a) and 41.14(b) constitutes an Applicant's prima facie burden of proof in an application proceeding." The Protestant to the instant application maintains that the Applicant has failed to meet this burden.

In order for the Applicant to secure authority from this Commission to operate as a motor carrier in the Commonwealth, the Applicant must demonstrate: (1) a need for the proposed service, and (2) that the Applicant is fit, both technically and financially, to operate the service.

A. APPLICANT HAS FAILED TO DEMONSTRATE A PUBLIC NEED FOR THE PROPOSED SERVICE.

A main focus of every motor carrier proceeding is the burden of showing a public need for the proposed service. Only through the production of relevant, probative, competent and credible evidence of record may a motor common carrier Applicant show that the proposed service will satisfy the asserted need: Seaboard Tank Lines, Inc. supra; Re Lenzner Coach Lines, Inc., 63 Pa. PUC 217 (1987); Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission, 16 Pa. Commonwealth Ct. 293, 328 A.2d 194 (1974). Additionally, only through proof of this need can an Applicant begin to establish that its intended service is "reasonably necessary for accommodation or convenience of the public" and meet the Commission's first evidentiary criterion: D.F. Bast, Inc. v. Pennsylvania Public Utility Commission, 397, Pa. Commonwealth Ct. 246, 154 A.2d 505 (1959); Purolator Courier Corp.; Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Commonwealth Ct. 1, 337 A.2d 922 (1975); McNaughton Brothers, Inc.; Re Mobilfore of Northeastern Pa., Inc., 54 Pa PUC 521 (1980). As was explained by Administrative Law Judge John Corbett, in Application of Pleasant Trucking, Inc., A-0018637 (Initial Decision issued December 5, 1989, Final Order entered January 8, 1990): "Evidence tending to establish a public demand for the proposed service is usually in the form of an expressed and defined desire, on part of some portion of the public, for the proposed service," Such evidence is traditionally comprised of detailed testimony of requests for

service: Byerly v. Pennsylvania Public Utility Commission, 440 Pa. Comm. Ct. 521, 270 A.2d 186 91970); Dutchland Tours, Inc.

In order to meet the Seaboard "public need" test, a witness supporting the application must be legally competent and credible: D.F. Bast, Inc.; Merz White Way Tours v. Pennsylvania Public Utility Commission, 204 Pa. Superior Ct. 43, 201 A. 2d 446 (1964), and the testimony of the witness must be probative and relevant to the application proceeding, Purolator Courier Corp.; Dutchland Tours, Inc.; Morgan Drive Away, Inc. In addition, the supporting witnesses must articulate a demand/need for the type of service embodied in the application, Re James Am Means, 53 Pa. PUC 216 (1979); Re Hasser Bros., Inc., 52 Pa. PUC 69 (1978). Also important, the supporting witnesses must identify Pennsylvania origin and destination points between which they require transportation, and these points must correspond with the scope of the operating territory specified in the application, Re Northstein Bros., Inc, 64 Pa. PUC 411 (1987); Re Purolator Courier Corp., 50 Pa. PUC 308 (1976). Based upon this administrative and judicial direction it is proper to review the testimony presented by the Applicant and his supporting witnesses.

The Applicant called herself as the first witness in support of the application. Ms. Grove was not able to identify any individuals or businesses in need of her services. She has proposed to offer a unique service of taking patrons on hunting trips or on skiing trips.

(N.T. p. 65). However, when she was asked to expand upon the service by her counsel she was not able to.

- Q: Do you anticipate providing any different services which are not being provided in the community currently?
- A: Yes, I do.
- Q: What might those be?
- A: I plan on offering my services for ski trips and also for hunting trips.
- Q: Have you thought about ways that you might specifically target them, those companies?
- A: Yes, I've thought of ways.
- Q: Do you care to get into those now?
- A: No. I would rather not.
- Q: Why is that?
- A: (No response)  
(N.T. p 65-66)

The witnesses offered in support did not state any need for the service either.

The Applicant does not have a need to serve. In fact she hopes to be a back-up service to the existing companies. (N.T. 67). She also testified during the second day of hearings she would not start providing service until April of 1999, a period of thirteen months after the hearing. (N.T. 251). The Applicant does not have any patrons in need of her service. She has called witness to support her, but the witnesses combined do not establish a representative sample or sufficient need to warrant a new limousine service.

The first witness called in support was her sister, Priscilla I. Hoffman, from York, Pennsylvania. Her past experience with using a limousine was for a birthday trip around town. (N.T. 120). She used the limousine over ten years ago. (N.T. 122). Her proposed future use may be for a wedding, but she answered "... I can't predict where

I'll go in the future, but I imagine there will be opportunity that we can use the service." (N.T. 121). She herself has never looked in to the cost of renting a limousine, but if she did it would be a stretch limousine. (N.T. 122). Ms. Hoffaman has not identified any need for a limousine and her past usage does not demonstrate any ongoing use of limousines.

The next witness was Donald P. Gill of York, Pennsylvania. Mr. Gill testified that he used a limousine seven, eight, and ten years ago for his daughter's weddings and he used one for a trip to Baltimore. (N.T. 124). He identified the possible future use of a limousine for a wedding and possibly for business use. (N.T. 124). However, he did not identify the specific future use beyond saying "...there was not need yet, but some day." (N.T. 124). His company has only picked up people for business purposes two or three times in the past year. (N.T. 126). Mr. Gill has not demonstrated a need for limousine service.

Barbara Lepley of Dallastown, Pennsylvania testified that she has used limousines for her children's school events three times in the past (N.T. 130). She did not have a problem securing the service. (N.T. 131). She also testified to personally using the service of Protestant Unique in November and had a very good trip and chauffeur. (N.T. 137). She did not identify any future need for limousine service.

Mark Stephen King, Jr., a student in York, Pennsylvania testified that he had trouble locating a limousine for use during a

Homecoming in 1996, they were able to eventually secure service. (N.T. 140). He testified, he may get married and need limousine someday. (N.T. 142).

Margaret Mary Bayliss of York, Pennsylvania testified to using a limousine one and a half years ago to travel to Baltimore. (N.T. 145). She stated that she may use a limousine for her daughter's graduation and proms and for her husband to transport Physicians that he is interviewing. (N.T. 146). She testified, she did not have a problem securing a limousine in the past and that she had good service. (N.T. 151).

The Applicant next called her husband, Todd G. Grove. Mr. Grove did not identify a need for limousine service. He did response to Judge Weismandell's question about vehicles as follows:

Q: Mr. Grove, you testified, if I got it right, that a stretch limousine would be the primary vehicle used by Central Pennsylvania Limousine Service if its application is approved.

A: That is my assumption, yes. I think it all depends on what the public demand is, what the occasion is. If it would be a wedding or something of that sort, I think the client would want to use a stretch limousine. (N.T. 165-166).

The Applicant has not made a vehicle decision because they do not know who they will serve. According to Mr. Grove's testimony the vehicle choice would depend on what the clients want. The Applicant does not have any clients to serve, so they do not know what vehicle to purchase.

The Applicant then called Frank E. King who operates a wedding photography business in York and the surrounding areas. Mr. King did

not testify to a personal or business future need. He only testified that he would recommend the Applicant's services. (N.T. 187). His company does not arrange limousine service or have packages which include limousine service. (N.T. 192). He did not identify a future need.

Philip R. Wenger who has a business address in Lancaster, Pennsylvania was called to support the Applicant. Mr. Wenger testified that he was looking for a vehicle for twelve to twenty people. (N.T. 196). A vehicle of that size is outside the scope of luxury limousine service. 52 Pa. Code Section 29.333(a). He did testify that his business may use a limousine service in the future. (N.T. 202). He did not identify any specific times, destinations or the frequency of use. He did not indicate he ever had trouble obtaining limousine service.

The Applicant called Kevin M. Deller of York, who has never hired a limousine service and those he used were primarily in South Florida. (N.T. 208, 211). He testified that he will use a service in the future. (N.T. 209). No time, place or events were specifically identified. Todd J. Shreve from York was also called to testify to past use for bachelor parties. (N.T. 213). He only identified a friend that would be getting married and they may use a limousine for that. (N.T. 215).

John Edward Johns, Jr. who lives in California, was called in support of the Applicant. He did not identify any future times he would need limousine service. Mr. Johns testified he relies on his

family first for transportation, but he does not have the last minute flexibility when leaving town. (N.T. 242). The service Mr. Johns is looking for is call and demand service, not luxury limousine service. 52 Pa. Code Section 29.13(2).

Finally, the Applicant called Gena Liane Dwyer of York, Pennsylvania to support her application. Ms. Dwyer testified she would use a limousine service if the price was right. (N.T. 245). She did not identify any specific times when she would be using the service. In response to the Judge's questions she did state she wanted Stacia to drive a limousine for a benefit dinner, which was approximately a month away. (N.T. 247). She did not make any other inquiries with other certified carries. (N.T. 247).

The Applicant has not identified a need to serve or potential customers who could not be served by the existing carriers. She was able to produce a number of witnesses who testified they would use her services if they ever needed service, but their testimony has not identified any need. Their past use has been sporadic at best and those that did use and hire the service were always able to find a carrier. The witnesses also failed to be a true representation of the areas she has applied for. For the most part all the witnesses live and work in York County. She had only one witness from Lancaster County and no witnesses from Dauphin County. The first criteria is the identification of a need. The Applicant has not met the initial burden.

B. THE APPLICANT HAS FAILED TO DEMONSTRATE TECHNICAL FITNESS

The criterion set forth in the Commission's regulations at 52 Pa. PUC 41.14(b) is a restatement of the often stated "fitness" criteria. In Re Perry Hassman, 55 Pa.PUC 661 (1982), the Commission stated its definition of fitness, in part as follows:

1. Technical expertise -- Applicant must have technical capacity to meet the need in a satisfactory fashion, Pennsylvania Public Utility Commission v. Pennsylvania Radio Teleph. Corp., 20 Pa. Commonwealth Ct. 519, 594, 342 A.2d 489 (1975). Applicant must possess sufficient staff, facilities, and operating skills to make the proposed service feasible, profitable, and a distinct service to the public: Merz White Way Tours v. Pennsylvania Public Utility Commission, 204 Pa. Superior Ct. 43, 54 PUR 3d 554, 201 A.2d 446 (1964). The Protestants feel the Applicant has failed to make this showing.

The Applicant has testified that she will be responsible for scheduling, accounting, book keeping, and billing. (N.T. 43). She also plans to be the primary driver and might answer the phones. (N.T. 85). She does not have experience transporting passengers she does not know. (N.T. 83). She herself has identified that she does not have sufficient business skills, she plans to take business classes if she is approved for authority. (N.T. 59).

Her primary motive to operate the service is to provide employment for herself. (N.T. 62). However, she has not done a very detailed analysis of the costs involved in operating a limousine

service safely and profitably. She has only offered that she is able to lease a Chevrolet Suburban for approximately \$602.00 per month and garage rental for \$165.00 per month. (N.T. 80 and 93). She did not have any of the other costs or even estimates associated with operating the vehicle or her company. The Applicant was not able to demonstrate she had done any preparatory work beyond investigating the lease of the Suburban. A car Mr. Grove later testified would be the family vehicle even if the authority was not granted. (N.T. 153).

The Applicant has testified her rates will be competitive, possibly a bit lower than the Protestants. (N.T. 66). However, when she was asked how those rates were established she was not able to answer what her estimated costs would be:

Q: What costs have you used to establish your rates?

A: I've taken into consideration insurance costs, gasoline costs, maintenance costs, I've taken everything into consideration.

Q: Do you have any proposed number for these costs, for example, the maintenance cost?

A: No, I don't.  
(N.T. 89-90)

Upon further testimony it was established the Applicant had merely called service stations to determine if they could service her vehicles. (N.T. 91). At the second day of hearings, she testified that "...her rates were based upon everybody else's rates, mainly the Protestants rates." (N.T. 257). Her decisions are not based upon her costs or sound business practices. She has not demonstrated an understanding of the costs or the operation of a limousine business.

A further example of her lack of business understanding was when the Applicant was asked, by her counsel, about hiring a part time employee to drive if she was driving another vehicle:

Q: Do you anticipate needing that sort of person very often at least to start?

A: That's a hard question to answer.  
(N.T. 89-90)

It is a hard question to answer because the Applicant has not identified what her costs of operation will be or the amount of sales she will need to cover her costs. The Applicant has not produced a business plan and does not have an estimates as to the number of trips she will need per day. (N.T. 105).

The Applicant did identify what assets she had available and for use in this venture. (N.T. 60-62). It is difficult to determine if the assets will be sufficient based upon the lack other evidence documenting the proposed operations of her business.

Finally, the Applicant has not demonstrated any technical expertise in the operation of a limousine business. She has not even looked into what is required to register a limousine with Penn DOT. (N.T. 258). She testified to only briefly reading the regulations issued by the Public Utility Commission. (N.T. 258). Those important regulations would control her business operations and the safety of the public.

The Applicant has not demonstrated she has the skills or the financial ability to operate a safe and profitable limousine service. She has not identified a source of income nor has she demonstrated a sufficient understanding of how a limousine service

operates. She has applied for an authority to have a part-time job which she believes will be flexible. A limousine authority is not a part-time business, the safety of her consumers and the citizens of this Commonwealth should be, and is, a full time job. The Applicant has not met the second burden.

#### IV. CONCLUSION

The Applicant has failed to demonstrate a public need for the proposed service. She has also failed to demonstrate fitness, and therefore has failed to meet the criteria for granting of the instant application. Therefor, the application should be denied.

#### V. PROPOSED CONCLUSIONS OF LAW

1. Applicants for Certificate of Public Convenience shall meet the requirements as established by the commission in its regulations.

2. The Applicant has not demonstrated that approval of the application will serve a useful public purpose, responsive to a public demand or need. 52 Pa. Code Section 41.14(a).


3. The Applicant has not demonstrated that it possesses the technical and financial ability to provide the proposed service. 52 Pa. Code Section 41.14(b).

4. The approval of additional authority in York, Lancaster and Dauphin Counties will be counter productive and will endanger or impair the operations of existing common carriers, to the extent that it would be counter productive to the public interest. 52 Pa. Code Section 41.14(c).

5. The Applicant has failed to satisfy the evidentiary criteria to grant a motor common carrier application.

Respectfully submitted,

ROBINSON & GERALDO

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(717) 232-8525

CERTIFICATE OF SERVICE


I, Scott W. Pohlman, Esquire, do hereby certify that on the 24th day of April 1998, I caused a true and correct copy of the forgoing Brief and Proposed Findings of Fact and Conclusions of Law of Unique Limousine Service, Inc, Salgals, Inc. t/d/b/a Villa Limousine Service, White Rose Limousine, Inc, and Keystone Limousine Service Inc., Protestants, to be served upon the following individuals:

Hand Delivered to:  
Administrative Law Judge  
Wayne L. Weismandel  
North Office Building  
P.O. Box 3265  
Harrisburg, PA 17105-3256

Via First Class Mail to:  
Benjamin C. Dunlap, Jr. Esq.  
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PROPOSED ORDER

Now this \_\_\_ day of \_\_\_\_\_ 1998, after a hearing held on December 17, 1997 and January 24, 1998 and upon review of the briefs submitted by the Applicant Stacia H. Grove t/d/b/a Central Pennsylvania Limousines Service and the Protestants, Unique Limousine Service, Inc., Salgals, Inc. t/d/b/a Villa Limousine Service, White Rose Limousine, Inc., and Keystone Limousine Service Inc., finding the Applicant has not demonstrated a sufficient need to serve a useful public purpose, or that they poses the technical fitness or financial ability to provide the proposed service, the application of Stacia H. Grove t/d/b/a Central Pennsylvania Limousines Service is hereby denied.

By \_\_\_\_\_  
Wayne L. Weismandel  
Administrative Law Judge

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April 24, 1998

HAND DELIVERED

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

RE: **STACIA H. GROVE t/d/b/a Central Pennsylvania Limousine Service (562 East Heatherfield Way, Red Lion, York County, PA 17345) - persons in limousine service between points in the counties of York, Lancaster, and Dauphin, and from points in the said territory to points in Pennsylvania and return; A-00114058**

Dear Sir:

I enclose an original and nine (9) copies of the Main Brief for filing in the above matter. In accordance with the accompanying Certificate of Service we have provided copies of the Brief to all active parties of record. Please time-stamp the original and all copies and return a time-stamped copy to our messenger. Thank you for your assistance.

Sincerely yours,

*Barbara Drake*

Barbara Drake  
Secretary to  
Benjamin C. Dunlap, Jr., Esquire

/bmd

Enclosures

cc: Scott Pohlman (w/encl.)  
Stacia H. Grove (w.encl.)  
ALJ Wayne L. Weismandel (w.encl.)

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**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: :  
STACIA H. GROVE t/d/b/a :  
CENTRAL PENNSYLVANIA :  
LIMOUSINE SERVICE (562 East :  
Heatherfield Way, Red Lion, York :  
County, PA 17356) - persons in :  
limousine service between points in :  
the counties of York, Lancaster, :  
and Dauphin, and from points in the :  
said territory to points in :  
Pennsylvania and return :

A-00114058

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**MAIN BRIEF OF STACIA H. GROVE T/D/B/A  
CENTRAL PENNSYLVANIA LIMOUSINE SERVICE, APPLICANT**

NAUMAN, SMITH, SHISSLER & HALL  
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**DOCKETED**  
APR 28 1998

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## Statement of the Case

Stacia H. Grove t/d/b/a Cental Pennsylvania Limousine Service ("Grove" or "Applicant") filed an application with the Pennsylvania Public Utility Commission ("Commission") on June 5, 1997, seeking a Certificate of Public Convenience authorizing her to render limousine service between points in York, Lancaster and Dauphin counties and from points in said territory to points in Pennsylvania and return. Notice of the filing of the application was published in the Pennsylvania Bulletin on June 28, 1997, with protests due not later than July 21, 1997.

On July 21, 1997, protests were filed on behalf of Keystone Limousine, Inc. ("Keystone"); Salgals, Inc., t/d/b/a Villa Limousine Service ("Villa"); Superior Transportation Services, Inc., t/d/b/a Superior Limousine Service of Harrisburg ("Superior"); Unique Limousine Service, Inc. ("Unique"); and White Rose Limousine, Inc. ("White Rose") (collectively "Protestants"), all represented by the same attorney.

Grove filed motions to dismiss or strike each of the five filed protests on August 7, 1997. On August 18, 1997, the Protestants each filed an answer to Grove's motions. An initial prehearing conference was held on October 17, 1997, before Administrative Law Judge Wayne L. Weismandel, prior to which both Grove and the Protestants submitted prehearing conference memoranda, pursuant to Judge Weismandel's Prehearing Conference Order dated September 8, 1997. At the prehearing conference, Judge Weismandel announced that Grove's motions to dismiss or strike would be granted and

all five protests stricken for failure to comply with the provisions of 52 Pa. Code §3.381(c)(1)(iv) and 5.52(a). Additionally, Judge Weismandel advised counsel that Superior appeared to lack standing to protest Grove's application, as the corporate entity does not hold a Certificate of Public Convenience issued by the Commission.

By Order granting Motions to Strike dated October 17, 1997, and served October 21, 1997, all five protests were stricken. All five Protestants filed amended protests pursuant to the provisions of 52 Pa. Code §5.101(f) on October 31, 1997. Grove filed a Motion to Dismiss Amended Protest of Superior Limousine Service on November 10, 1997, averring that Superior Transportation Services, Inc., lacked standing to protest Grove's application. Superior filed its answer on November 25, 1997. By Initial Decision Granting Motion to Dismiss Amended Protest dated December 1, 1997, issued December 12, 1997, Grove's motion was granted and the amended protest of Superior was dismissed. The Initial Decision became final without further Commission action, pursuant to the provisions of 66 Pa.C.S. §332(h), in a Final Order entered January 14, 1998.

The initial hearing in this proceeding was held on December 16, 1997. At that hearing Grove and her husband, Todd G. Grove, testified, and five additional witnesses testified in support of Grove's application. Twenty-four exhibits in support of Grove's application were admitted into evidence. One hundred forty-nine pages of transcript resulted from the hearing, bearing page numbers 22 through 170. Pursuant to the agreement of counsel and Judge Weismandel, the second day of the initial hearing

scheduled for December 17, 1997, was continued. By notice dated January 8, 1998, a further hearing was scheduled for February 24 and 25, 1998.

On February 4, 1998, Grove filed a Motion for Sanctions pursuant to 52 Pa. Code §§ 5.371 and 5.372 against the four remaining Protestants, *i.e.*, Unique, Villa, Keystone and White Rose, based upon their failure to provide certain financial information requested by Grove. *The Protestants had neither filed objections to the interrogatories pursuant to 52 Pa. Code § 5.342 nor did they seek protective orders pursuant to 52 Pa. Code §§ 5.362 or 5.423.* Grove averred that the requested financial information was essential to her ability to conduct effective cross examination regarding the Protestants' burden under 52 Pa. Code §41.14(c), "that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest," which the Protestants put at issue in their amended protests. The Protestants filed no answer to Grove's Motion for Sanctions and by Order dated February 10, 1998, Judge Weismandel deemed Grove's Motion for Sanctions to be a Motion to Compel and directed the Protestants to answer the interrogatories and produce the requested documents described in the Order not later than February 17, 1998.

The Protestants did not file the answers to interrogatories and requested documents pursuant to Judge Weismandel's Order by February 17, 1998, and Grove filed a Renewed Motion for Sanctions on February 20, 1998. The Protestants filed an Answer to Renewed Motion for Sanctions and New Matter on February 23, 1998, in which they averred that

they did “not intend to offer any evidence or testimony as to the financial status or condition of their operations,” nor did they “intend to offer any evidence or testimony as to the financial effect that the Applicant would have upon them.”

The further hearing of this matter was held on February 24, 1998, which produced 120 pages of transcript, numbered as pages 171-191, and at which one additional exhibit offered by Grove was admitted into evidence. Grove presented six additional witnesses who testified in support of her application and a witness from whose company she intends to purchase a limousine, should her application be granted. Grove presented additional testimony regarding how her location of a source from whom she could purchase a limousine between the initial and further hearings had changed her business plans.

The Protestants presented one witness, James J. Salinger (“Salinger”), who has a 50 percent ownership interest in Unique, White Rose and Keystone along with his wife, Josie Salinger, and manages Villa, which is owned 100 percent by his wife. [N.T. 264-267]. Judge Weismandel set April 24, 1998, as the deadline for the filing and service of main briefs, and May 8, 1998, for the filing and service of reply briefs. Briefing Order dated February 24, 1998. The record will close at 4:30 p.m., prevailing local time at Harrisburg, Pennsylvania, on May 8, 1998. *Id.*

### Statement of Questions Involved

1. Has Grove presented a prima facie case of demonstrating that approval of her application will serve a useful public purpose, responsive to a public demand or need, in the territories she proposes to serve, as well as demonstrating that she possesses the technical and financial ability to provide the proposed service and has a propensity to operate safely and legally, as required by 52 Pa. Code § 41.14(a) and (b)?

Suggested answer in the affirmative.

2. By the Protestants' failure to produce any evidence that the entry of Grove into the field "would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest," as required by 52 Pa. Code § 41.14(c), should not Grove's application be considered unopposed, thus warranting a lesser *standard of proof* of demand or need for the proposed service?

Suggested answer in the affirmative.

3. Should not Unique's illegal operations in York and Lancaster counties be deemed further evidence of a public demand or need to support the granting of Grove's application in those counties?

Suggested answer in the affirmative.

4. By Unique operating in York and Lancaster counties, where it has no authority, and White Rose and Keystone not conducting operations under their Certificates of Public Convenience, should it not be held that no valid protests exist to Grove's application as to Lancaster County, the city of York and the townships of York, Spring Garden, Manchester, West Manchester and Newberry, York County, thus warranting a lesser standard of proof of demand or need for the proposed service in those territories?

Suggested answer in the affirmative.

5. Should not the Protestants' misrepresentations regarding their operations, which served to deny Grove the opportunity to amend her application to provide service in only those territories where no valid protests exist in order to take advantage of the modified procedures of obtaining application approval under 52 Pa. Code § 3.381(c)(1)(iii), be weighed by the Commission as a factor warranting the grant of Grove's application, particularly as to those territories in which no valid protest exists?

Suggested answer in the affirmative.

## Summary of Argument

Grove has established that she has the requisite fitness to operate the proposed service, as required by 52 Pa. Code § 41.14(b), by presenting substantial evidence as to her technical expertise, financial capacity and propensity to operate safely and legally.

Grove has demonstrated a demand or need for the service in the requested territories, as required by § 41.14(a), through substantial evidence not only of passenger support, but also through substantial evidence of the inadequacy of existing services. In addition, she submitted evidence of rider preference as well as evidence that she plans to provide back up service during periods of peak demand and different services from present carriers, all of which have been relied upon by appellate courts as substantial evidence supporting a need for proposed services.

In addition, the Protestants are all under common ownership and have pervasive operations throughout the territory in which Grove proposes to offer services. The Protestants have presented no evidence that the entry of Grove into the field would endanger or impair their operations. In such cases, the Commission should require a lesser showing of demand or need, as it currently does in unprotested cases. To do otherwise would only serve to encourage the filing of unsubstantiated protests as a means to raise the cost and lower the possibility of new competitors entering the field.

Furthermore, Protestants Unique, Keystone and White Rose misrepresented to the Commission and to Grove the scope of their operations. Unique is operating in Lancaster and York counties, where it has no authority, and Keystone and White Rose are not operating under their Certificates of Public Convenience. Therefore, no valid protests to Grove's application exist in Lancaster County and those portions of York County where Villa does not hold authority, namely the city of York and the townships of York, Spring Garden, Manchester, West Manchester and Newberry, York County. In those territories where no valid protest exists, "the competent and credible evidence of record should be viewed in the light most favorable to the applicant." Unique's illegal operations in York and Lancaster counties should be viewed as further evidence of a demand or need for Grove's additional services in those counties.

The Protestants' misrepresentations regarding their operations were established through the hearing process, including the admissions of Salinger following the close of Grove's case. These misrepresentations served to deny Grove the opportunity to amend her application to provide service in only those territories where no valid protests exist in order to take advantage of the modified procedures of obtaining application approval under 52 Pa. Code § 3.381(c)(1)(iii), and should be weighed by the Commission as a factor warranting the grant of Grove's application, particularly as to those territories in which no valid protest exists.

Taken as a whole under the particular circumstances of this case, Grove has sustained her burden of establishing a prima facie case through legally sufficient evidence to support an order of the Commission granting her application for the issuance of a Certificate of Public Convenience in the territories requested.

### Argument

#### 1. General Criteria

Section 1103 of the Public Utility Code requires that in order for the Commission to grant a Certificate of Public Convenience, it “shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. §1103(a). To evaluate whether an application meets that standard, the Commission adopted the evidentiary criteria found at 52 Pa. Code §41.14, as its former standards “tend[ed] to restrain healthy competition, reduce the industry’s operational and marketing flexibility, misallocate economic resources, and discourage innovation.” Commission’s Adoption of Transportation Regulatory Policy Statement at 52 Pa. Code §41.14, 12 Pa.B. 4282, 4282 (1982), as cited in *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC 262, 271 (1990).

Under section 41.14, a motor common carrier applicant has a two-part burden of proof. Subsection 41.14(a) places upon an applicant the “burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public

demand or need.” Subsection 41.14(b) places upon an applicant the “burden of demonstrating that it possesses the technical and financial ability to provide the proposed service,” and that the applicant does not lack “a propensity to operate safely and legally.” These evidentiary criteria constitute an applicant’s prima facie burden of proof in an application proceeding to acquire motor common carrier authority. *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC at 271-272.

Conversely, existing carriers have the burden of showing that approval of an application would contravene the public interest. *Seaboard Tank Lines, Inc. v. Pa. Public Utility Commission*, 93 Pa. Commw. 601, 502 A.2d 762, 764 (1985). The standard by which an existing carrier’s protest to an application is assessed is stated in subsection 41.14(c) as follows: “[t]he Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.”

In the present case, the Protestants did not offer any evidence as to the issue that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers or would be contrary to the public interest. [N.T. 178-179]. Thus, the Protestants have conceded this issue on which they bear the burden of proof under section 41.14(c).

Any order of the Commission granting an application, in whole or in part, must be based on substantial evidence. *Dutchland Tours, Inc. v. Pa. Public Utility Commission*, 19 Pa. Commw. 1, 337 A.2d 922, 925 (1975). The term "substantial evidence" has been defined by Pennsylvania courts as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Murphy v. Com., Dept. of Public Welfare, White Haven Center*, 85 Pa. Commw. 23, 480 A.2d 382, 386 (1984); *Erie Resistor Corp. v. Unemployment Comp. Bd. Of Review*, 194 Pa. Super. 278, 166 A.2d 96, 97 (1961).

2. Technical and Financial Ability.

Grove has provided substantial evidence of her technical and financial ability to sustain her burden under 52 Pa. Code § 41.14(b). In *Re Perry Hassman*, 55 Pa. PUC 661 (1982), the Commission stated the three-part criteria for satisfying an applicant's burden of proving fitness as follows:

1. Technical expertise — applicant must have technical capacity to meet the need in a satisfactory fashion . . . . Applicant must possess sufficient staff, facilities, and<sup>1</sup> operating skills, to make the proposed service feasible, profitable, and a distinct service to the public. . . .

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<sup>1</sup> The Commission later changed the word "and" to "or" in this definition to make clear that an applicant possesses technical expertise when it has established sufficient operating skills alone and need not obtain vehicles, staff or garage space prior to certification and initiation of service. *Re Adegbola Ige t/a Globe Limousine Service*, 75 Pa. PUC 45 (1991).

2. Financial capacity — applicant should possess the financial ability to give reliable and respectable service to the public . . . . Applicant should own or should have sufficient financial resources to obtain the equipment needed to perform the proposed service.

3. Propensity to operate safely and legally — in this regard, lack of fitness is demonstrated by persistent disregard for, flouting, or defiance of the *Public Utility Law* and the commission's orders and regulations . . . and by violations in matters affecting the safety of operation. . . . For applicants who do not possess operating authority, the commission may consider any evidence which would bear upon the applicant's propensity to operate a public utility safely and legally.

*Id.* at 662-663 (citations omitted). Accord, *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC at 285.

Regarding her technical ability, Grove would handle all aspects of operating the proposed business, including driving the vehicle, scheduling services, keeping account books, billing and advertising/marketing. [N.T. 42-43]. She may hire a part-time driver at some point in the future and has looked into the legal requirements for doing so. [N.T. 93-94, 103-104].

Grove's work experience has included employment with a contracting company, where she performed payroll and bookkeeping duties, handled accounts receivable and scheduled deliveries. [N.T. 56-57, 84]. Grove also worked for a commercial food service operation for three years, in which she served customers over a 125 mile route in York County, handled inventory and performed general maintenance of her delivery vehicle. [N.T. 57-58, 83-84, 118-120]. Grove has held other positions in which she dealt with the public and in which the care of a vehicle was part of her duties. [N.T. 58, 98-100, 188].

Grove is aware of what it costs to maintain a vehicle from maintaining her personal vehicles. [N.T. 104].

Grove plans to purchase as her first vehicle a late model Lincoln Town Car stretch limousine that seats approximately six people to provide the proposed service. [N.T. 251]. Grove would store the vehicles with which she plans to provide the proposed service in a rented garage near her home. [N.T. 92-93].

Edward W. Emswiler ("Emswiler") is the owner of Primetime Auto, 2311 South Queen Street, York, Pennsylvania. [N.T. 219]. In his business, Emswiler deals in the buying and selling of used limousines and is a licensed dealer. [N.T. 219-220, 223]. Emswiler could obtain a late model Lincoln Town Car stretch limousine for Grove, in excellent condition and ready to drive, having luxury features such as air conditioning, power windows, power locks, cruise control, sunroof, VCR and TV. [N.T. 220-223, 229-230; Grove Exhibit No. 26].

Grove is working with the Service Corps of Retired Executives in York to develop a business plan and operating plan and has developed a preliminary six-month plan in which supplies, repairs and maintenance, Yellow Pages advertising, vehicle payments, rent for a storage garage, telephone charges, pager and cellular phone charges, insurance costs and fuel costs are included. Her preliminary plan projected 25-30 hours of operating time per month for weddings, proms, airport corporate business and miscellaneous

business. She will draw no salary in the beginning but will put whatever money she makes back into the business. Grove intends to take business courses upon obtaining a Certificate of Public Convenience to further her business skills. [N.T. 59, 85, 88, 253-257].

Todd G. Grove, the husband of Applicant, is sales representative for Monarch Products Company, Inc., York Haven, Pennsylvania. [N.T. 152]. At Monarch Products, he is in charge of the entire estimating department, in charge of all daily production and delivery of the company's finished product and is involved in billing. [N.T. 152]. Although no formal relationship has yet been determined, Todd Grove would advise his wife on any business aspects of Central Pennsylvania Limousine Service. [N.T. 153].

Grove would be in a position to commence operations within 90 days of an order approving her application. [N.T. 260-261]. Through the aforementioned evidence, Grove has shown that she possesses the requisite technical expertise to operate the proposed service.

Regarding her financial capacity, Grove and her husband have assets of \$184,758.95 and liabilities of \$63,639.54 for a net worth of \$121,119.41. [N.T. 59-63, 154-156, 164-165; Grove Exhibits No. 9, 10, 19]. In addition, they have been preliminarily approved for a home equity line of credit in the amount of \$20,000.00 and been approved for an unsecured line of credit in the amount of \$10,000.00. [N.T. 61; Grove Exhibit No. 9]. The marital assets held jointly by Grove and her husband would be available for Grove's

use in Central Pennsylvania Limousine Services. [N.T. 154]. Grove and her husband also have good credit ratings. [N.T. 63-65, 157-158; Grove Exhibits No. 11, 20].

Emswiler has reviewed the finances of Grove and her husband and does not think they will have any trouble obtaining a loan to purchase a used limousine. Based upon that review and his perceived need for an additional limousine service, Emswiler would co-make a loan with Grove and her husband for Grove to obtain a used limousine. [N.T. 224, 227-228].

Grove has received pre-approval to lease a 1998 Chevrolet Suburban with luxury features, which she may utilize as a second vehicle for providing the proposed services, from Corestates Dealer Services in the amount of \$36,888.00. Although Grove cannot obtain pre-approval for a bank loan to purchase a limousine until the exact vehicle is located, she was told by the bank that she should not have trouble obtaining a loan. She also received pre-approval from Corestates Dealer Services to lease a second vehicle in the amount of \$27,905.00. [N.T. 43-51, 153-154, 251-252; Grove Exhibits No. 2, 3a, 4].

Grove has also been pre-approved to obtain commercial insurance coverage in an amount up to \$1.5 million dollars for her proposed limousine service upon receiving a Certificate of Public Convenience. [N.T. 55-56; Grove Exhibit No. 8]. Based upon the foregoing evidence, Grove has sustained her burden of proving her financial capacity to operate the proposed service.

Regarding her propensity to operate safely and legally, Grove has likewise sustained her burden under the *Hassman* criteria. Grove holds a valid Pennsylvania drivers license and has an excellent driving record. Her three-year driving record issued by the Pennsylvania Department of Transportation shows no citations, no accidents and no restrictions, and she was involved in no accidents nor did she receive any citations from the issuance date of the report to the time of hearing. [N.T. 51-53; Grove Exhibits No. 5, 6]. She is familiar with the Commission's regulations which apply to limousine services. [N.T. 258-259].

Neither does Grove have a criminal record. She has neither been convicted of nor arrested for any crime. [N.T. 53-55; Grove Exhibit No. 7]. Grove is of good character, and is described by witnesses as having ambition, energy, integrity and as being honest, trustworthy, courteous, considerate, personable, responsible and businesslike. [N.T. 118, 125, 148, 187, 210, 214, 237-239, 246].

3. Public Demand or Need.

An applicant sustains its burden of proof under subsection 41.14(a) "through relevant, probative, competent and credible evidence of record" showing that "the applicant's proposed service will satisfy the supporting witnesses' asserted transportation demand/need." *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC at 274. The evidence must show that the intended service is "reasonably necessary for the accommodation or

convenience of the public.” *Id.* The Commission has articulated the standard for showing a public demand or need as follows:

A public demand/need for an applicant’s proposed transportation service may be proven through witnesses comprising a representative sampling of the public that will use the applicant’s proposed service within the territory encompassed by the application. The witnesses supporting a motor common carrier application must be legally competent and credible, and their testimony must be probative and relevant to the application proceeding. The supporting witnesses must articulate a demand/need for the type of service embodied in the application. Moreover, the supporting witnesses must identify Pennsylvania origin and destination points between which they require transportation, and these points must correspond with the scope of the operating territory specified in the application.

*Id.* (citations omitted).

To this standard the Commission adds the caveat that the “particular circumstances of a case determine what constitutes sufficient evidence of a public demand/need for the applicant’s proposed service.” *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC at 274, *citing, Noerr Motor Freight, Inc. v. Pa. Public Utility Commission*, 181 Pa. Super. 322, 330, 124 A.2d 393 (1956).

In York County, Grove presented substantial evidence of a demand or need for the proposed service. Priscilla I. Hoffman (“Hoffman”) is the owner of three dance studios under the name B\*Dazzled, two of which are located in the same building at 30 North Main Street, Red Lion, York County, and one adjoining her home at 1422 South George Street, York. [N.T. 116-117]. She has between 150 and 250 students at any given time. [N.T. 117]. Ms. Hoffman used limousine services in the past for a birthday-related trip around

York. [N.T. 120]. Although Ms. Hoffman could not predict where she will go in the future, she would “definitely” use Grove’s services if her application were granted and anticipates using limousine services for her daughter’s marriage and for a birthday party. [N.T. 121]. She would be prone to utilize the limousine services of someone she knew more often than the limousine services of others. [N.T. 121].

Donald P. Gill (“Gill”) is the owner of Double Diamond Finishing Systems, which specializes in exterior stucco on large commercial buildings, located at 1422 South George Street, York. [N.T. 123-125, 127]. Personally, he has used limousine services in the past to take his daughter to the prom and to go to dinner in Baltimore. [N.T. 124]. Gill would use Grove’s services for his daughter’s future wedding and would recommend Grove’s services to his clients. [N.T. 124-126].

Barbara Ann Lepley, lives at 279 Teila Drive, Dallastown, York County. [N.T. 128]. She has personally used limousine services three times in the past for her childrens’ proms and homecomings in York County. [N.T. 130].

Mark Stephen King, Jr., of 111 Keymar Drive, York, used a limousine service for his 1996 homecoming in York. [N.T. 139-141]. If Grove’s application were approved, he would use her services in the future, although he could not state any specific occasion at this time. [N.T. 142].

Margaret Mary Bayliss ("Bayliss") of 445 Chestnut Lane, York, has three children. [N.T. 145]. Her husband is Director of Maternal Fetal Medicine and Associate Director of the Residency Program for Obstetricians and Gynecologists at York Hospital. [N.T. 145]. Bayliss and her husband have used limousine services in the past to travel to Baltimore for an anniversary dinner and to travel back and forth between LaGuardia Airport in New York and Connecticut. [N.T. 145-146]. Bayliss would "absolutely" use Grove's services if her application were granted. [N.T. 146]. Bayliss would use Grove's services for her daughter's graduation and prom and for she and her husband to go out for the evening. [N.T. 146-147, 149]. Bayliss would book Grove's services to pick up prospective physicians being interviewed by her husband for positions at York Hospital from their local hotels and have them brought to dinner. [N.T. 146-147]. Bayliss would use Grove's services no matter what type vehicle Grove was utilizing to provide the service. [N.T. 150].

Frank E. King ("King") is the owner of Frank King Photography & Video, 4101 Carlisle Road, Dover, York County. [N.T. 184-185]. King personally used a limousine service in 1996 to travel from York County to Harrisburg for a river boat ride and as a birthday party gift for his sister and her husband. [N.T. 189-191]. King secured three or four limousines for each of his two daughters' weddings. [N.T. 191-192]. If Grove's application were approved, King would use her service for personal use, as the need arose. [N.T. 191].

Philip R. Wenger ("Wenger") is the owner of Isaac's Restaurant & Deli ("Isaac's"), 354 North Prince Street, Lancaster, Pennsylvania. [N.T. 193-194]. Isaac's operates 14 restaurants, including restaurants in York County, [N.T. 194]. Wenger would "absolutely" use her limousine and van services for company functions and might specifically use her van services to move employees to different locations or take them to sporting events. [N.T. 202].

Kevin M. Deller ("Deller") is a Community Relations Coordinator for deaf services for Lutheran Social Services, 750 Kelly Drive, York, Pennsylvania. [N.T. 207]. Deller has hired limousine services in the past in the south Florida area, and in this area he has used limousine services personally for traveling to concerts or restaurants and for business to provide interpretation services for entertainment figures at York County venues and in Philadelphia. [N.T. 207-208, 211]. Deller anticipates hiring limousine services in the future, and if Grove's application were to be granted, he "definitely" would use her services to travel from York to such intrastate locations as Harrisburg and Philadelphia for both business and personal reasons. [N.T. 209, 211-212]. Deller would also recommend Grove's services to others through his job. [N.T. 210].

Todd J. Shreve ("Shreve") is an Estimator with Monarch Products, 385 Sipe Road, York Haven, Pennsylvania. [N.T. 213]. Shreve has helped plan for, but not personally booked, the use of limousine services twice in the past, which involved two vehicles each time. [N.T. 213-214, 217]. He would "definitely" use Grove's services for special

occasions if her application were to be granted, specifically for a bachelor party in the fall of 1998, regarding which no plans have yet been made. [N.T. 215-216].

John Edward Johns, Jr., ("Johns") is the owner of New West Tour Products, Inc., 653 Bair Island Road, Suite 106, Redwood City, California, which manufactures home storage products and is a supplier of personal care products, having 1997 revenues of \$12 million dollars and anticipated 1998 revenues of \$23 million dollars. [N.T. 233-234]. Johns uses limousine services and car services in New York and Los Angeles to travel back and forth to the airport. [N.T. 235, 240]. If Grove's application were granted, Johns would "definitely" use her services for transportation between his mother's home in York and Harrisburg International Airport two to five times a year. [N.T. 234, 237, 242].

Gena L. Dwyer ("Dwyer") is employed as a Financial Controller and a licensed real estate agent at Cherry Lane Realty, 540 West Market Street, York, Pennsylvania. [N.T. 244]. Dwyer has used limousine services in the past in her business for transportation to and from Christmas parties and was considering hiring one for a near-term benefit dinner. [N.T. 245, 247]. She anticipates using limousine services in the future for entertaining potential clients, and to transport them from the airport to look at various rental units managed by Cherry Lane Realty. [N.T. 244-245]. If Grove's application were to be granted, Dwyer would use Grove's services for these purposes. [N.T. 245-246].

Additionally, King testified that his company, Frank King Photography & Video, which operates in York, Lancaster and Dauphin counties and photographs or videographs between 700 and 900 weddings annually, receives requests for limousine recommendations "in the hundreds most likely" each year. [N.T. 185-187]. He has observed brides having trouble obtaining limousine services during the high demand months of May, June, September and October, and sometimes the services were unavailable. [N.T. 186]. He would "definitely" recommend Grove's services to brides-to-be or couples who ask for limousine service recommendations, should her application be granted. [N.T. 187].

Emswiler, the owner of Primetime Auto, owns a 1987 Lincoln Town Car stretch limousine for his personal use. [N.T. 224-225]. When he kept this limousine at his business location, he would have four or five people a month ask if they could rent the limousine, stating that they could not find a limousine to rent at that time. [N.T. 225].

King's and Emswiler's testimony in regard to the needs of others by itself does not demonstrate an actual public demand or need for Grove's proposed service. But taken together with other witnesses' evidence of actual need for the proposed service, King's and Emswiler's testimony is "helpful in showing public demand/need for [Grove's] intended transportation because it tends to corroborate the other witnesses' statements of need." *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC at 277 n.10, 289-290.

Grove herself has received requests for service which she could not fulfill, being unauthorized to do so. [N.T. 96]. This evidence may also be considered by the Commission. 52 Pa. Code § 3.382(a).

Substantial evidence of a public demand or need was also demonstrated in Dauphin County, particularly in regard to services from Harrisburg International Airport. Johns, the owner of New West Tour Products, would “definitely” use Grove’s services for transportation between Harrisburg International Airport and West Chester, Chester County, where one of his prime customers is located, or between Harrisburg and York, where his mother lives, two to five times a year. [N.T. 234-235, 237].

Gill, the owner of Double Diamond Finishing Systems, has picked up clients at Harrisburg International Airport two or three times in the past two years. [N.T. 125-126]. Gill anticipates a future need for Grove’s services to pick up clients at Harrisburg International Airport and take them to job sites, which could be located anywhere within the area from Allentown to Chambersburg and north of Harrisburg. [N.T. 124-126].

Bayliss testified that she would book Grove’s services to transport physicians interviewing with her husband for positions at York Hospital back and forth from local airports. [N.T. 146-147]. Dwyer anticipates using Grove’s services to transport potential clients from the airport to look at various rental units managed by her employer, Cherry Lane Realty. [N.T. 244-246]. Lepley is Market Representative for Manor Care Health

Services, which has two facilities in Dauphin County, four in York County and two in Lancaster County, the latter being located in Lancaster and Elizabethtown. [N.T. 129]. As part of her job, she brings in educational speakers from around the country to do presentations or seminars in Manor Care's specific markets. [N.T. 129-130].

Wenger, who owns Isaac's restaurants located in Dauphin County, testified that he "absolutely" would use Grove's services for company functions, and might specifically use her van services to move employees to different locations or to take them to sporting events. [N.T. 194, 201-202]. King's testimony regarding brides in Dauphin, York and Lancaster counties having trouble obtaining, and sometimes being unable to obtain, limousine services during the high demand months of May, June, September and October, also buttresses the need for an additional service in Dauphin County. [N.T. 186].

In Lancaster County, Wenger testified that he would use Grove's services for dinner outings with friends to various locations, and has used a group and party service to transport a group of friends from Lancaster to Philadelphia for a birthday celebration. [N.T. 194-197, 201-202]. Wenger's company Isaac's has its corporate headquarters as well as restaurants in Lancaster County, and he has used limousine services in the past for company functions and would use Grove's services in the future for company functions. [N.T. 194-195, 201-202]. Wenger might specifically use Grove's proposed van services to move employees to different locations or to take them to sporting events. [N.T. 201-202].

Although no longer required to prove the inadequacy of existing services, *Seaboard Tank Lines, Inc. v. Pa. Public Utility Commission*, 502 A.2d at 764, Grove went beyond her burden by making such a showing. The “[i]nadequacy of existing service is a factor indicating a public necessity for the proposed service.” *Pennsylvania Railroad Co. v. Pa. Public Utility Commission*, 199 Pa. Super. 158, 184 A.2d 111, 115-116 (1962). In one recent case, the testimony of just three witnesses as to the inadequacy of existing services was held to be substantial evidence under § 41.14(a) to support a grant of additional authority for an entire county. *Hercik v. Pa. Public Utility Commission*, 137 Pa. Commw. 377, 586 A.2d 492, 495 (1991). Therefore, evidence of the inadequacy of existing services shown by Grove, as outlined in the following paragraphs, should be considered and weighed by the Commission as further substantial evidence demonstrating a public demand or need for Grove’s proposed service.

In York County, Mark Stephen King, Jr., could not locate a locally based limousine service for his 1996 homecoming in York, even though he called all local limousine services about six weeks before the event. [N.T. 140]. He was forced to go outside York County to obtain the services of a company from Mechanicsburg, forcing him to pay for an extra hour and a half for the limousine to travel from Cumberland County to York and back. [N.T. 140-142].

Also in York County, Lepley of Dallastown testified that she had trouble booking services on the needed dates each of the three times she used limousine services for her

childrens' proms and homecomings. [N.T. 130-131]. In one instance, the grade of service she desired was not available, and she was forced to book a lower grade of service. [N.T. 131].

Johns, the owner of New West Tour Products in California, testified as to the inadequacy of services in Dauphin and York counties in regard to booking transportation to Harrisburg International Airport from York or from the airport to York or West Chester. Johns has not been able to obtain such services on short notice or found them overly expensive. One of the services with which he attempted and was unable to make transportation arrangements was Protestant White Rose. [N.T. 235-237, 242].

Wenger felt so strongly regarding his inability to book the type of transportation services he desired to take a group of friends from Lancaster to Philadelphia for dinner, due to territorial restrictions on the service he located, that he volunteered to testify on behalf of Grove's application. [N.T. 195-199]. King, the owner of Frank King Photography and Video, has observed brides not only having trouble obtaining limousine services during the high demand months of May, June, September and October, when his company may photograph 30 to 50 weddings a weekend, but sometimes being unable to locate the needed services altogether. [N.T. 184-187]. Emswiler had four or five people a month inquire about renting a limousine he kept at his business location in York County, stating that they could not find one to rent on the needed dates. [N.T. 224-225].

The above evidence substantially demonstrates a public demand or need for Grove's proposed services in the designated territories. The rigorous origin and destination criteria used in *Blue Bird* should not be required in the present case, especially where, as here, an applicant has presented substantial evidence of the inadequacy of present services. *Blue Bird* concerned an application for charter service in which the testimony of witnesses showed that the groups they represented offered similar trips on a periodic basis for which the groups required transportation. See *id.* at 276-283. In the present case, however, a number of witnesses stated that they would utilize Grove's services if her application were granted, but did not yet know the locations to which they might travel or stated that the events had not yet been planned. [N.T. 121, 142, 191, 216]. "Furthermore, 'No matter how unimpressive this testimony may appear . . . , it was competent testimony and therefore its weight [is] for the Commission.'" *Noerr Motor Freight, Inc. v. Pa. Public Utility Commission*, 181 Pa. Super. at 330-331 (citations omitted).

In addition, a number of witnesses testified that they wished to utilize Grove's services, stating that they would "absolutely" or "definitely" use her services. [N.T. 121, 146, 202, 209, 215, 237]. Bayliss specifically stated that she would use Grove's services no matter what vehicle Grove used to offer the services. [N.T. 150]. Such evidence of rider preference will support a Commission finding that there is a public need for the proposed service. *Seaboard Tank Lines, Inc., v. Pa. Public Utility Commission*, 502 A.2d at 762, 768.

Grove also exceeded her burden by submitting evidence regarding the “alternatives to ‘inadequacy’” under *Re Richard L. Kinard, Inc.*, 58 Pa. PUC 548, 551 (1984), which she is no longer required to demonstrate. Specifically, Grove testified that she planned to provide back-up service during periods of peak demand in the growing counties in which she proposes to offer her services, as well as to provide different services targeted to hunters and skiers. [N.T. 65-67, 89, 103]. Such evidence has been relied on by the Commonwealth Court as substantial evidence in support of a need for proposed services. *Morgan Drive Away, Inc. v. Pa. Public Utility Commission*, 99 Pa. Commw. 420, 512 A.2d 1359, 1361 (1986).

Another contrast between *Blue Bird* and the present case is that the applicant in *Blue Bird* was a large operator with pervasive operations, and the Protestants presented evidence that the granting of additional authority to the applicant was a threat to their survival. *Id.* at 269-270. Conversely, in the present case, Salinger, along with his wife, not only owns the operating authorities of all four Protestants, but also the operating authorities of three additional affiliated companies operating in the area in which Grove seeks authority. [N.T. 268]. In the present case, it is the Protestants and their affiliated companies which have pervasive operations, and they have presented no evidence that the entry of Grove into the field would endanger or impair their operations. [N.T. 178-179].

Having conceded this issue, one can only conclude that the purpose of the protests is to insulate the Protestants from competition, which may not be done without a

demonstrated basis. *W. C. McQuaide, Inc., v. Pa. Public Utility Commission*, 137 Pa. Commw. 282, 585 A.2d 1151, 1156-7 (1991). Counsel for the Protestants stated at the pre-hearing conference that the Protestants file standard protests in application proceedings. [N.T. 8]. Counsel for the Protestants' assertion that the failure of new entrants in the market adversely affects his clients as a reason for filing the protests is specious at best. [N.T. 12]. The filing of protests, which cause an applicant to expend considerable time and money in litigation, in contrast to the modified procedures of 52 Pa. Code § 3.381(c)(1)(iii), are in themselves a substantial bar to new entrants gaining approval, as indirectly acknowledged by counsel for the Protestants during his cross-examination of Grove. [N.T. 106].

Grove asserts that where a protestant presents no evidence that its operations will be impaired or endangered by a new entrant into the field, as here, the applicant's burden of showing a public demand or need should be lessened, as is already the Commission's rule in regard to unprotested applications. *Re Nothstein Bros., Inc.*, 64 Pa. PUC 411, 414 (1987). To do otherwise only serves to encourage and reward the filing of unsubstantiated protests by present operators as a means to raise the cost and lessen the possibility of new competitors entering the field, a result which is not in the public interest and contrary to the purposes underlying the Commission's regulations. *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC at 271.

Furthermore, Protestants Unique, Keystone and White Rose misrepresented to the Commission as well as to Grove the scope of their operations. In paragraph 4 of its amended protest, Unique listed only Dauphin and Cumberland as counties in which it was operating. See also Exhibit "A" attached to Unique's Amended Protest, which sets forth Unique's authority upon which its protest is predicated. However, it was established through hearing evidence, including an admission by Salinger following the close of Grove's case, that Unique was operating in York and Lancaster counties under the Unique name. [N.T. 69-71, 132-138, 264, 269; Grove Exhibits No. 12-15, 23-25]. Unique's operations in Lancaster and York counties circumvents the Public Utility Code's requirement that all carriers which provide service to the public hold a certificate of public convenience. *Fiore v. Commonwealth*, 668 A.2d 1210, 1216 (Pa. Commw. 1995).<sup>2</sup>

White Rose stated in paragraph 4 of its amended protest that it was currently operating in Dauphin and York counties, while Keystone stated in paragraph 4 of its amended protest that it was currently operating in Lancaster, York and Dauphin counties.

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<sup>2</sup> Evidence of illegal service may be offered by an applicant under section circumstances to prove that a public need exists for the proposed service. See, e.g., *W.C. McQuaide, Inc. v. PA Public Utility Commission*, 585 A.2d at 1155-6, and cases cited therein. In the present case, Unique should not be permitted to profit from its misrepresentations, and its provision of unauthorized services in York and Lancaster counties should be viewed by the Commission as further evidence of a public demand or need for Grove's additional services in those counties. See also *Chemical Leaman Tank Lines, Inc. v. PA Public Utility Commission*, 201 Pa. Super. 196, 210-212, 191 A.2d 876 (1963) (evidence of public need presented by other operators supported a grant of authority to applicant, even though applicant presented neither request testimony nor public witnesses in support of its application).

See also Exhibit "A" attached to amended protest of White Rose and Keystone, which set forth the authorities upon which their respective protests are predicated. However, Keystone and White Rose have no vehicles and have no operations at the addresses listed on their amended protests. [N.T. 72-74, 272; Grove Exhibits No. 14-15].

The addresses and telephone numbers for Unique and White Rose are the same in the York Yellow Pages telephone directory, and Unique's ad in that directory states that it is "formerly White Rose Limousine." [N.T. 69-70; Grove Exhibit No. 13]. In the Lancaster Yellow Pages directory, the addresses and telephone numbers for Unique and Keystone are the same. [N.T. 70-71; Grove Exhibit No. 13]. Lacking vehicles or business locations, as well as the evidence provided by their own Yellow Pages listings and ads, Grove has established that White Rose and Keystone are not operating under their Certificates of Public Convenience, contrary to the requirements of 66 Pa.C.S. § 2301.

Therefore, no valid protests exist in Lancaster County and those portions of York County where Villa does not hold authority, namely the city of York and the townships of York, Spring Garden, Manchester, West Manchester and Newberry, York County.<sup>3</sup> As noted *supra*, the Commission requires less evidence of demand or need in unprotested cases and "the competent and credible evidence of record should be viewed in the light

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<sup>3</sup> The Commission may and should take judicial notice that York mailing addresses include the townships surrounding York city. *Pittsburgh Railways Company v. Public Service Commission*, 124 Pa. Super. 266, 269, 188 At. 549 (1936).

most favorable to the applicant,” which should be applied to those territories where no valid protest exists in the present case. *Re Nothstein Bros., Inc.*, 64 Pa. PUC at 414.

Furthermore, the Protestants' misrepresentations regarding their operations served to deny Grove the opportunity to amend her application prior to hearing, as did the applicant in *Nothstein*, see *id.* at 412, to include only those territories in which no protests existed in order to proceed under the modified procedures of 52 Pa. Code § 3.381(c)(1)(iii). She was forced to incur the litigation expenses of hearings and discovery to establish that no valid protests exist in those territories. Grove asserts that these circumstances should be weighed by the Commission to support the approval of her application.

Grove has therefore sustained her burden of establishing a prima facie case in support of her application. Taken as a whole under the particular circumstances of this case, the evidence is legally sufficient to support an order of the Commission granting Grove's application for the issuance of a Certificate of Public Convenience as requested. See *Dutchland Tours, Inc. v. Pa. Public Utility Commission*, *supra*, 337 A.2d at 926 (“[n]o particular type of evidence is required; the only requirement is that the evidence as a whole be legally sufficient to support the order of the [PUC]” (citations omitted)).

### Conclusion

For the foregoing reasons, the Application of Stacia H. Grove t/d/b/a Central Pennsylvania Limousine Service for a Certificate of Public Convenience to transport persons in limousine service between points in the counties of York, Lancaster, and Dauphin, and from points in said territory to points in Pennsylvania and return, should be granted.

### Proposed Findings of Fact

1. On January 22, 1997, Grove filed an Application for Fictitious Name Registration under the name Central Pennsylvania Limousine Service, under which name she would operate her proposed service. [N.T. 41-43; Grove Exhibit No. 1].

2. Grove would handle all aspects of operating the proposed business, including driving the vehicle, scheduling services, keeping account books, billing and

advertising/marketing. She may hire a part-time driver at some point in the future and has looked into the legal requirements for doing so. [N.T. 42-43, 93-94, 103-104].

3. Grove plans to purchase as her first vehicle a late model Lincoln Town Car stretch limousine that seats approximately six people to provide the proposed service. [N.T. 251].

4. Grove received pre-approval to lease a 1998 Chevrolet Suburban with luxury features, which she may utilize as a second vehicle for providing the proposed services, from Corestates Dealer Services in the amount of \$36,888.00. Although Grove cannot obtain pre-approval for a bank loan to purchase a limousine until the exact vehicle is located, she was told by the bank that she should not have trouble obtaining a loan. She also received pre-approval from Corestates Dealer Services to lease a second vehicle in the amount of \$27,905.00. [N.T. 43-51, 153-154, 251-252; Grove Exhibits No. 2, 3a, 4].

5. Edward W. Emswiler is the owner of Primetime Auto, 2311 South Queen Street, York, Pennsylvania. In his business, Emswiler deals in the buying and selling of used limousines and is a licensed dealer. [N.T. 218-220, 223].

6. Emswiler could obtain a late model Lincoln Town Car stretch limousine for Grove, in excellent condition and ready to drive, having luxury features such as air conditioning,

power windows, power locks, cruise control, sunroof, VCR and TV. He would profit on the transaction as a dealer only. [N.T. 220-223, 229-230; Grove Exhibit No. 26].

7. Grove would store the vehicles with which she provides the proposed service in a rented garage near her home. [N.T. 92-93].

8. Emswiler has reviewed the finances of Grove and her husband and does not think they will have any trouble obtaining a loan to purchase a used limousine. Based upon that review and his perceived need for an additional limousine service, Emswiler would co-make a loan with Grove and her husband for Grove to obtain a used limousine. [N.T. 224, 227-228].

9. Grove and her husband have assets of \$184,758.95 and liabilities of \$63,639.54 for a net worth of \$121,119.41. In addition, they have been preliminarily approved for a home equity line of credit in the amount of \$20,000.00 and been approved for an unsecured line of credit in the amount of \$10,000.00. [N.T. 59-63, 154-156, 164-165; Grove Exhibits No. 9, 10, 19].

10. The marital assets held jointly by Grove and her husband would be available for Grove's use in Central Pennsylvania Limousine Services. [N.T. 154].

11. Grove and her husband have good credit ratings. [N.T. 63-65, 157-158; Grove Exhibits No. 11, 20].

12. Grove has been pre-approved to obtain commercial insurance coverage in an amount up to \$1.5 million dollars for her proposed limousine service upon receiving a Certificate of Public Convenience. [N.T. 55-56; Grove Exhibit No. 8].

13. Grove has worked with a contracting company, where she performed payroll and bookkeeping duties, handled accounts receivable and scheduled deliveries. She also worked for a commercial food service operation for three years, in which she served customers over a 125 mile route in York County, handled inventory and performed general maintenance of her delivery vehicle. She has held other positions in which she dealt with the public and in which the care of a vehicle was part of her duties and is aware of what it costs to maintain a vehicle. [N.T. 56-58, 83-84, 98-100, 104, 118-120, 188].

14. Grove is working with the Service Corps of Retired Executives in York to develop a business plan and operating plan and has developed a preliminary six-month plan in which supplies, repairs and maintenance, Yellow Pages advertising, vehicle payments, rent for a storage garage, telephone charges, pager and cellular phone charges, insurance costs and fuel costs are included. Her preliminary plan projected 25-30 hours of operating time per month for weddings, proms, airport corporate business and

miscellaneous business. She will draw no salary in the beginning but will put whatever money she makes back into the business. [N.T. 85, 88, 253-257].

15. Grove intends to take business courses upon obtaining a Certificate of Public Convenience to further her business skills. [N.T. 59].

16. Todd G. Grove, the husband of Applicant, is sales representative for Monarch Products Company, Inc., York Haven, Pennsylvania. At Monarch Products, he is in charge of the entire estimating department, in charge of all daily production and delivery of the company's finished product and is involved in billing. [N.T. 152].

17. Although no formal relationship has yet been determined, Todd Grove would advise his wife on any business aspects of Central Pennsylvania Limousine Service. [N.T. 153].

18. Grove holds a valid Pennsylvania drivers license. She has an excellent driving record. Her three-year driving record issued by the Pennsylvania Department of Transportation shows no citations, no accidents and no restrictions, and she was involved in no accidents nor did she receive any citations from the issuance date of the report to the time of hearing. She is familiar with the Commission's regulations which apply to limousine services. [N.T. 51-53; Grove Exhibits No. 5, 6].

19. Grove has no criminal record. She has neither been convicted of nor arrested for any crime. [N.T. 53-55; Grove Exhibit No. 7].

20. Grove is of good character, and is described by witnesses as having ambition, energy, integrity and as being honest, trustworthy, courteous, considerate, personable, responsible and businesslike. [N.T. 118, 125, 148, 187, 210, 214, 237-239, 246].

21. Grove would be in a position to commence operations within 90 days of an order approving her application. [N.T. 260-261].

22. Priscilla I. Hoffman is the owner of three dance studios under the name B\*Dazzled, two of which are located in the same building at 30 North Main Street, Red Lion, York County, and one adjoining her home at 1422 South George Street, York. Ms. Hoffman used limousine services in the past for a birthday-related trip around York. Although Ms. Hoffman could not predict where she will go in the future, she does anticipate using limousine services for her daughter's marriage and for a birthday party. She would be prone to utilize the limousine services of someone she knew more often than the limousine services of others. Ms. Hoffman would recommend Grove's services to the parents of students of her dance studios for recitals and to the clients of her anticipated travel agency if Grove's application were granted. [N.T. 116-118, 120-122].

23. Donald P. Gill is the owner of Double Diamond Finishing Systems, which specializes in exterior stucco on large commercial buildings and is located at 1422 South George Street, York. In the past two years he has picked up clients at Harrisburg International Airport two or three times. He anticipates a future need for Grove's services to pick up clients at Harrisburg International Airport and take them to job sites, which could be located anywhere within the area from Allentown to Chambersburg and north of Harrisburg. Personally, he has used limousine services in the past to take his daughter to the prom and to go to dinner in Baltimore and would use Grove's services for his daughter's wedding. [N.T. 123-127].

24. Barbara Ann Lepley, 279 Teila Drive, Dallastown, York County, is Market Representative and Business Development Representative for Manor Care Health Services, working out of York. Manor Care has two facilities in Dauphin County, four in York County and two in Lancaster County, the latter being located in Lancaster and Elizabethtown. As part of her job, she brings educational speakers in from around the country to do presentations or seminars in Manor Care's specific markets. She has personally used limousine services three times in the past for her childrens' proms and homecomings in York County. During those instances, she had trouble booking a service on the needed dates, and in one instance the grade of service she wanted was not available. She used the services of Protestant Unique Limousine in November 1997, to travel from a hotel in Lancaster to a restaurant in York County and return. [N.T. 128-135, 138; Grove Exhibits No. 23-25].

25. Mark Stephen King, Jr., 111 Keymar Drive, York, could not locate a locally based limousine service for his 1996 homecoming in York, even though he called all local limousine services about six weeks before the event. He was forced to go outside York County to obtain the services of a company from Mechanicsburg, forcing him to pay for an extra hour and a half for the limousine to travel from Cumberland County to York and back. If Grove's application were approved, he would use her services in the future, although he could not state any specific occasion at this time. [N.T. 139-142].

26. Margaret Mary Bayliss of 445 Chestnut Lane, York, has three children. Her husband is Director of Maternal Fetal Medicine and Associate Director of the Residency Program for Obstetricians and Gynecologists at York Hospital. She and her husband have used limousine services in the past to travel to Baltimore for an anniversary dinner and to travel back and forth between LaGuardia Airport in New York and Connecticut. Bayliss would use Grove's services if her application were granted for her daughter's graduation and prom and to go out for the evening. Her husband often interviews prospective physicians for his program at York Hospital, and she would make arrangements to take them back and forth from local airports. She would use Grove's services to pick up prospective physicians from their hotels and have them brought to dinner. She would "absolutely" use Grove's services, no matter what type vehicle Grove was utilizing to provide service. [N.T. 145-151].

27. Frank E. King is the owner of Frank King Photography & Video, 4101 Carlisle Road, Dover, York County. His company operates in York, Lancaster and Dauphin counties and photographs or videographs between 700 and 900 weddings a year, with sometimes working 30 to 50 weddings a weekend. Each year King's company receives requests for limousine recommendations "in the hundreds most likely." He has observed brides having trouble obtaining limousine services during the high demand months of May, June, September and October, and sometimes the services were unavailable. He would "definitely" recommend Grove's services to brides-to-be or couples who ask for limousine service recommendations, should her application be granted. [N.T. 184-188].

28. King personally used a limousine service in 1996 to travel from York County to Harrisburg for a river boat ride and as a birthday party gift for his sister and her husband. He secured three or four limousines for each of his two daughters' weddings. If Grove's application were approved, he would use her service for personal use, as the need arose. [N.T. 189-192].

29. Philip R. Wenger is the owner of Isaac's Restaurant & Deli ("Isaac's"), 354 North Prince Street, Lancaster, Pennsylvania. Isaac's operates 14 restaurants in Lancaster, Dauphin, York, Cumberland and Berks counties, and has yearly revenues of \$10 million dollars. He used a limousine in 1992 for a company anniversary party. He also used a group and party service to transport a group of friends from Lancaster to Philadelphia for a birthday celebration, but could not obtain the type of vehicle he wanted.

If Grove's application were to be granted, he would "absolutely" use her services. Wenger would use her limousine service for dinner outings with friends to various locations. He might also use her van services to move employees to different locations or take them to sporting events. [N.T. 193-198, 201-202].

30. Kevin M. Deller is a Community Relations Coordinator for deaf services for Lutheran Social Services, 750 Kelly Drive, York, Pennsylvania. Deller has hired limousine services in the past in the south Florida area, and has used them in this area as well, personally for traveling to concerts or restaurants and for business to provide interpretation services for entertainment figures at York County venues and in Philadelphia. Deller anticipates hiring limousine services in the future, and if Grove's application were to be granted, he would use her services to travel from York to such intrastate locations as Harrisburg and Philadelphia for both business and personal reasons. He would also recommend her services to others through his job. [N.T. 207-212].

31. Todd J. Shreve is an Estimator with Monarch Products, 385 Sipe Road, York Haven, Pennsylvania. Shreve has helped plan, but not personally booked, for the use of limousine services twice in the past, which involved two vehicles each time. He would "definitely" use Grove's services for special occasions if her application were to be granted, in the near future for a bachelor party in the fall of 1998, regarding which no plans have yet been made. [N.T. 213-217].

32. Emswiler owns a 1987 Lincoln Town Car stretch limousine for his personal use. When he kept this limousine at his business location, he would have four or five people a month ask if they could rent the limousine, stating that they could not find a limousine to rent at that time. [N.T. 224-225].

33. John Edward Johns, Jr., is the owner of New West Tour Products, Inc., 653 Bair Island Road, Suite 106, Redwood City, California, which manufactures home storage products and is a supplier of personal care products, having 1997 revenues of \$12 million dollars and anticipated 1998 revenues of \$23 million dollars. He uses limousine services and car services in New York and Los Angeles to travel back and forth to the airport. If Ms. Grove's application were granted, he would "definitely" use her services for transportation between Harrisburg Airport and West Chester, Chester County, where one of his prime customers is located, or between Harrisburg and York, where his mother lives, two to five times a year. [N.T. 233-235, 237].

34. Johns has attempted to obtain limousine services from Harrisburg International Airport or from York to the airport in the past, and not been able to obtain services on short notice or found them overly expensive. One of the services from which he was unable to make transportation arrangements in the past was White Rose Limousine. [N.T. 235-237, 242].

35. Gena L. Dwyer is employed as a Financial Controller and a licensed real estate agent at Cherry Lane Realty, 540 West Market Street, York, Pennsylvania. Dwyer has used limousine services in the past in her business for transportation to and from Christmas parties and was considering hiring one for a near-term benefit dinner. She anticipates using limousine services in the future for entertaining potential clients, and to transport them from the airport to look at various rental units managed by Cherry Lane Realty. If Grove's application were to be granted, Dwyer would use Grove's services for these purposes. [N.T. 244-247].

36. Grove has received requests for services which she was not able to fulfill, being unauthorized to do so. [N.T. 96].

37. James J. Salinger, 3803 Crooked Hill Road, Harrisburg, Pennsylvania, owns the operating authorities for Protestants Unique, Keystone and White Rose on a 50-50 basis with his wife, Josie Salinger. The operating authority for Villa is owned by Salinger's wife, Josie Salinger. Salinger is involved in the business operations of all four Protestants. [N.T. 263-268].

38. Salinger owns three other affiliated companies operating in the areas in which Grove seeks authority, *i.e.*, Lancaster Limousine, A.F. Reymer Limited and James J. Salinger t/d/b/a Mid-Atlantic Transit. [N.T. 268].

39. Unique operates in York and Lancaster counties under the Unique Limousine name, despite having no authority to operate in those counties. [N.T. 69-71, 132-138, 264, 269; Grove Exhibits No. 12-15, 23-25].

40. Salinger's businesses own or lease 28 vehicles, with 13 vehicles being model years prior to 1995. One vehicle is a 1985 model year and another is a 1987 model year. [N.T. 270-272].

41. Twenty-six of the Protestants' vehicles are owned or leased by Unique and two by Villa. Keystone and White Rose have no vehicles. [N.T. 272].

42. Keystone and White Rose have no operations at the addresses listed on their amended protests. The addresses and telephone numbers for Unique and White Rose are the same in the York Yellow Pages telephone directory and Unique's ad in that directory states that it is "formerly White Rose Limousine." In the Lancaster Yellow Pages directory, the addresses and telephone numbers for Unique and Keystone are the same. [N.T. 69-74; Grove Exhibits No. 13-15].

43. Salinger has not acted to transfer the operating authorities presently held by Keystone and White Rose to Unique. [N.T. 282].

## Proposed Conclusions of Law

1. Grove has demonstrated through substantial evidence that she possesses the requisite technical expertise, financial capacity and propensity to operate safely and legally the proposed service. *Re Adegbola Ige t/a Globe Limousine Service*, 75 Pa. PUC 45 (1991); *Re Perry Hassman*, 55 Pa. PUC 661 (1982).

2. Grove has provided substantial evidence of a public demand or need for the proposed services in the requested territories through passenger testimony and requests for service sufficient for the particular circumstances of this case. *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC 262, 274 (1990); *Noerr Motor Freight, Inc. v. Pa. Public Utility Commission*, 181 Pa. Super. 322, 330-331, 124 A.2d 493 (1956).

3. The inadequacy of existing services in the requested territories, shown by Grove, is substantial evidence indicating a public need for the proposed services. *Hercik v. Pa. Public Utility Commission*, 137 Pa. Commw. 377, 586 A.2d 492, 495 (1991); *Pennsylvania Railroad Company v. Pa. Public Utility Commission*, 199 Pa. Super. 158, 184 A.2d 111, 115-116 (1962).

4. The testimony of rider preference for Grove's proposed services is substantial evidence which will support a Commission finding that there is a public demand or need

for the proposed service. *Seaboard Tank Lines, Inc. v. Pa. Public Utility Commission*, 93 Pa. Commw. 601, 502 A.2d 762 at 762, 768 (1985).

5. Grove's testimony that she planned to provide back-up service during periods of peak demand in the growing counties in which she proposes to offer her services, as well as to provide different services targeted to hunters and skiers is further substantial evidence in support of a need for the proposed services. *Morgan Drive Away, Inc. v. Pa. Public Utility Commission*, 99 Pa. Commw. 420, 512 A.2d 1359, 1361 (1986).

6. Where a protestant presents no evidence that its operations will be impaired or endangered by a new entrant into the field, as here, the applicant's burden of showing a public demand or need should be lessened, as is already the Commission's rule in regard to unprotested applications, in order to prevent a misuse of the Commission's regulations to restrain competition. *W. C. McQuaide, Inc. v. Pa. Public Utility Commission*, 137 Pa. Commw. 282, 585 A.2d 1151, 1156-7 (1991); *Re Nothstein Bros., Inc.*, 64 Pa. PUC 411, 414 (1987).

7. No valid protests exist to Grove's application in Lancaster County and those portions of York County where Villa does not hold authority, namely the city of York and the townships of York, Spring Garden, Manchester, West Manchester and Newberry, York County, as Unique does not hold authority to operate in Lancaster or York counties and

Keystone and White Rose are not operating under their Certificates of Public Convenience. 66 Pa.C.S. § 2301; *Fiore v. Commonwealth*, 668 A.2d 1210, 1216 (Pa. Commw. 1995).

8. The Commission requires less evidence of demand or need in unprotested cases and “the competent and credible evidence of record should be viewed in the light most favorable to the applicant,” which should be applied as to those territories where no valid protest exists to Grove’s application. *Re Nothstein Bros., Inc.*, 64 Pa. PUC at 414.

9. The Protestants’ misrepresentations regarding their operations should be weighed by the Commission to support the approval of Grove’s application, as she was denied the opportunity to amend her application prior to hearing to include only those territories in which no protests existed in order to proceed under the modified procedures of 52 Pa. Code § 3.381(c)(1)(iii) and therefore forced by the Protestants’ actions to incur substantial litigation expenses. *See Re Nothstein Bros., Inc.*, 64 Pa. PUC at 412.

10. Taken as a whole under the particular circumstances of this case, the evidence is legally sufficient to support an order of the Commission granting Grove’s application for the issuance of a Certificate of Public Convenience as requested and Grove has sustained her burden of establishing a prima facie case in support of her application. *Dutchland Tours, Inc. v. Pa. Public Utility Commission*, 19 Pa. Commw. 1, 337 A.2d 922, 926 (1975).

Proposed Ordering Paragraph

1. That the Application of Stacia H. Grove t/d/b/a Central Pennsylvania Limousine Service for a Certificate of Public Convenience to transport persons in limousine service between points in the counties of York, Lancaster, and Dauphin, and from points in said territory to points in Pennsylvania and return, be and hereby is granted.

RESPECTFULLY SUBMITTED,

NAUMAN, SMITH, SHISSLER & HALL

By: *Benjamin C. Dunlap, Jr.*  
Benjamin C. Dunlap, Jr., Esquire  
Supreme Court ID# 66283

200 North Third Street, P. O. Box 840  
Harrisburg, PA 17108-0840  
Telephone: (717) 236-3010  
Counsel for Applicant, Stacia H. Grove,  
t/d/b/a Central Pennsylvania Limousine Service

Date: April 24, 1998

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: :  
STACIA H. GROVE t/d/b/a : A-00114058  
CENTRAL PENNSYLVANIA :  
LIMOUSINE SERVICE (562 East :  
Heatherfield Way, Red Lion, York :  
County, PA 17356) - persons in :  
limousine service between points in :  
the counties of York, Lancaster, :  
and Dauphin, and from points in the :  
said territory to points in :  
Pennsylvania and return :

**CERTIFICATE OF SERVICE**

I hereby certify that I served three (3) copies of the foregoing "**Main Brief**" in the above action, this day by first class mail, postage prepaid, at Harrisburg, Pennsylvania, addressed to:

**SERVICE LIST**

Scott Pohlman, Esquire  
Robinson & Geraldo  
4407 North Front Street  
P. O. Box 5320  
Harrisburg, PA 17110  
Counsel for Protestants, Salgals, Inc. t/d/b/a Villa Limousine Service  
Keystone Limousine, Inc., White Rose Limousine, Inc. and  
Unique Limousine Service, Inc.

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Barbara Drake, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

Dated: April 24, 1998



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF STACIA H. GROVE : DOCKET NO. A-00114058  
t/d/b/a CENTRAL PENNSYLVANIA :  
LIMOUSINE SERVICE :  
:

**BEFORE:** Wayne L. Weismandel, Administrative Law Judge

**HEARING DATES:** Friday, October 17, 1998  
Tuesday, December 16, 1997,  
Tuesday, February 24, 1998  
North Office Building  
North Street and Commonwealth Ave.  
Harrisburg, Pennsylvania

**APPEARANCES:** Protestant's Counsel  
Scott W. Pohlman, Esquire  
Robinson & Geraldo  
4407 North Front Street  
Harrisburg, PA 17110

Applicant's Counsel  
Benjamin Dunlap Jr., Esquire  
Nauman Smith Shissler & Hall  
18th Floor 200 N. 3rd St.  
P.O. Box 840  
Harrisburg, PA 17108-0804

**WITNESSES:** For Protestant:  
James Salinger

For Applicant:  
Stacia H. Grove  
Priscilla I. Hoffman  
Donald P. Gill  
Barbara Ann Lepley  
Mark Stephen King, Jr.  
Margaret Mary Bayliss  
Todd G. Grove  
Frank E. King  
Philip R. Wenger  
Kevin M. Deller  
Todd J. Shreve  
Edward W. Emswiler  
John Edward Johns, Jr.  
Gena Liane Dwyer

REPLY BRIEF

AND NOW come the Protestants, Unique Limousine Service, Inc., ("Unique"), Salgals, Inc. t/d/b/a Villa Limousine Service, ("Villa"), White Rose Limousine, Inc, ("White Rose"), and Keystone Limousine Service Inc., ("Keystone"), by and through its attorney Scott W. Pohlman, Esquire and ROBINSON and GERALDO, and files this Reply Brief in response to the Main Brief of the Applicant Stacia H. Grove t/d/b/a Central Pennsylvania Limousine Service, produced by Benjamin C. Dunlap, Jr., Esquire, counsel for the Applicant.

The Applicant has failed to establish that a sufficient need for additional luxury limousine service exists in York, Dauphin, and Lancaster Counties. In addition, the Applicant has not established that it possesses the technical ability to operate a luxury limousine service or that it has the financial and technical ability to operate the proposed service. The Applicant has not met the evidentiary requirements of 52 Pa Code Section 41.14, as further established in Re Bluebird Coach Lines, Inc., 72 Pa. PUC 262 (1990), where the Commission stated:

"Under the new criteria at Section 41.14, a motor common carrier Applicant now has a bipartite burden of proof. Section 41.14(a) places upon the Applicant the "burden of demonstration that the approval of the application will serve a useful public purpose, responsive to a public demand or need." Subsection (b) places upon the Applicant the burden of demonstration that it possesses the technical and financial ability to provide the proposed service." Together, the evidentiary criteria at Subsection 41.14(a) and 41.14(b) constitutes an Applicant's prima facie burden of proof in an application proceeding."

The Protestants to the instant application maintain the Applicant has failed to meet this burden.

The evidence presented by the Applicant did not establish a sufficient need in the requested counties. The main reason the Applicant wants to operate the service is for her own personal employment. (N.T. 67). The Applicant herself did not identify specific customers in need of her service. (N.T. 67). The Applicant's witnesses were not representative of the community she seeks to serve. Her witnesses did not identify points of origin or destination within the selected territory. In fact her attorney argues in his main brief that the Blue Bird origin and destination criteria should not be required. The witnesses presented do not have a need for limousine service. Their past use was sporadic at best, and their future use was nothing more than mere speculation as to the possible use of limousine service.

Some of the witnesses testified to having difficulty obtaining service. However, the difficulties, which could be calling multiple service providers, took place at least two years ago. There was no testimony or evidence of any attempts to obtain future service of that any witnesses had any recent difficulties obtaining service. The Applicant's supporting witnesses have not demonstrated a need for limousine service.

Finally, the Applicant herself testified to having received requests for service which she could not fulfill. (N.T. 96). The Applicant does not currently have a vehicle to even provide service.

Her testimony throughout the proceedings lacked consistency and creditability. She testified that she had a business plan which included costs (N.T. 98). During the second day of testimony she testified as to producing a rough business plan where she considered costs. (N.T. 254-257). She did not testify what any of those numbers or estimates were. If she was testifying as she did during prior testimony about maintenance of her vehicles then she has not produced a business plan which would provided any indication of her ability to operate. Her testimony about maintenance was that she had researched maintenance for her vehicles, but when the issue was pursued in depth she had only called a mechanic to see if they could service her vehicles. (N.T. 91, 94-96). If she applied the same diligence to her rough business plan, and there is no evidence to the contrary, then she has failed to credibly present information to the Commission.

To summarize the demonstration of need, the Applicant has not provided a representative sample of the territory she seeks to serve. She has not demonstrated a need sufficient to warrant the granting of a new authority. The Applicant has not met her burden as established by the Public Utility Commission.

The Applicant has proposed to perform all aspects of the operation of the business. (N.T. 42-43). Her work experience does not reflect the ability to profitably operate the business. Her lack of experience is most notably demonstrated through her lack of effort to obtain critical operational information. She has only looked into the requirements of hiring a part-time driver for her second vehicle.

(N.T. 93-94, 103-104). Her testimony did not establish any knowledge or understanding of the Commission's regulations (N.T. 258). When asked about the cost of maintenance for a vehicle she testified that she had not explored the cost, only that she called mechanics to determine if they were able to service her vehicle. (N.T. 91, 94-96). Her personal maintenance experience is limited to making sure the vehicle is clean, air in the tires, and the wipers work. (N.T. 57). She also worked as a bookkeeper and handled accounts receivables. (N.T. 56-57, 84). Her testimony did not demonstrate a working knowledge of business operations or the importance of planning.

The Applicant has not demonstrated any planning for the operation of her business. She apparently had not constructed or prepared a business plan before the first hearing and prior to the second hearing she had only been able to produce a "very rough" plan (N.T. 254). She demonstrated very limited understanding of the complexity of operating a limousine business. When she was questioned about her lease arrangements for the Suburban, her primary vehicle, she did not know what the per month cost would be, or if there would be mileage limitations, or per mile cost, or what the contract would require for maintenance. (N.T. 80-81). Despite her testimony that she has prepared a "rough plan" it is the Protestants position she has done nothing more than research the cost of leasing a vehicle for her family. The evidence presented a trial did not demonstrate the technical ability to operate her business safely.

The Applicant has offered testimony as to her financial capabilities to demonstrate her financial fitness. There was no evidence the banks who have pre-approved various leases or loans would be willing to make those loans if other vehicles or loans were made simultaneously. (N.T. 257-258). Mr. Grove testified the Suburban would be the family vehicle, (N.T. 153). Mr. Emswiler testified he would compare a loan to purchase a limousine, but there is no evidence a bank would offer a loan, based upon her anticipated liabilities. (N.T. 224, 227-228). Finally, the Applicant herself does not know if her assets would be sufficient to operate her proposed business because she has not identified what her costs would be. The Applicant has not demonstrated the technical or financial fitness to operate her proposed service under 52 Pa. Code Section 41.14 (b).

To direct the Commission's focus away from the Applicant's prima facie burden, the Applicant argues evidence of inadequacy should be used as evidence to support the grant of additional authority for an entire county. In Herick v. Pa. Public Utility Commission, 137 Pa. Commw. 377, 586 A.2d 492, 495 (1991), which the Applicant cites to support her argument, the Applicant was able to demonstrate a need for additional limousine service based upon testimony of a specific need which occurred on a regular basis. In the instant application there is no need for additional service and the examples of inadequacy do not demonstrate a need. Mark Stephen King, Jr. was able to locate a service which was then used by himself and his parents

for the evening. (N.T. 143). Mr. King was not able to identify the provider or the period of time the vehicle was used to allow a fair evaluation of the rate he paid. (N.T. 142). Ms. Lepley testified she had trouble obtaining service for her children's proms. She did not identify the dates of the past service nor did she identify who the service was provided by. She was able to obtain limousine service at all times. (N.T. 131). The final proposed example of inadequate service is Mr. Johns, he testified that the service was too expensive or not available on short notice. (N.T. 236). Mr. Johns is comparing the price of limousine service in Pennsylvania to Los Angeles where the regulations on limousine service could be entirely different if they exist at all. Additionally, there is no evidence the Applicant's rates would be less than all her competitors. Counsel's argument for inadequacy is another means to attempt to argue an existing need. The witnesses however, have not demonstrated a need for future limousine service.

Next, the Applicant's counsel argues the Applicant's burden of showing public demand or need should be lessened when the Protestant presents no evidence that its operations will be impaired. He cites Re Nothstein Bros., Inc., 1987 Pa. PUC LEXIS 168, 64 Pa. PUC 411, (1987), arguing that it approves a lesser standard. However, a review of the case finds:

A grant of motor carrier operating authority must always be premised upon credible, competent, prima facie evidence of record which establishes the two elements of proof required by 52 Pa. Code @ 41.14(a)-(b), namely, proof that the Applicant's propounded transportation services will satisfy a useful public purpose, responsive to a public need or

demand, and proof that the Applicant is fit to provide the proposed services to the public. Supra. 6-7.

The Applicant still has the burden, the only difference in an unprotested case is the witnesses are not examined for their credibility nor is any evidence offered to rebut their testimony. Therefore, quite naturally, the quantity of evidence will be less. In the instant case, the Applicant's witnesses were cross examined, and it was established there was no specific future need, nor were origin and destination points established. The Applicant's counsel has argued to lessen the quality of evidence which should be presented to the Commission. To the contrary, the case law and the Commission still require all Applicants demonstrate a public demand or need exists and that they prove they are technically and financially able to provide the proposed services to the public.

The Applicant next argues the Protestants have misrepresented their scope of operations. The Protestants all filed protests for the counties and localities in which they have authority to operate. All Protestants have a valid operating authority in conflict with the Applicant as required in Application of Carriage Limousine Services, Inc., Docket No. A-00108361, F.1, Am-B, Initial Decision Dated October 12, 1994, final by operation of law (Order entered December 23, 1994). The Protestants all operate according to their authority, which is in direct conflict with the Applicant's requested territory. (N.T. 280, 282). Their interests are substantial, direct and immediate. The Protestants filed their protests in accordance with 52 Pa Code Section 3.381(c). They maintain and operate valid

authorities. The issue of standing is a fact that is to be determined based upon a hearing. Application of K-Cab, Inc., Dkt. No. A-00111416, F 0004, 1995 Pa. PUC LEXIS 135, 7 (1995). There has been no Motion to Dismiss filed by the Applicant for lack of standing against the Protestants and no hearing as to the operations of the Protestants.


Keystone and White Rose have been identified as not owning vehicles and are therefore not operating in their respective authorities. A review of the Public Utility Commission's public documents pursuant to 52 Pa. Code Section 5.406, would show that operating tariffs have been filed by the Protestants. Additionally, all Protestants have cars registered with the Pennsylvania Department of Transportation. According to the testimony of the Protestants, both Keystone and White Rose maintain valid operating authorities. (N.T. 280, 282). Counsel for the Applicant has again tried to redirect the Commission's attention away from the Applicant's prima facie burden which has not met. All four Protestants have proper standing to have protested the Applicant's application for authority.

The Applicant has not sustained her burden. Her counsel has attempted to raise a variety of arguments to direct the commissions decision making process away from her application. A review of the testimony establishes she has not identified a need to serve or met the financial and technical requirements. Granting her authority to operate would be contrary to the purpose of the Public Utility

Commission and it's regulations, which is to protect the citizens of this Commonwealth.

Respectfully submitted,

ROBINSON & GERALDO

By   
Scott W. Pohlman, Esquire  
Attorney I.D. No. 78004  
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P.O. Box 5320  
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(717) 232-8525

Attorney for Protestant.

CERTIFICATE OF SERVICE


I, Scott W. Pohlman, Esquire, do hereby certify that on the 8th day of May 1998, I caused a true and correct copy of the forgoing Reply Brief of Unique Limousine Service, Inc, Salgals, Inc. t/d/b/a Villa Limousine Service, White Rose Limousine, Inc, and Keystone Limousine Service Inc., Protestants, to be served upon the following individuals:

Hand Delivered to:  
Administrative Law Judge  
Wayne L. Weismandel  
North Office Building  
P.O. Box 3265  
Harrisburg, PA 17105-3256

Via First Class Mail to:  
Benjamin C. Dunlap, Jr. Esq.  
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Harrisburg, Pennsylvania 17108-0840

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ROBINSON & GERALDO,

By   
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 DENNIS E. BOYLE

COUNSEL  
 DAVID C. EATON  
 JOHN C. SULLIVAN  
 DIRECT E-MAIL ADDRESS  
 NSSH@REDROSE.NET

May 8, 1998

**HAND DELIVERED**

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

RE: **STACIA H. GROVE t/d/b/a Central Pennsylvania Limousine Service (562 East Heatherfield Way, Red Lion, York County, PA 17345) - persons in limousine service between points in the counties of York, Lancaster, and Dauphin, and from points in the said territory to points in Pennsylvania and return; A-00114058**

Dear Sir:

I enclose an original and nine (9) copies of the Reply Brief for filing in the above matter. In accordance with the accompanying Certificate of Service we have provided copies of the Reply Brief to all active parties of record. Please time-stamp the original and all copies and return a time-stamped copy to our messenger. Thank you for your assistance.

Sincerely yours,

*Barbara Drake*

Barbara Drake  
 Secretary to  
 Benjamin C. Dunlap, Jr., Esquire

/bmd  
 Enclosures  
 cc: Scott Pohlman (w/encl.)  
 Stacia H. Grove (w.encl.)  
 ALJ Wayne L. Weismandel (w.encl.)

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :  
STACIA H. GROVE t/d/b/a : A-00114058  
CENTRAL PENNSYLVANIA :  
LIMOUSINE SERVICE (562 East :  
Heatherfield Way, Red Lion, York :  
County, PA 17356) - persons in :  
limousine service between points in :  
the counties of York, Lancaster, :  
and Dauphin, and from points in the :  
said territory to points in :  
Pennsylvania and return :

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REPLY BRIEF OF STACIA H. GROVE T/D/B/A  
CENTRAL PENNSYLVANIA LIMOUSINE SERVICE, APPLICANT

Stacia H. Grove t/d/b/a Central Pennsylvania Limousine Service, Applicant ("Grove"), files this reply brief to the main brief of Keystone Limousine, Inc. ("Keystone"); Salgals Inc., t/d/b/a Villa Limousine Service ("Villa"); Unique Limousine Service Inc. ("Unique"); and White Rose Limousine Inc. ("White Rose") (collectively "Protestants"), filed in the above proceeding on April 24, 1998, to address the issue of standing of the Protestants as well as to counter the Protestants' assertions regarding Grove's sustaining of her burden of proof.

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1. The Protestants Lack Standing to Protest Grove's Application. Thus, Grove's Application Should be Evaluated Under the Criteria for Unprotected Applications.

In their main brief, the Protestants contend that they "all have a direct interest in their respective counties" sufficient to provide them standing to protest Grove's application. Protestants' Main Brief at 8. In support of this contention, the Protestants correctly cite the standard that an aggrieved party must have "an interest which is substantial, direct and immediate" in order to have standing. *Id.* at 7, citing, *Application of Dorinda Nolan, t/d/b/a Puddle Jumper's*, Docket No. A-00113708, 1997 Pa. PUC LEXIS 33, \*8 (Initial Decision dated July 24, 1997), citing, *In Re Francis Edward McGillick Foundation*, 537 Pa. 194, 642 A.2d 467 (1994). *Accord*, *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269, 282-283 (1975). The Protestants, all of which are under the common ownership of James J. Salinger and his wife, lack such an interest on three separate bases. [N.T. 263-268].

First, as detailed on pages 30-32 of Grove's main brief, Unique is operating in Lancaster and York counties, where it has no certificate of authority. This is contrary to the Public Utility Code's requirement that all carriers which provide service to the public hold a certificate of public convenience in the areas in which they operate and abide by Public Utility Commission ("Commission") regulations and restrictions on their operating authority. *Fiore v. Commonwealth*, 668 A.2d 1210, 1216 (Pa. Commw. 1995, *aff'd*, 547 Pa. 357, 690 A.2d 234 (1997), *cert. denied*, \_\_\_ U.S. \_\_\_, 118 S.Ct. 181; 66 Pa.C.S. § 1103(a) ("The commission, in granting such certificate [of public convenience], may impose such conditions as it may deem to be just and reasonable."). Furthermore, Keystone and White

Rose have no vehicles and have no operations at the addresses listed on their amended protests and thus are not operating under their certificates of public convenience, thereby violating the requirements of 66 Pa.C.S. § 2301.

Unique, Keystone and White Rose are thus basing their protests in Lancaster and York counties on operations or lack of operations in violation of the Public Utility Code. It should not be held that the protection of illegal conduct constitutes a “substantial interest” conferring standing on Unique, Keystone and White Rose to protest Grove’s proposed operations in York and Lancaster counties. Instead, the Commission should hold that no valid protests to Grove’s application exist in Lancaster County and those portions of York County where Villa does not hold authority, namely the city of York and the townships of York, Spring Garden, Manchester, West Manchester and Newberry, York County.

Secondly, the Protestants cite *Application of K-Cab, Inc.*, Docket No. A-00111416 F0004, 1995 Pa. PUC LEXIS 135 \*8, for the proposition that there “is no requirement that a protest must be based on [an] existing competing certificate of authority.” Protestants’ Main Brief at 7. In reaching that conclusion, however, ALJ Cohen cites the provisions of 52 Pa. Code § 5.52(a), which requires that a protest to an application “shall on its face set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined, the grounds of the protest and the facts establishing protestant’s standing to protest.” *Application of K-Cab, Inc.*, at \*8. As stated in another case cited by the Protestants, “the Commission’s regulations mandate a protestant must clearly and concisely explain its standing when it files its protest and not at some later time, such as

at a hearing. *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.1, Am-B, Initial Decision dated October 12, 1994, at 4.

In the present case, it has been established that Unique, White Rose and Keystone misrepresented on their amended protests the scope of their operations, as detailed on pages 30-31 of Grove's Main Brief. These misrepresentations should not confer standing on Unique, White Rose and Keystone to protest Grove's application. Instead, those misrepresentations directly violate the requirements of 52 Pa. Code § 5.52(a) and warrant dismissal of the protests of Unique, White Rose and Keystone, which would have the same effect as a determination that no valid protests to Grove's application exist in Lancaster County and those portions of York County where Villa does not hold authority, namely the city of York and the townships of York, Spring Garden, Manchester, West Manchester and Newberry, York County.

Third, "[t]o have a substantial interest means that there must be some discernable adverse effect to some interest of the complaining party." *Application of Dorinda Nolan, t/d/b/a Puddle Jumper's, supra*, at \*8. In the present case, the Protestants conceded that the granting of Grove's application would cause no adverse effect to their operations by presenting no evidence on the issue at the hearing. [N.T. 178-179]. In this regard, the Protestants' Proposed Conclusion of Law No. 4 on page 21 of their main brief should be stricken.

The cases cited by Protestant serve only to strengthen Grove's argument that where a protestant presents no evidence that its operations will be impaired or endangered by a new entrant into the field, as here, an application should be considered unprotested. Grove Main Brief at 29. As set forth in *Application of Carriage Limousine Services, Inc.*, *supra*:

If a party is not adversely affected in any way by the matter sought to be challenged, that party is not "aggrieved" and thus, has no standing to challenge the matter. It is simply not sufficient for the party claiming to be adversely affected and thus, "aggrieved" to assert the common interest of the public in procuring obedience to the law. *Id.* Since the Protestant's asserted interest in this proceeding is no greater than the common interest of the public in having an applicant for this authority comply with the law, I must conclude the Protestant does not now have a direct, immediate and substantial interest in the applicant proceeding. Since the Protestant will not be adversely affected by approval of the application to any greater extent than the general public, any adverse impact to the Protestant resulting from approval of the application will be remote.

*Id.* at 12-13, quoting, *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.0003, Initial Decision dated September 7, 1994, at 13-14. Accord, *William Penn Parking Garage, Inc. v. City of Pittsburgh*, *supra*, 346 A.2d at 282-283.

In the present case, the Protestants put forth no evidence that the granting of Grove's application would have any adverse effect on their operations. [N.T. 178-179]. Thus, the Protestants' "asserted interest in this proceeding is no greater than the common interest of the public in having an applicant for this authority comply with the law . . . [and] the Protestant[s] do] not now have a direct, immediate and substantial interest in this proceeding." *Id.* This merely "remote" interest on the part of the Protestants warrants the dismissal of all their protests. Thus, Grove's application should be considered unprotested and evaluated under the criteria for unprotested applications as articulated in *Re Nothstein Bros., Inc.*, 64 Pa. PUC 411, 414 (1987).

2. Contrary to the Assertions of the Protestants, Grove has Sustained Her Burdens of Showing a Demand or Need for the Proposed Service and Her Fitness to Provide the Service.

The Protestants attack Grove's fitness to provide the proposed services through mischaracterizations of the testimony presented as well as by asserting irrelevant points. Protestants' Main Brief at 18-21 and Proposed Findings of Fact 3-12 at pages 3-4. Regarding her technical ability, the Protestants contend Grove lacks sufficient business skills to operate the proposed service. While there is no Commission requirement that an applicant possess a business degree or have any specific background in order to be found to possess sufficient technical ability, the Protestants ignore the testimony regarding her prior business work experience. [N.T. 56-58, 83-84, 98-100, 104, 118-120, 188]. They state she does not have experience transporting passengers she does not know, likewise not a Commission requirement, and ignore testimony that her in prior work she frequently dealt with persons she did not know. *Id.* They find fault with her desire to better herself through business classes and ignore that she will be able to draw upon the considerable business experience of her husband in operating the proposed service. [N.T. 59, 152-153].

The Protestants criticize Grove's alleged failure to perform a sufficiently "detailed analysis of the costs involved in operating a limousine service safely and profitably." Protestants' Main Brief at 18-19. While the formulation of such formal plans are not a Commission requirement for gaining approval, the Protestants ignore Grove's testimony that she is working with the Service Corps of Retired Executives in York to develop a business plan and operating plan and has developed a preliminary six-month plan in which

supplies, repairs and maintenance, Yellow Pages advertising, vehicle payments, rent for a storage garage, telephone charges, pager and cellular phone charges, insurance costs and fuel costs are included. Her preliminary plan projected 25-30 hours of operating time per month for weddings, proms, airport corporate business and miscellaneous business, and she will draw no salary in the beginning but will put whatever money she makes back into the business. [N.T. 85, 88, 253-257]. Grove likewise is not required to establish the tariffs she will charge her patrons prior to the granting of her application, as contended by the Protestants. 52 Pa. Code § 3.381(e).

The Protestants ignore the testimony of a successful local entrepreneur that a formal business plan is far from the most important factor in determining the success of a new business venture. [N.T. 200-201]. The Protestants' criticisms in this regard are especially ironic in that James J. Salinger started as a small businessperson himself 16 years ago with one vehicle which "looked like a funeral car." [N.T. 270].

The Protestants mischaracterize Grove's testimony regarding the vehicles she would use to provide the proposed service. Protestants' Main Brief at 19-20. Grove testified that she plans to purchase as her first vehicle a late model Lincoln Town Car stretch limousine that seats approximately six people. [N.T. 251]. Between the initial hearing and the further hearing, she was able to locate a dealer from whom she could obtain such a vehicle. [N.T. 220-223, 229-230; Grove Exhibit No. 26]. A luxury van could be utilized as a secondary vehicle, depending upon the needs of Grove's passengers. [N.T. 153-154, 252-253]. Grove has demonstrated her ability to obtain financing for these

vehicles. [N.T. 43-51, 153-154, 224, 227-228, 251-252; Grove Exhibits No. 2, 3a, 4]. She is aware of the costs of maintaining these vehicles from her experience in maintaining her personal vehicles. [N.T. 104].

The Protestants also mischaracterize Grove's testimony as to when she would begin operations. Protestants' Main Brief at 13. Grove's actual testimony was that while she anticipated beginning operations in April of 1999 due to the anticipated length of the Commission proceedings, she would be prepared to begin operations within 90 days of a Commission Order requiring her to do so. [N.T. 260-261].

Grove testified that she has reviewed the Commission's regulations pertaining to the provision of limousine services. [N.T. 258-259]. She had not looked into the specific requirements of registering a limousine with PennDOT at the time of the further hearing. [N.T. 258]. On both these matters, Grove's spotless driving and criminal records provide substantial evidence that she will abide by all applicable Commission and PennDOT regulations. [N.T. 51-55; Grove Exhibits No. 5-7]. Grove has thus demonstrated through substantial evidence that she has the requisite technical and financial ability to operate the proposed service as well as a propensity to operate safely and legally.

Regarding the demand or need for the proposed services, Grove has established through relevant, probative, competent and credible evidence of record a demand or need for her proposed service sufficient under the circumstances of this case. She has presented substantial evidence of demand or need through the testimony of supporting

witnesses comprising a representative sampling of the public as to their past use of limousine services and future use of Grove's services. Grove Main Brief at 17-21, 23-24. This testimony was buttressed by the relevant testimony of business owners who would recommend her services to clients and others needing limousine services. *Id.* at 22.

The Protestants denigrate the testimony of Grove's witnesses in regard to their alleged failure to identify specific times, dates, destinations or frequency of use. See Protestants' Main Brief at 14-17. For instance, the Protestants discount the testimony of Kevin M. Deller in this regard, even though Deller testified that he would "definitely" use Grove's services to travel from York to such intrastate locations as Harrisburg and Philadelphia for both business and personal reasons. [N.T. 209, 211-212]. As another example, the testimony of John Edward Johns, Jr., was discounted by the Protestants in this regard even though Johns testified that he would "definitely" use Grove's services two to five times a year for travel between Harrisburg International Airport to York or West Chester or from York to the Airport. [N.T. 234-235, 237, 242].

Other witnesses testified that they would utilize Grove's services if her application were granted, but did not yet know the locations to which they might travel or stated that the events for which they would use her services had not yet been planned. [N.T. 121, 142, 191, 216]. The Commission should permit Grove's services to be available to these witnesses and other members of the public when they desire to use her services.

The services proposed by Grove are not scheduled services or services which persons or groups utilize on a regular, periodic basis, such as the charter services at issue in *Re Blue Bird Coach Lines, Inc.*, 72 Pa. PUC 262 (1990). The Protestants would require Grove's witnesses to testify as to the use of Grove's services for specific events on specific dates which may be months or a year or more subsequent to the hearings for travel to specific destinations which have not yet been determined and state a specific frequency of use in that regard. The rigorous exactitude which the Protestants contend is required would place a tremendous burden on an applicant who proposes offering non-scheduled services which passengers would utilize on a non-regular basis, presenting protestants an effective means to stifle competition, an outcome which is not in the public interest.

Grove asserts that the 12 witnesses who felt strongly enough about supporting her application to travel to the hearing and testify that they would use her services as proposed, with varying degrees of specificity as to such use, should weigh heavily toward the approval of her application. Their testimony should carry more weight than the verified statements of support which an applicant submits and has the opportunity to supplement under the Commission's modified procedures, which Grove was denied the opportunity to elect due to the Protestants' misrepresentations and unsubstantiated protests. See 52 Pa. Code § 3.381(c)(1)(iii)(A)(I); Grove Main Brief at 32; see also *Application of Lazer Limousine Services, Inc.*, 1997 Pa. PUC LEXIS 59 (Initial Decision dated September 2, 1997) (ALJ Smolen bifurcated need assessment and evaluated protested portion of application by witness testimony and unprotested portion by verified statements) (certification approved by Commission as of December 3, 1997). The testimony of Grove's

witnesses, as discussed on pages 17-26 of Grove's main brief and summarized in Proposed Findings of Fact 22-35 on pages 38-44 of the brief, constitute substantial evidence demonstrating a demand or need for her proposed services.

Grove's evidence of a demand or need for her services does not end with the testimony of witnesses regarding their use of her proposed services, however. Grove presented further substantial evidence of need by showing the inadequacy of existing services in the territory she proposes to serve. *Grove Main Brief at 25-26*. Contrary to the assertions of Protestants in their brief at 14-17, Barbara Lepley had to settle for a lower grade of service due to the unavailability of the grade she desired; Mark Stephen King had to pay extra to obtain services from another county; and John Edward Johns, Jr., has been unable to obtain limousine services, including limousine services from one of the Protestants, not call and demand services, from Harrisburg International Airport and York. See *Grove Main Brief at 25-26*.

The Protestants ignore the testimony of Frank E. King of Frank King Photography and Video that he has observed brides being unable to locate limousine services for weddings during the high demand months of May, June, September and October. [N.T. 184-187]. They also ignore the testimony of vehicle dealer Edward W. Emswiler that he has had four or five people a month inquire as to the possibility of renting the limousine he kept at his York County business location, stating they could not locate limousine services

on the dates needed. [N.T. 224-225]. Grove herself has received requests for service which she could not fulfill, being unauthorized to do so. [N.T. 96].

The Public Utility Code provides that the Commission shall grant a certificate of public convenience if it finds "that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa.C.S. § 1103(a). The public is not being accommodated or inconvenienced when they are unable to obtain the type of services they desire or services at the times they desire or if they are forced to incur extra costs to obtain services from outside the area. Thus, contrary to the assertions of the Protestants, Grove has presented witnesses who need limousine services, and it is "necessary or proper" that the Commission grant her application to provide those services.


Grove presented additional substantial evidence of public demand or need through witness testimony establishing a rider preference for her services. See Grove Brief at 27. Grove presented substantial evidence of demand or need in that she hopes to provide backup service to existing carriers during periods of peak demand, and will provide unique services targeted to hunters and skiers. See Grove Main Brief at 28. In regard to the details of providing her unique services, the Protestants ignore Grove's testimony that she was reluctant to reveal to them, her competitors, her ideas for marketing those services. Protestants' Main Brief at 12-13; N.T. 66. She will sell her services to those groups after she obtains a certificate of public convenience.

Grove further contends that Unique's illegal operations in York and Lancaster counties should be held as further substantial evidence of the need for certificated services by Grove in those counties. See Grove Main Brief at 30, n.2. Grove also asserts that the Protestants' misrepresentations regarding their operations, which served to deny Grove the opportunity to amend her application prior to hearing in order to proceed under the modified procedures of 52 Pa. Code § 3.381(c)(1)(iii) should likewise be weighed by the Commission to support the approval of her application. See Grove Main Brief at 32.

All of the evidence showing a demand or need for Grove's services is substantial evidence which may and should be considered by the Commission in granting Grove's application. *Applications of Altair Airlines, Inc.*, 43 Pa. PUC 183 (1967). Taken as a whole under the particular circumstances of this case, the evidence presented is legally sufficient to sustain Grove's burdens under 52 Pa. Code § 41.14(a) and (b) and support a Commission Order granting Grove's application for the issuance of a certificate of public convenience as requested. *Dutchland Tours, Inc. v. Pa. Public Utility Commission*, 19 Pa. Commw. 1, 337 A.2d 922, 926 (1975). It is in the public interest that the Commission do so.

RESPECTFULLY SUBMITTED,

NAUMAN, SMITH, SHISSLER & HALL

By:   
Benjamin C. Dunlap, Jr., Esquire  
Supreme Court ID# 66283

200 North Third Street, P. O. Box 840  
Harrisburg, PA 17108-0840  
Telephone: (717) 236-3010  
Counsel for Applicant, Stacia H. Grove,  
t/d/b/a Central Pennsylvania Limousine Service

Date: May 8, 1998

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: :  
STACIA H. GROVE t/d/b/a : A-00114058  
CENTRAL PENNSYLVANIA :  
LIMOUSINE SERVICE (562 East :  
Heatherfield Way, Red Lion, York :  
County, PA 17356) - persons in :  
limousine service between points in :  
the counties of York, Lancaster, :  
and Dauphin, and from points in the :  
said territory to points in :  
Pennsylvania and return :

**CERTIFICATE OF SERVICE**


I hereby certify that I served three (3) copies of the foregoing "**Reply Brief of Stacia H. Grove t/d/b/a Central Pennsylvania Limousine Service**" in the above action, this day by first class mail, postage prepaid, at Harrisburg, Pennsylvania, addressed to:

**SERVICE LIST**

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Robinson & Geraldo  
4407 North Front Street  
P. O. Box 5320  
Harrisburg, PA 17110  
Counsel for Protestants, Salgals, Inc. t/d/b/a Villa Limousine Service,  
Keystone Limousine, Inc., White Rose Limousine, Inc. and  
Unique Limousine Service, Inc.

ALJ Wayne L. Weismandel  
PA Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265  
(Via Hand Delivery)

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PA PUBLIC UTILITY COMMISSION  
PROTHONOTARY'S OFFICE

  
Barbara Drake, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

Dated: May 8, 1998

LAW OFFICES

NAUMAN, SMITH, SHISSLER & HALL

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DENNIS E. BOYLE

May 21, 1998

HAND DELIVERED

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

RE: **STACIA H. GROVE t/d/b/a Central Pennsylvania Limousine Service (562 East Heatherfield Way, Red Lion, York County, PA 17345) - persons in limousine service between points in the counties of York, Lancaster, and Dauphin, and from points in the said territory to points in Pennsylvania and return; A-00114058**

Dear Sir:

I enclose an original and three (3) copies of the Motion of Stacia H. Grove t/d/b/a Central Pennsylvania Limousine Service, Applicant, to Dismiss Protests for Lack of Standing for filing in the above matter. In accordance with the accompanying Certificate of Service we have provided copies of the Motion to all active parties of record. Please time-stamp the original and all copies, returning a time-stamped copy to our messenger. Thank you for your assistance.

Sincerely yours,

Barbara Drake, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

/bmd

Enclosures

cc: Scott Pohlman (via hand delivery w/encl.)  
ALJ Wayne L. Weismandel (via hand delivery w/encl.)  
Stacia H. Grove

DOCUMENT  
FOLDER

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ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :  
STACIA H. GROVE t/d/b/a :  
CENTRAL PENNSYLVANIA :  
LIMOUSINE SERVICE (562 East :  
Heatherfield Way, Red Lion, York :  
County, PA 17356) - persons in :  
limousine service between points in :  
the counties of York, Lancaster, :  
and Dauphin, and from points in the :  
said territory to points in :  
Pennsylvania and return :

A-00114058

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SECRETARY'S BUREAU

DOCKETED  
MAY 28 1998

MOTION OF STACIA H. GROVE T/D/B/A  
CENTRAL PENNSYLVANIA LIMOUSINE SERVICE, APPLICANT,  
TO DISMISS PROTESTS FOR LACK OF STANDING

Stacia H. Grove t/d/b/a Central Pennsylvania Limousine Service, Applicant ("Grove"), files this motion pursuant to the provisions of 52 Pa. Code § 5.103, for the dismissal of the amended protests of Keystone Limousine, Inc. ("Keystone"); Salgals Inc., t/d/b/a Villa Limousine Service ("Villa"); Unique Limousine Service Inc. ("Unique"); and White Rose Limousine Inc. ("White Rose") (collectively "Protestants"), based on the Protestants' lack of standing, as follows:

1. The Public Utility Commission ("Commission") has adopted the criteria used in Pennsylvania civil law practice to determine if a party has standing. *Application of*

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FOLDER

*Dorinda Nolan, t/d/b/a Puddle Jumper's*, Docket No. A-00113708, 1997 Pa. PUC LEXIS 33, \*8 (Initial Decision dated July 24, 1997) (Initial Decision Adopted and Application Approved as Amended by Commission Order dated November 2, 1997), *citing*, *Courier Express, Inc. v. F.L. Shaffer Company, Inc.*, Docket No. C-892462 (Order dated April 11, 1990).

2. In order to have standing to protest an application for a motor common carrier certificate of authority, a protestant must be an aggrieved party, meaning that it must have "an interest which is substantial, direct and immediate" in the proceeding. *Application of Dorinda Nolan, t/d/b/a Puddle Jumper's, supra*, 1997 Pa. PUC LEXIS 33, \*8, *citing*, *In Re Francis Edward McGillick Foundation*, 537 Pa. 194, 642 A.2d 467 (1994). *Accord*, *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269, 282-283 (1975).

3. "To have a substantial interest means that there must be some discernable adverse effect to some interest of the complaining party. . . . To have a direct interest means that the aggrieved party must show causation of the harm to his interest by the matter of which he complains." An immediate interest requires a sufficiently close "causal connection between the action complained of and the injury to the person challenging it." *Application of Dorinda Nolan, t/d/b/a Puddle Jumper's, supra*, at \*8, *citing*, *In Re Francis Edward McGillick Foundation, supra*.

4. The Protestants lack a substantial, direct and immediate interest in these proceedings on three separate bases, the facts supporting which were established at the hearings in these matters.

Basis 1 — Illegal Operations.

5. Unique is operating in Lancaster and York counties, where it has no certificate of authority. [N.T. 69-71, 132-138, 264, 269; Grove Exhibits No. 12-15, 23-25].

6. Unique's operations in Lancaster and York counties are contrary to the Public Utility Code's requirement that all carriers which provide service to the public hold a certificate of public convenience in the areas in which they operate and abide by Commission regulations and restrictions on their operating authority. *Fiore v. Commonwealth*, 668 A.2d 1210, 1216 (Pa. Commw. 1995), *aff'd*, 547 Pa. 357, 690 A.2d 234 (1997), *cert. denied*, 118 S.Ct. 181; 66 Pa.C.S. § 1103(a) ("The commission, in granting such certificate [of public convenience], may impose such conditions as it may deem to be just and reasonable.").

7. Keystone and White Rose have no vehicles and have no operations at the addresses listed on their amended protests. [N.T. 72-74, 272; Grove Exhibits No. 14-15].

8. Keystone and White Rose are not operating under their certificates of public convenience, thereby violating the requirements of 66 Pa.C.S. § 2301. *See Re Lukens*

*Steel Company*, 58 Pa. PUC 256, 261-262 (1984) (a certificate of public convenience imposes a duty to serve the certificated area).

9. Unique, Keystone and White Rose are basing their protests in Lancaster and York counties on operations or lack of operations in violation of the Public Utility Code.

10. The protection of illegal conduct does not constitute a “substantial interest” conferring standing on Unique, Keystone and White Rose to protest Grove’s proposed operations in York and Lancaster counties. See *Carlino v. Whitpain Investors*, 499 Pa. 498, 453 A.2d 1385 (1982) (no standing to enforce illegal contract).

11. Due to the illegal conduct of Unique, Keystone and White Rose, no valid protest exists to Grove’s application in Lancaster County and those portions of York County where Villa does not hold authority, namely the city of York and the townships of York, Spring Garden, Manchester, West Manchester and Newberry, York County.

Basis 2 — Misrepresentations as to Operations.

12. Commission regulations require that a protest to an application “shall on its face set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined, the grounds of the protest and the facts establishing protestant’s standing to protest.” 52 Pa. Code § 5.52(a).

13. "[T]he Commission's regulations mandate a protestant must clearly and concisely explain its standing when it files its protest and not at some later time, such as at a hearing." *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.1, Am-B, Initial Decision dated October 12, 1994, at 4 (made final by operation of law by Commission Order entered December 24, 1994).

14. Protestants Unique, Keystone and White Rose misrepresented to the Commission as well as to Grove the scope of their operations.

15. In paragraph 4 of its amended protest, Unique listed only Dauphin and Cumberland as counties in which it was operating. See *also* Exhibit "A" attached to Unique's Amended Protest, which sets forth Unique's authority upon which its protest is predicated. However, it was established through hearing evidence, including an admission by Unique's owner following the close of Grove's case, that Unique was operating in York and Lancaster counties under the Unique name. [N.T. 69-71, 132-138, 264, 269; Grove Exhibits No. 12-15, 23-25].

16. Unique's operations in Lancaster and York counties circumvents the Public Utility Code's requirement that all carriers which provide service to the public hold a certificate of public convenience. *Fiore v. Commonwealth, supra*, 668 A.2d at 1216.

17. White Rose stated in paragraph 4 of its amended protest that it was currently operating in Dauphin and York counties, while Keystone stated in paragraph 4 of its

amended protest that it was currently operating in Lancaster, York and Dauphin counties. *See also* Exhibit "A" attached to amended protest of White Rose and Keystone, which set forth the authorities upon which their respective protests are predicated.

18. Keystone and White Rose have no vehicles and have no operations at the addresses listed on their amended protests, [N.T. 72-74, 272; Grove Exhibits No. 14-15], thereby violating the requirements of 66 Pa.C.S. § 2301.

19. The misrepresentations of Unique, Keystone and White Rose directly violate the requirements of 52 Pa. Code § 5.52(a) and thereby do not confer standing to protest Grove's application.

Basis Three — No Adverse Effect to The Interests of Any Protestant.

20. The "core concept" of standing is that "a person who is not adversely affected in any way by the matter he seeks to challenge is not 'aggrieved' thereby and has no standing to obtain a judicial resolution of his challenge." *William Penn Parking Garage, Inc. v. City of Pittsburgh, supra*, 346 A.2d at 280.

21. The Protestants have conceded that the granting of Grove's application would cause no adverse effect to their operations by presenting no evidence on the issue at the hearing, where they had the opportunity to do so. [N.T. 178-179].

22. As set forth in *Application of Carriage Limousine Services, Inc., supra*, Docket No. A-00108361, F.1, Am-B (Initial Decision dated October 12, 1994):

It is simply not sufficient for the party claiming to be adversely affected and thus, "aggrieved" to assert the common interest of the public in procuring obedience to the law. Since the Protestant's asserted interest in this proceeding is no greater than the common interest of the public in having an applicant for this authority comply with the law, I must conclude the Protestant does not now have a direct, immediate and substantial interest in the applicant proceeding. Since the Protestant will not be adversely affected by approval of the application to any greater extent than the general public, any adverse impact to the Protestant resulting from approval of the application will be remote.

*Id.* at 12-13, quoting, *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.0003, Initial Decision dated September 7, 1994, at 13-14 (Initial Decision Adopted and Application Approved by Commission Order dated December 15, 1994). Accord, *William Penn Parking Garage, Inc. v. City of Pittsburgh, supra*, 346 A.2d at 282-283.

23. By conceding that the granting of Grove's application would have no adverse effect on their operations, the Protestants have no substantial or direct interest in this proceeding. *In re Family Style Restaurant, Inc.*, 503 Pa. 109, 468 A.2d 1088 (1983) (Association of tavern owners did not have standing to appeal granting of liquor license, where association presented no evidence at Liquor Control Board hearing that any of its members would suffer direct and substantial harm as a result of the approval of a new liquor license); *Re Mobile Communication Service, Inc.*, 54 Pa. PUC 349, 350-351 (1980) (traditional standing tests apply in application proceedings regarding competing carriers).

24. The Protestants' lack of a substantial or direct interest in these proceedings warrant the dismissal of the amended protests of Unique, Keystone, White Rose and Villa. *In re Family Style Restaurant, Inc., supra*; *Application of Carriage Limousine Services, Inc.*,

*supra*, Docket No. A-00108361, F.1, Am-B, Initial Decision dated October 12, 1994, at 12-13.

25. The amended protests of all four Protestants should be dismissed and Grove's application should be evaluated under the criteria for unprotested applications as articulated in *Re Nothstein Bros., Inc.*, 64 Pa. PUC 411, 414 (1987).

26. Alternatively, Grove's application should be evaluated under the aforementioned criteria for unprotested applications in any territory in which Grove proposes to provide services where no valid protest is determined to exist. *Application of Lazer Limousine Services, Inc.*, 1997 Pa. PUC LEXIS 59 (Initial Decision dated September 2, 1997) (need assessment bifurcated, with protested and unprotested territories evaluated separately) (certification approved by Commission as of December 3, 1997).

RESPECTFULLY SUBMITTED,

NAUMAN, SMITH, SHISSLER & HALL

By: *Benjamin C. Dunlap, Jr.*  
Benjamin C. Dunlap, Jr., Esquire  
Supreme Court ID# 66283

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Counsel for Stacia H. Grove t/d/b/a  
Central Pennsylvania Limousine Service,  
Applicant

Date: May 21, 1998

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :  
STACIA H. GROVE t/d/b/a : A-00114058  
CENTRAL PENNSYLVANIA :  
LIMOUSINE SERVICE (562 East :  
Heatherfield Way, Red Lion, York :  
County, PA 17356) - persons in :  
limousine service between points in :  
the counties of York, Lancaster, :  
and Dauphin, and from points in the :  
said territory to points in :  
Pennsylvania and return :

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing "Motion of Stacia H. Grove t/d/b/a Central Pennsylvania Limousine Service, Applicant, to Dismiss Protests for Lack of Standing" in the above action, this day by hand delivery, addressed to:

**SERVICE LIST**

Scott Pohlman, Esquire  
Robinson & Geraldo  
4407 North Front Street  
P. O. Box 5320  
Harrisburg, PA 17110  
Counsel for Protestants, Salgals, Inc. t/d/b/a Villa Limousine Service,  
Keystone Limousine, Inc., White Rose Limousine, Inc. and  
Unique Limousine Service, Inc.



Barbara Drake, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

Dated: May 21, 1998