



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

ISSUED: JUNE 9, 1998

IN REPLY PLEASE
 REFER TO OUR FILE
 A-00114058

BENJAMIN C DUNLAP JR ESQUIRE
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DOCUMENT
 FOLDER

APPLICATION OF STACIA H. GROVE. t/d/b/a CENTRAL PENNSYLVANIA LIMOUSINE SERVICE

TO WHOM IT MAY CONCERN:

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

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

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

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

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

WEISMANDEL/OFFICE OF ALJ/TRANS & SAFETY-LEGAL/TRANS &
 Y/LAW/PIO/OSA/CHAIRMAN/COMMISSIONERS/NEW FILING/OUR FILE

Very truly yours,

smk
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James J. McNulty
 Secretary

EEF

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Stacia H. Grove, : Docket Number
t/d/b/a Central Pennsylvania :
Limousine Service : A-00114058

Initial Decision

Before
Wayne L. Weismandel
Administrative Law Judge

DOCUMENT
FOLDER

History Of The Proceeding...

DOCKETED
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On June 5, 1997, Stacia H. Grove, t/d/b/a Central Pennsylvania Limousine Service (applicant) filed an Application (Application) with the Pennsylvania Public Utility Commission (Commission) 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 (individually Protest, collectively 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) (individually protestant, collectively protestants), all represented by the same attorney.

On August 7, 1997, applicant filed Motions To Dismiss Or Strike (individually Motion, collectively Motions) each of the five filed Protests.

On August 18, 1997, protestants each filed an Answer (individually Answer, collectively Answers) to applicant's Motions.

By Notice dated August 28, 1997, an initial prehearing conference was scheduled for October 17, 1997, and the case was assigned to me.

By Prehearing Conference Order dated September 8, 1997, I directed the parties as to preparation for the prehearing conference, reminded them of the Commission's regulations pertaining to discovery and informal information exchange, and ordered that they submit prehearing conference memoranda at least three days before the scheduled prehearing conference.

Both applicant and protestants submitted their prehearing conference memoranda in a timely fashion.

The prehearing conference convened as scheduled on October 17, 1997. Applicant was represented by Benjamin C. Dunlap, Jr., Esquire, and protestants were represented by Scott W. Pohlman, Esquire.

At the prehearing conference, after hearing from both counsel, I announced that applicant's Motions 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, I advised counsel that Superior appeared to lack standing to protest the Application as the corporate entity (incorporated June 13, 1997) does not hold a Certificate of Public Convenience issued by the Commission.¹ A transcript of the proceeding containing 21 pages was produced.

By Order Granting Motions To Strike (Order) dated October 17, 1997, all five Protests were stricken. In accordance with the provisions of 52 Pa.Code §5.101(f), protestants had ten days from service of the Order to file amended Protests.

By Hearing Notice dated October 20, 1997, an Initial and Further Hearing were scheduled for December 16 and 17, 1997.

On October 31, 1997, all five protestants filed Amended Protests (individually Amended Protest, collectively Amended Protests).

On November 10, 1997, applicant filed its Motion To Dismiss Amended Protest Of Superior Limousine Service (Superior Motion). The Superior Motion averred that Superior Transportation Services, Inc. lacked standing to protest the Application.

On November 25, 1997, Superior filed its Answer (Superior Answer).

¹ The fictitious name Superior Limousine Service of Harrisburg is registered to Raymond D. Bensch, an individual. Mr. Bensch, trading and doing business as Superior Limousine Service of Harrisburg, holds Certificate of Public Convenience A-00110383, authorizing him to provide limousine service, in part, from points in Dauphin County to points in Pennsylvania, and return.

By Initial Decision Granting Motion To Dismiss Amended Protest dated December 1, 1997, applicant's Superior Motion was granted and Superior's Amended Protest was dismissed for lack of standing. This decision became final by Commission Final Order entered January 14, 1998.

The Initial Hearing convened as scheduled on December 16, 1997. Applicant was present and represented by Benjamin C. Dunlap, Jr., Esquire. The remaining protestants, Keystone; Villa; Unique; and White Rose, were represented by Scott W. Pohlman, Esquire. Due to unavailability of some witnesses for applicant and unresolved discovery problems, it was agreed that the further hearing scheduled for December 17, 1997, would be postponed. Seven witnesses testified on behalf of applicant and a total of 24 exhibits were admitted into evidence (Grove Exhibits 1, 2, 3, 3A, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, and 25). A transcript of the proceeding containing 149 pages (number 22 through 170) was produced.

By Hearing Notice dated January 6, 1998, Further Hearings were scheduled for February 24 and 25, 1998.

On February 4, 1998, applicant filed and served a Motion For Sanctions seeking the imposition of sanctions authorized by 52 Pa.Code §§5.371 and 5.372 on Keystone, Villa, Unique, and White Rose. Because applicant had not previously submitted a Motion To Compel, I deemed applicant's Motion For Sanctions to be a Motion To Compel, which protestants had not timely answered [52 Pa.Code

§§5.342(e)(1), 5.371(b)]. Consequently, I issued an Order dated February 10, 1998, ordering the protestants to answer applicant's Interrogatories and produce requested documents not later than February 17, 1998.

On February 20, 1998, applicant filed and served a Renewed Motion For Sanctions, averring that protestants had not complied with the Order dated February 10, 1998.

Also on February 20, 1998, applicant submitted a letter, with copy to counsel for protestants, indicating that two of applicant's witnesses would appear telephonically at the further hearing on February 24, 1998. This procedure had been agreed to at the prehearing conference.

On February 23, 1998, protestants filed and served their Answer To Renewed Motion For Sanctions. In New Matter, protestants stated that they "do not intend to offer any evidence or testimony as to the financial status or condition of their operations" (Paragraph 17) and "do not intend to offer any evidence or testimony as to the financial affect that the Applicant would have upon them" (Paragraph 18).

The further hearing convened as scheduled on February 24, 1998. Protestants agreed on the record that they would not offer any evidence 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 (N.T. 176 - 179). Eight witnesses

testified on behalf of applicant and one witness testified on behalf of protestants. One exhibit was received into evidence (Grove Exhibit 26). A transcript of the proceeding containing 121 pages (numbered 171 through 291) was produced. At the end of the hearing on February 24, 1998, it was agreed that the hearing scheduled for the next day should be canceled.

By Briefing Order dated February 24, 1998, the parties were directed as to mandatory contents of Briefs and ordered to file and serve Main Briefs not later than April 24, 1998, and Reply Briefs not later than May 8, 1998.

Both applicant and protestants timely filed and served both Main and Reply Briefs.

In accordance with the provisions of the Briefing Order, the record was closed at 4:30 p.m. on May 8, 1998.

On May 21, 1998, applicant filed and served a Motion To Dismiss Protests For Lack Of Standing. This Motion, being untimely, will not be separately acted upon. However, because the issues were timely raised during the hearing [N.T. 264-268; 274-286] and in the Briefs filed by the parties, they will be addressed in this Initial Decision.

Findings Of Fact

1. On January 22, 1997, applicant registered the name Central Pennsylvania Limousine Service, under which name she would operate her proposed service, with the Pennsylvania Corporation Bureau. [N.T. 41-43; Grove Exhibit No. 1].

2. Applicant 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. Applicant 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. Applicant 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 applicant 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 applicant, 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. Applicant would store the vehicles with which she intends to provide the proposed service in a rented garage near her home. [N.T. 92-93].

8. Emswiler has reviewed the finances of applicant 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 applicant and her husband for applicant to obtain a used limousine. [N.T. 224, 227-228].

9. Applicant 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 have 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 applicant and her husband would be available for applicant's use in Central Pennsylvania Limousine Services. [N.T. 154].

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

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

16. Todd G. Grove, applicant's husband, 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 applicant, his wife, on any business aspects of Central Pennsylvania Limousine Service. [N.T. 153].

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

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

21. Applicant 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 applicant's services to the parents of students of her dance studios for recitals and to the

clients of her anticipated travel agency if applicant'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 applicant'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 applicant's services for his daughter's wedding. [N.T. 123-127].

24. Barbara Ann Lepley, 279 Tells 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 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 applicant'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 applicant's services if her Application were granted for her daughters' 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 applicant's services to pick up prospective physicians from their hotels and have them brought to dinner. She would "absolutely" use applicant's services, no matter what type vehicle applicant 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, 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 applicant'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 applicant'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 applicant'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 applicant'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, the use of limousine services twice in the past, which involved two vehicles each time. He would "definitely" use applicant'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. [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 applicant'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 has 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 protestant White Rose. [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 applicant's Application were to be granted, Dwyer would use applicant's services for these purposes. [N.T. 244-247].

36. Applicant 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 applicant 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. 6974; 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].

Discussion

The standards for granting a motor carrier application are set forth in a collection of legal references. Section 1102 of the Public Utility Code, 66 Pa.C.S. §1102, states that it shall be lawful to provide service as a public utility only after applying for and obtaining a certificate of public convenience from the Commission. Section 1103(a) of the Public Utility Code, 66 Pa.C.S. §1103(a), further states that:

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.

In applying these requirements to motor carrier applications, the Commission promulgated Section 41.14 of its regulations, 52 Pa.Code §41.14, which states that:

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

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed

service, and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

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

This policy statement has survived appellate challenge. Seaboard Tank Lines, Inc. v. Pa. Public Utility Comm'n, 93 Pa.Comm.w. 601, 502 A.2d 762 (1985).

In Application of Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262, 274, (1990) (Blue Bird), the Commission stated that:

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant's proposed service will satisfy the supporting witness' asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14 (a) by establishing that , "approval of the application will serve a useful public purpose, responsive to a public demand or need." E.g., Seaboard Tank Lines, Inc., 93 Pa. Cmwlth. at 613, 502 A.2d at 768 [Citations omitted.]. This interpretation of subsection 41.14(a) is consonant with our avowed reason for promulgating the transportation regulatory policy statement at 52 Pa.Code §41.14, namely, to eliminate monopolistic protection of existing motor carriers and to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.

The commission further stated that:

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. E.g., Re Nothstein Bros. Inc., 64 Pa PUC 411(1987); Re Purolator Courier Corp., 50 Pa PUC 308 (1976).

The particular circumstances of a case determine what constitutes sufficient evidence of a public demand/need for the applicant's proposed service. Noerr Motor Freight, Inc. v. Pennsylvania Public Utility Commission, 181 Pa. Super. Ct. 322, 124 A.2d 493 (1956), Re Purolator Courier Corp.

Blue Bird, p. 274.

Also in the Blue Bird opinion, the Commission stated that it considered "demand" and "need" as used in 52 Pa.Code §41.14(a) to be "interchangeable terms." Blue Bird, 72 Pa. P.U.C. at 272.

Evidence of requests received by an applicant for service may be offered by the applicant to establish need for the service. 52 Pa.Code §3.382(a). The weight to be attributed to request evidence depends upon the extent to which the alleged requests are substantiated by specific details such as the date of each request, the name, address and phone number of the person requesting service, the nature of the service requested on each occasion, including the persons to be transported, and the origin and destination of the requested transportation, and whether the applicant provided the service, or referred the service to another carrier, and if so, to which carrier. 52 Pa.Code §3.382(a). The reason for this rule is obvious: anyone can come

into the courtroom and claim to have received requests for service. Without details such as those required by the regulation, the opposing parties have no way to test such a claim.

Another issue to be considered concerning need is whether the supporting witnesses represent a reasonable cross-section of the public to whom the proposed service will be available. The number of witnesses that will comprise a cross-section of the public sufficient to support an application will vary with the circumstances of each case, such as the breadth of the intended operating authority, the population density in the intended operating territory, and the scope of the requested operating authority. Blue Bird, 72 Pa. P.U.C. at 274-275. While it is true that an applicant need not present proof of need at every point in the territory for which authority is sought, Pa. Public Utility Comm'n v. Purolator Courier Corp., 24 Pa. Commw. 301, 355 A.2d 850(1976), an applicant seeking a broad grant of authority is required to prove that the needs of the supporting witnesses represent the need for similar transportation service throughout the territory for which authority is sought. Application of Samuel J. Lansberry, Inc., 71 Pa. P.U.C. 23, 33-35(1989), aff'd. sub nom. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 134 Pa. Commw. 218, 578 A.2d 600(1990).

Under the Blue Bird interpretation of 52 Pa.Code §41.14(a), witness support is sufficient to satisfy the applicant's burden, and the applicant need not prove either the inadequacy of existing services or alternatives to inadequacy. This is so even if the witness has available the service of other carriers. It is unnecessary to give consideration to evidence of inadequacy or of alternatives to inadequacy. While it is no longer required for an applicant to prove inadequacy of existing service in order to establish need, common sense would indicate that such evidence can still be probative evidence of the need for additional service. Application of USA Taxi, Inc., Docket Number A-00113977, Opinion and Order adopted April 9, 1998, entered April 29, 1998.

In Re Perry Hassman, 55 Pa. P.U.C. 661, 662-663 (1982), the Commission stated that fitness consists of three elements: (1) the applicant must have sufficient technical and operating knowledge, staff and facilities to provide the proposed service; (2) the applicant must have sufficient financial ability to provide reliable and safe service; and (3) the applicant must exhibit a propensity to operate safely and legally.

Section 41.14(b) of the Commission's Regulations provides that an applicant must prove that it has the requisite financial and technical ability to provide the proposed service.

Regarding technical fitness, in its decision at Application of Adgebola Ige, t/a Globe Limousine Service, Docket No. A-00108943 (Order entered August 7, 1991), the Commission stated:

An applicant must have the technical capacity to meet the need for the proposed service in a satisfactory fashion. An applicant must possess sufficient staff and facilities or operating skills to make the proposed service feasible, profitable, and a distinct service to the public. (emphasis added).

The applicant bears the burden of proving that it either has sufficient staff and facilities or that it has sufficient operating skills to be regarded as technically fit.

In order to prove that it possesses the requisite financial fitness, the applicant should own or should have sufficient financial resources to obtain the equipment needed to perform the proposed service. Re Perry Hassman, 55 Pa. P.U.C. 661, 662 (1982).

The standard is slightly different with respect to an applicant's burden of proof relative to safe and legal operations. Section 41.14(b) explicitly provides that "authority may be withheld if **the record demonstrates** that the applicant lacks a propensity to operate safely and legally." Application of Harrisburg Taxicab & Baggage Company, t/a Yellow Cab Company, Docket Number A-00079143, F0008, Am-E, Opinion and Order adopted May 8, 1997, entered June 13, 1997 (emphasis in original). Thus, the decision must be based on the totality of the record which must demonstrate conclusively that an applicant will not operate safely or legally. The applicant does not have an affirmative duty to prove that it will operate safely and legally.

This third element of the fitness test is subdivided into two sub-issues: Does an applicant lack the propensity to operate safely; Does an applicant lack the propensity to operate legally?

This prong of the fitness test has been described by the Commission as follows:

(I]n this regard, lack of fitness is demonstrated by persistent disregard for, flouting, or defiance of the Public Utility Law and the Commission's orders and regulations . . . and by violations in matters affecting the safety of operations. (Citations omitted).

Re Perry Hassman, 55 Pa. P.U.C. 661, 662-63(1982).

Unauthorized operations affect the fitness issue. A favorable finding of fitness may not be based upon evidence of the quality of service conducted in willful violation of the Public Utility Code although the mere fact of prior operation in violation of the Public Utility Code does not preclude a carrier from obtaining authority in a subsequent proceeding before the Commission. The Commission may still grant authority if it has before it positive evidence of the applicant's fitness independent of the evidence relating to the period of prior unlawful operation. Brinks, Inc. v. Pa. Public Utility Comm'n, 500 Pa. 387; 391-392, 456 A.2d 1342; 1344-1345(1983). Evidence that is related to illegal service rendered in bad faith cannot be relied upon to support a grant of authority. Bunting Bristol

Transfer, Inc. v. Pa. Public Utility Comm'n, 418 Pa. 286; 291-293, 210 A.2d 281; 283-284(1965).

After an applicant for motor carrier authority has met its burden of proving that approval of the application will serve a useful public purpose, responsive to a public demand or need, and that it possesses the technical and financial ability to provide the proposed service, and the totality of the record demonstrates conclusively that the applicant will not operate unsafely or illegally, then the applicant is entitled to a grant of authority commensurate with the demonstrated public need unless it is shown that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest. 52 Pa.Code §41.14(c). The burden of proof placed upon protestants by Section 41.14(c) is quite heavy. It is not satisfied by showing mere diversion of traffic volume. Blue Bird, 72 Pa. P.U.C. at 286.

The Commission's policy, as interpreted in Blue Bird, and its subsequent refinements, is to promote healthy competition and make it easier for qualified applicants to obtain motor carrier authority.

It is within these parameters that the applicant must establish the merits of its case.

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 Comm'n, 19 Pa.Comm. 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. Comw., Dep't. of Public Welfare, White Haven Center, 85 Pa.Comm. 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).

Applicant has successfully borne her burden of proof in demonstrating the existence of a public demand or need for her proposed service in York, Dauphin, and Lancaster Counties.

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. She has between 150 and 250 students at any given time. 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 would "definitely" use applicant's services if the Application were granted and anticipates using limousine services for her daughter's marriage and for a birthday party. Hoffman

would be prone to utilize the limousine services of someone she knew more often than the limousine services of others.

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. He has used limousine services in the past to take his daughter to the prom and to go to dinner in Baltimore. Gill would use applicant's services for his daughter's future wedding and would recommend applicant's services to his clients.

Barbara Ann Lepley (Lepley) lives at 279 Teila Drive, Dallastown, York County. She has personally used limousine services three times in the past for her childrens' proms and homecomings in York County. 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. 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. Lepley also 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. In one instance, the grade of service she desired was not available, and she was forced to book a lower grade of service.

Mark Stephen King, Jr., of 111 Keymar Drive, York, used a limousine service for his 1996 homecoming in York. If applicant's

Application were approved, he would use her services in the future, although he could not state any specific occasion at this time. Mr. King could not locate a locally based limousine service in York for his 1996 homecoming, 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.

Margaret Mary Bayliss (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. 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. Bayliss would "absolutely" use applicant's services if the Application were granted. Bayliss would use applicant's services for her daughter's graduation and prom and for she and her husband to go out for the evening. Bayliss would book applicant'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. Bayliss would use applicant's services no matter what type vehicle applicant was utilizing to provide the service.

Frank E. King (King) is the owner of Frank King Photography & Video, 4101 Carlisle Road, Dover, York County. 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. King secured three or four limousines for each of his two daughters' weddings. If the Application were approved, King would use applicant's service for personal use, as the need arose. Additionally, King testified that his company, 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. He has observed brides having trouble obtaining limousine services during the high demand months of May, June, September and October, and sometimes being unable to locate the needed services altogether. He would "definitely" recommend applicant's services to brides-to-be or couples who ask for limousine service recommendations, should her application be granted.

Philip R. Wenger (Wenger) is the owner of Isaac's Restaurant & Deli (Isaac's), 354 North Prince Street, Lancaster, Pennsylvania. Isaac's operates 14 restaurants, including restaurants in York County. 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.

Kevin M. Deller (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 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. Deller anticipates hiring limousine services in the future, and if applicant'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. Deller would also recommend applicant's services to others through his job.

Todd J. Shreve (Shreve) is an Estimator with Monarch Products, 385 Sipe Road, York Haven, Pennsylvania. Shreve has helped plan for, but not personally booked, the use of limousine services twice in the past, which involved two vehicles each time. He would "definitely" use applicant's services for special occasions if her Application were to be granted, specifically for a bachelor party in the fall of 1998.

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. Johns uses limousine services and car services in New York and Los Angeles to travel back and forth to the airport. If applicant'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. Johns 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.

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. 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 applicant's Application were to be granted, Dwyer would use applicant's services for these purposes.

Edward W. Emswiler (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. 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.

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

Applicant herself has received requests for service which she could not fulfill, being unauthorized to do so. This is evidence that 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 applicant'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.

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. Gill anticipates a future need for applicant'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 also north of Harrisburg.

Bayliss testified that she would book applicant's services to transport physicians interviewing with her husband for positions at York Hospital back and forth from local airports.

Dwyer anticipates using applicant's services to transport potential clients from the airport to look at various rental units managed by her employer, Cherry Lane Realty.

Wenger, who owns Isaac's restaurants located in Dauphin County, testified that he "absolutely" would use applicant'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.

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 additional service in Dauphin County.

In Lancaster County, Wenger testified that he would use applicant'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. Wenger's company 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 applicant's services in the future for company functions. Wenger might specifically use applicant's proposed van services to move employees to different locations or to take them to sporting events. 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 appear and testify on behalf of applicant's Application.

Although no longer required to prove the inadequacy of existing services, applicant went beyond her burden by making such a showing. The "inadequacy of existing service is a factor indicating a public necessity for the proposed service." Pennsylvania Railroad Co. v. PA Public Utility Comm'n, 199 Pa.Super. 158; 166, 184 A.2d 111; 115-116 (1962). In fact, the testimony of just three witnesses as to the inadequacy of existing services has been held to be substantial evidence under 52 Pa.Code §41.14(a) to support a grant of additional authority

for an entire county. Hereik v. PA Public Utility Comm'n, 137 Pa.Comm. 377, 586 A.2d 492(1991).

Therefore, evidence of the inadequacy of existing services shown by applicant through the testimony of Mark Stephen King, Jr., Lepley, Johns, Wenger, and King is properly considered and weighed as further substantial evidence demonstrating a public demand or need for her proposed service.

Regarding her technical ability, applicant 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.

Applicant's work experience has included employment 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 also held other positions in which she dealt with the public and in which the care of a vehicle was part of her duties. Applicant is aware of what it costs to maintain a vehicle from maintaining her personal vehicles.

Applicant 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. She would store the vehicles with which she plans to provide the proposed service in a rented garage near her home.

Emswiler, the owner of Primetime Auto, deals in the buying and selling of used limousines and is a licensed dealer. Emswiler could obtain a late model Lincoln Town Car stretch limousine for applicant, in excellent condition and ready to drive, having luxury features such as air conditioning, power windows, power locks, cruise control, sunroof, VCR and TV.

Applicant 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. Applicant intends to take business courses upon obtaining a Certificate of Public Convenience to further her business skills.

Todd G. Grove, the husband of applicant, is a 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. Although no formal relationship has yet been determined, Todd Grove would advise his wife on any business aspects of Central Pennsylvania Limousine Service.

Applicant would be in a position to commence operations within 90 days of an order approving her application.

Applicant has clearly shown that she possesses the requisite operating skills to make the proposed service feasible, profitable, and a distinct service to the public.

Regarding her financial fitness, applicant 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. Applicant and her husband have good credit ratings. The marital assets held jointly by applicant and her husband would be available for her use in Central Pennsylvania Limousine Services.

Emswiler has reviewed the finances of applicant 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 additional limousine service, Emswiler would co-make a loan with applicant and her husband for applicant to obtain a used limousine.

Applicant has received pre-approval to lease a 1998 Chevrolet Suburban with luxury features, which she may utilize as a second vehicle for providing her proposed services, from Corestates Dealer Services in the amount of \$36,888.00. Although she 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.

Additionally, applicant 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.

Applicant has obviously sustained her burden of proving that she has sufficient financial resources to obtain the equipment needed to perform her proposed service.

Regarding her propensity to operate safely and legally, the totality of the record in this case contains not one iota of evidence that applicant will not operate safely and legally. She is familiar with the Commission's regulations which apply to limousine services. Applicant 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. Applicant does not have a criminal record, she has neither been convicted of nor arrested for any crime. Evidence established that applicant is of good character, and she was described by witnesses as having ambition, energy, and integrity, and as being honest, trustworthy, courteous, considerate, personable, responsible and businesslike.

Applicant has carried her burden of proof successfully with respect to the issues of her technical and financial fitness to be granted a Certificate of Public Convenience. Additionally, the record is devoid of evidence that applicant lacks a propensity to operate safely and legally.

If the applicant satisfies the criteria of Sections 41.14(a) and (b) of the Commission's Regulations [52 Pa.Code §41.14(a), (b)], as the applicant has done here, the Application must be granted unless a protestant establishes that granting the Application would so endanger or impair existing carrier operations that the public interest would suffer. 52 Pa.Code §41.14(c).

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. Consequently, the protestants have conceded this issue on which they bear the burden of proof.

Having conceded this issue, one can only conclude that the purpose of the instant 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 Comm'n, 137 Pa.Comm.w. 282, 585 A.2d 1151(1991).

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.

Where protestants present no evidence that their 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 P.U.C. 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 to promote healthy competition and make it easier for qualified applicants to obtain motor carrier authority.

Furthermore, protestants Unique, Keystone and White Rose misrepresented to the Commission as well as to applicant 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 Amended Protest is predicated. However, it was established through hearing evidence, including an admission by its principal following the close of applicant's case, that Unique was operating in York and Lancaster Counties under the Unique name. Unique's operations in Lancaster and York Counties violates 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.Comm.w., 1995).

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 Amended Protest of Keystone, which set forth the authorities upon which their respective Amended Protests are predicated. However, Keystone and White Rose have no vehicles and 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 advertisement 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. Lacking vehicles or business locations, as well as the evidence provided by their own Yellow Pages' listings and ads, applicant 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 Newborn, York County. Protestants' misrepresentations regarding their operations served to deny applicant the opportunity to amend her Application prior to hearing, as the applicant in Re Nothstein Bros., Inc., 64 PA P.U.C. 411(1987) did, 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). Instead, she was forced to incur the litigation expenses of hearings and discovery to establish that no valid protests exist in those territories and that Unique is operating in areas where it holds no Commission granted authority.

Applicant's Motion To Dismiss Protests For Lack Of Standing is well-grounded, but was untimely filed (after the close of the record). However, as set forth above, record evidence exists that

no valid protests exist as to those portions of the Application seeking authority to provide service in Lancaster County and in the City of York, and the Townships of York, Spring Garden, Manchester, West Manchester, and Newborn, York County.

As to those remaining areas covered by the Application in which valid protests exist (portions of York County and Dauphin County), applicant has sustained her burdens of proof that a public demand or need exists and that she is fit to render the proposed service. Protestants have offered no evidence on the issue on which they bear the burden of proof (entry of a new carrier would so endanger the operations of existing carriers as to be contrary to the public interest), therefore that issue too must be decided in favor of applicant. The Application will be granted.

Conclusions of Law

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

2. Applicant has provided substantial evidence that she possesses the requisite technical expertise, financial capacity and propensity to operate safely and legally the proposed service.

3. Applicant has provided substantial evidence of a public demand or need for the proposed services in the territories requested in the Application.

4. The inadequacy of existing services in the requested territories, shown by applicant, is substantial evidence indicating a public need for the proposed services.

5. The testimony of rider preference for applicant's proposed service is substantial evidence which will support a Commission finding that there is a public demand or need for the proposed service.

6. Applicant'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.

7. Where protestants present no evidence that their 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.

8. No valid protests exist to the 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 Newborn, 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.

9. The Commission requires less evidence of demand or need in unprotested cases and this reduced burden should be applied as to those territories where no valid protest exists to applicant's Application.

10. Taken as a whole, the evidence is legally sufficient to support an order of the Commission granting applicant's Application for the issuance of a Certificate of Public Convenience as requested.

Order

THEREFORE,

IT IS ORDERED:

1. That the application of Stacia H. Grove, t/d/b/a Central Pennsylvania Limousine Service, at Docket No. A-00114058, be and is hereby approved and that a certificate be issued granting the following rights:

To transport as a common carrier by motor vehicle, persons, in limousine service, between points in York, Lancaster, and Dauphin Counties and from points in said territory to points in Pennsylvania, and return.

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

3. That the certificate holder shall comply with all the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all pertinent regulations of this Commission now in effect, or as may hereafter be prescribed by the Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate.


4. That the applicant shall not engage in any transportation granted herein until it shall have paid all outstanding Public Utility Commission assessments and/or civil penalties due.

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

6. That, in the event the applicant has not, on or before 60 days from receipt of this order, complied with the

requirements set forth herein, the application shall be dismissed without further proceeding.

Date: JUNE 2, 1998


Wayne L. Weismandel
Administrative Law Judge

Act 294

Case Identification: A-00114058; Application of
Stacia H. Grove, t/d/b/a
Central Pennsylvania Limousine
Service

Initial Decision By: ALJ Wayne L. Weismandel

Deadline for Return to OSA: June 25, 1998

This decision has not been reviewed by OSA.

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Date

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Commissioner

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Act 294

Case Identification: A-00114058; Application of
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Service

Initial Decision By: ALJ Wayne L. Weismandel

Deadline for Return to OSA: June 25, 1998

This decision has not been reviewed by OSA.

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OFFICE OF SPECIAL ASSISTANTS

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Commissioner

Date

~~I do not want full Commission review of this decision.~~

Robert K. Bloom 6/15
Commissioner

6/19/98
Date

Act 294

Case Identification: A-00114058; Application of
Stacia H. Grove, t/d/b/a
Central Pennsylvania Limousine
Service

Initial Decision By: ALJ Wayne L. Weismandel

Deadline for Return to OSA: June 25, 1998

This decision has not been reviewed by OSA.

RECEIVED

JUN 26 1998

* * * * *

OFFICE OF SPECIAL
ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

David W. Rolka / jr
Commissioner

6-25-98
Date

Act 294

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Nora Mae Brownell
Commissioner

6-25-98
Date

Act 294

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JUN 22 1998

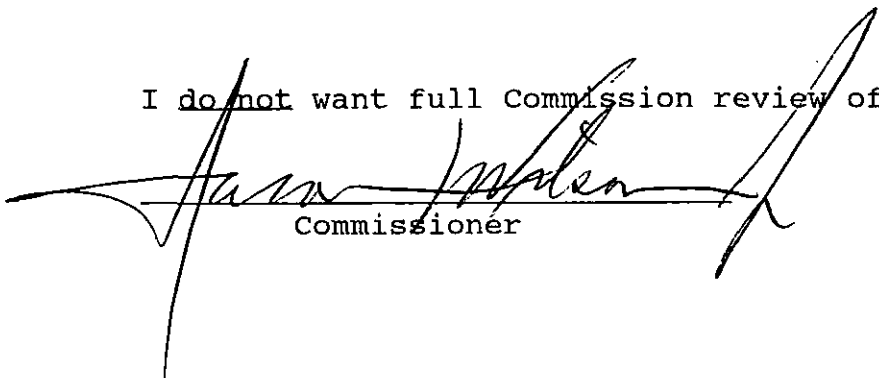
OFFICE OF SPECIAL
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Commissioner

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I ~~do not~~ want full Commission review of this decision.



Commissioner

6-17-98

Date

DATE: July 15, 1998

SUBJECT: A-00114058

TO: Office of Administrative Law Judge
Annette Shelley

FROM: James J. McNulty
Secretary

JVM

DOCKETED
JUL 16 1998
DOCUMENT
FOLDER

APPLICATION OF STACIA H. GROVE T/D/B/A
CENTRAL PENNSYLVANIA LIMOUSINE SERVICE

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

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

cc: Office of Special Assistants

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

EEF