



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

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: April 12, 2007

A-00122443
REDOCKETED
A-00121541 F0002
DOCUMENT
FOLDER

JOHN C DELAUTER
DELAUTER'S A-1 SERVICE INC
388 NEWCOMER ROAD
WINDSOR PA 17336

Application of Delauter's A-1 Services, Inc.

TO WHOM IT MAY CONCERN:

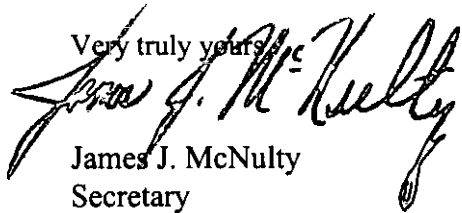
Enclosed is a copy of the Initial Decision of Administrative Law Judge David A. Salapa. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

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

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

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

Very truly yours,

James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
MH

EDWARD A PASKEY ESQUIRE
KAGEN MACDONALD & FRANCE PC
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BA

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of John C. Delauter t/d/b/a Delauter's :
A-1 Services for the right to begin to transport, as a :
Common carrier, by motor vehicle, Household goods :
in use between points in York County and from : A-00122443
points in York County to points in Lancaster, :
Dauphin, Cumberland and Adams Counties and :
from Points in Lancaster, Dauphin, Cumberland :
and Adams Counties to points in York County :

DOCKETED
APR 1 2 2007

**DOCUMENT
FOLDER**

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On December 5, 2005, Delauter's A-1 Services, Inc. (Delauter's) filed an application with the Commission to transport household goods in use between points in York County and from points in York County to points in Lancaster, Dauphin, Cumberland and Adams Counties and vice versa. The Commission caused notice of this application to be published in the Pennsylvania Bulletin dated March 11, 2006, at 36 Pa.B. 1194 as follows:

A-00122443. Delauter's A-1 Services, Inc. (388 Newcomer Road, Windsor, York County, PA 17366) a corporation of the Commonwealth-- household goods in use, from points in York County to points in Lancaster, Dauphin, Cumberland and Adams Counties, and vice versa.

The notice stated that the deadline for filing protests was April 3, 2006.

On March 20, 2006, Zeigler's Storage and Transfer, Inc. (Zeigler's) filed a protest to the application. On March 22, 2006, Shelly Moving & Storage, Inc. (Shelly) and Warners Moving & Storage, Inc. (Warners) filed protests to the application. On April 3, 2006, Gastley's Moving & Storage, Inc. (Gastley's), M.F. Rockey Moving Company (Rockey) and Camp Curtin Transfer, Inc. (Camp Curtin) all filed protests to the application. I will refer to the entities that have filed protests in this proceeding collectively as the Protestants.

By notice dated July 20, 2006, the Commission scheduled an initial hearing in this case for August 22, 2006, and assigned the case to Administrative Law Judge (ALJ) Kandace F. Melillo. ALJ Melillo issued a prehearing order on July 25, 2006, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements. By notice dated July 26, 2006, the Commission rescheduled the initial hearing in this proceeding for September 5, 2006, at 10:00 a.m. in Hearing Room #2 of the Keystone Commonwealth Building in Harrisburg and reassigned the matter to me. By notice dated September 6, 2006, the Commission rescheduled the hearing in this proceeding for November 16 and 17, 2006, at 10:00 a.m. in Hearing Room #2 of the Keystone Commonwealth Building in Harrisburg.

I conducted the initial hearing as scheduled on November 16, 2006. Edward R. Paskey, Esquire represented Delauter's, which presented five witnesses and sponsored twenty-four exhibits. James D. Campbell, Jr., Esquire represented the Protestants which presented four witnesses and sponsored six exhibits. During the hearing, the testimony of the witnesses and a review of Delauter's application revealed two mistakes in the notice published in the Pennsylvania Bulletin.

First, Delauter's application states that it is applying for the right to begin to transport, as a common carrier by motor vehicle, household goods in use between points in York County and from points in York County to points in Lancaster, Dauphin, Cumberland and Adams Counties and from points in Lancaster, Dauphin, Cumberland and Adams Counties to points in York County. The notice published in the Pennsylvania Bulletin omitted the portion of the

application requesting authority to transport household goods between points in York County.
(N.T. 76-77)

Second, John Delauter, the owner of Delauter's testified that at the end of 2005, he had caused the corporation, Delauter's A-1 Services, Inc., to be dissolved. Mr. Delauter testified that effective January 1, 2006, the corporation no longer existed. Effective January 1, 2006, the business was operating as a sole proprietorship named Delauter's A-1 Services at the same address as the now dissolved corporation. The notice published in the Pennsylvania Bulletin lists the corporation as the applicant even though it no longer exists. (N.T. 76-77)

In order to correct these errors, I issued an order dated November 17, 2006, directing the Commission's Bureau of Transportation and Safety to republish Delauter's application in the Pennsylvania Bulletin with the applicant's correct name and the portion of the application requesting authority to transport household goods between points in York County. I held the record open in this proceeding until notice of the application was republished in the Pennsylvania Bulletin. If the Commission received additional protests as a result of the republication, further hearings would be scheduled in this matter.

Subsequently, I issued an order dated November 30, 2006, directing Delauter's to file an amended application setting forth its change in status from a corporation to a sole proprietorship and the name under which it proposes to operate. In response, Delauter's filed an amended application with the Commission on December 12, 2006. Upon the filing of the amended application by Delauter's, the Commission's Bureau of Transportation and Safety caused notice of the amended application, including the portion of the original application requesting authority to transport household goods between points in York County, to be republished in the Pennsylvania Bulletin dated January 20, 2007 at 37 Pa.B. 381 as follows:

A-00122443. (Corrected), John C. Delauter t/d/b/a Delauter's A-1 Services (338 Newcomer Road, Windsor, York County, PA 17366) household goods in use, between points in the County of York, and from points in the said county, to points in Lancaster, Dauphin, Cumberland and

Adams Counties, and vice versa. (This application was originally published March 11, 2006, as Delauter's A-1 Services, Inc.)

The notice stated that the deadline for filing protests was February 12, 2007.

I will modify the caption of this proceeding to state the correct name of the applicant but will continue to refer to the applicant in the balance of this decision as Delauter's. No protests were filed to the amended application. Therefore, I issued a briefing order dated February 23, 2007, setting forth a briefing schedule. The Protestants filed their main brief on March 15, 2007. Delauter's filed its main brief on March 16, 2007. The Protestants filed a reply brief on March 29, 2007. The record closed on March 29, 2007, the date the Protestants filed their reply brief.

FINDINGS OF FACT

1. Delauter's, the applicant in this proceeding, filed this application on December 5, 2005.
2. The Commission caused notice of this application to be published in the Pennsylvania Bulletin dated March 11, 2006, at 36 Pa.B. 1194.
3. The notice in the Pennsylvania Bulletin stated that the deadline for filing protests to Delauter's application was April 3, 2006.
4. On March 20, 2006, Zeigler's Storage and Transfer, Inc. filed a protest to the application.
5. On March 22, 2006, Shelly Moving & Storage, Inc. and Warners Moving & Storage, Inc. filed protests to the application.
6. On April 3, 2006, Gastley's Moving & Storage, Inc., M.F. Rockey Moving Company and Camp Curtin Transfer, Inc. all filed protests to the application.

7. The notice published in the Pennsylvania Bulletin dated March 11, 2006, omitted the portion of the application requesting authority to transport household goods between points in York County. (N.T. 76-77)

8. John Delauter, the owner of Delauter's caused the corporation, Delauter's A-1 Services, Inc., to be dissolved effective January 1, 2006. (N.T. 43-44)

9. Effective January 1, 2006, John Delauter was operating as a sole proprietorship named Delauter's A-1 Services at the same address as the now dissolved corporation. (43-44)

10. The notice published in the Pennsylvania Bulletin dated March 11, 2006, lists the corporation as the applicant even though it was dissolved effective January 1, 2006. (N.T. 76-77)

11. Delauter's, the applicant in this proceeding, filed an amended application on December 12, 2006, setting forth its change in status from a corporation to a sole proprietorship and the name under which it proposed to operate.

12. The Commission caused notice of the amended application, including the portion of the original application requesting authority to transport household goods between points in York County to be republished in the Pennsylvania Bulletin dated January 20, 2007, at 37 Pa.B. 381.

13. The notice in the Pennsylvania Bulletin stated that the deadline for filing protests to Delauter's amended application was February 12, 2007.

14. No protests were filed to the amended application.

15. Scott Grube is a realtor located in York. (N.T. 7)

16. Scott Grube has been a realtor for twenty-four years. (N.T. 8)
17. Scott Grube has known John Delauter for approximately fifteen to seventeen years. (N.T. 8)
18. Scott Grube has used Delauter's to move goods into and out of storage. (N.T. 9)
19. Scott Grube would recommend Delauter's to anyone needing moving services. (N.T. 9-10)
20. Scott Grube would consider using Delauter's if he were moving. (N.T. 10)
21. Scott Grube has seen development in York County, particularly southern York County, grow substantially in the last five years. (N.T. 10-13)
22. There are approximately fifty to sixty new home communities currently under construction in York County. (N.T. 12-13)
23. There are large numbers of people relocating to York County from surrounding counties and southern Maryland. (N.T. 12-13)
24. Scott Grube has referred some of his clients to Delauter's for moving services but does not know whether Delauter's performed moving services for any of those clients or the nature of those services. (N.T. 14, 17-18)
25. John Slatky owns and operates a car wash and self storage facility in York. (N.T. 20)

26. John Slatky has been a resident of York since 1972. (N.T. 20)
27. John Slatky has referred some of his storage customers to Delauter's to move goods into and out of storage. (N.T. 21)
28. John Slatky would recommend Delauter's to anyone needing moving services. (N.T. 21)
29. John Slatky has observed new housing developments under construction near his storage facility. (N.T. 22)
30. Scott Dietz owns C.C. Dietz Incorporated located in York. (N.T. 26-27)
31. Scott Dietz has owned C.C. Dietz Incorporated for the last 22 years. (N.T. 27)
32. C.C. Dietz Incorporated has been in business for eighty-five years. (N.T. 27)
33. C.C. Dietz Incorporated engages primarily in residential construction. (N.T. 27)
34. Scott Dietz has resided in York his entire life except from 1973 to 1976. (N.T. 28)
35. Scott Dietz has known John Delauter his entire life since they are second cousins. (N.T. 28)
36. Scott Dietz has referred some of his customers to Delauter's. (N.T. 29)

37. Delauter's moved some office furniture from one part of the York International building to another as part of a project where C.C. Dietz Construction was the general contractor for some office renovations. (N.T. 29-30)

38. C.C. Dietz Incorporated has experienced a significant increase in residential development in York County in the last five years. (N.T. 31-32)

39. C.C. Dietz Incorporated has experienced a large number of customers purchasing the residences it has constructed. (N.T. 31-32)

40. Sandy Korman is a vice president for Community Banks in York. (N.T. 35)

41. Sandy Korman has been in the mortgage business for the last twelve years. (N.T. 35-36)

42. Community Banks has experienced a significant increase in its home mortgage business in York County in the last five years. (N.T. 36-40)

43. Community Banks has experienced a significant increase in its home builder financing business in the last five years. (N.T. 38-40)

44. Delauter's moved Community Banks' office from one building to another. (N.T. 40)

45. Sandy Korman would recommend Delauter's to anyone who needs moving services. (N.T. 40-41)

46. Delauter's facilities are located at 388 Newcomer Road, Windsor, Pennsylvania. (N.T. 44)

47. John Delauter is the sole proprietor of Delauter's. (N.T.43-44)
48. John Delauter founded Delauter's in 1993. (N.T. 44)
49. John Delauter changed Delauter's from a corporation to a sole proprietorship at the end of 2005. (N.T. 43-44)
50. Delauter's was certificated by the Commission to transport property between points in Pennsylvania at A-00121541 in 2005. (N.T. 44-45)
51. Delauter's currently acts as a helper service, providing laborers to help people load and unload trucks. (N.T. 45)
52. Delauter's currently has five full time and two or three part time employees. (N.T. 45)
53. Delauter's has one twenty-four foot box truck, one Ford F-350 truck and one thirty-two foot cargo trailer. (N. T. 47-48, Delauter's Ex. 1)
54. Delauter's repairs and maintains its equipment primarily using River's Truck Center, Inc. at 2975 Cape Horn Road, Red Lion, Pennsylvania. (N.T. 53-54, Delauter's Ex. 5)
55. Delauter's obtains driver reports for its drivers from the Pennsylvania Department of Transportation twice a year. (N.T. 54-56, Delauter's Ex. 6)
56. Delauter's performs criminal background checks on all of its employees. (N.T. 58-59, Delauter's Ex. 11)

57. All of Delauter's drivers understand and agree to abide by all traffic laws. (N.T. 56-57, Delauter's Ex. 7)

58. All of Delauter's employees are subject to random drug testing. (N.T. 57-58)

59. Delauter's currently insures its vehicles. (N.T. 59-60, Delauter's Ex. 8)

60. Delauter's currently has a \$35,000 line of credit. (N.T. 61-62, Delauter's Ex. 9)

61. Patricia Delauter currently performs the bookkeeping functions for Delauter's, including payroll using Quickbooks. (N.T. 46-47, 60-63, Delauter's Ex. 12)

62. Delauter's uses cellular telephones so that its employees can keep in constant communication with each other and the home office. (N.T. 61, 64, Delauter's Ex. 14)

63. Delauter's had total sales of \$190,402 in 2005. (N.T. 64-65, Delauter's Ex. 15)

64. Delauter's maintains a separate bank account for the quarterly taxes it pays. (N.T. 65-66, Delauter's Ex. 16)

65. Delauter's maintains a separate bank account for the personal taxes it pays for John and Patricia Delauter. (N.T. 66, Delauter's Ex. 17)

66. Delauter's maintains a separate bank account for its business expenses. (N.T. 66-67, Delauter's Ex. 18)

67. The Federal Motor Carrier Safety Administration authorized Delauter's to transport household goods between states by certificate at MC-580176-C in 2006. (N.T. 67-68, Delauter's Ex. 19)

68. The Commission gave Delauter's a satisfactory safety rating to transport property between points in Pennsylvania at A-00121541 in 2005. (N.T. 68, Delauter's Ex. 20)

69. According to the United States Census Bureau, in 2000 York County had 156,720 housing units. (N.T. 71-72, Delauter's Ex. 21)

70. According to the United States Census Bureau, in 2005 York County had 168,875 housing units. (N.T. 72-73, Delauter's Ex. 22)

71. According to the United States Census Bureau, in 2000 York County had a total population of 381,751. (N.T. 73, Delauter's Ex. 21)

72. According to the United States Census Bureau, in 2005 York County had a total population of 400,670. (N.T. 73, Delauter's Ex. 22)

73. According to the United States Census Bureau, in 2000 Adams County had 35,831 housing units. (N.T. 73-74, Delauter's Ex. 23)

74. According to the United States Census Bureau, in 2005 Adams County had 38,693 housing units. (N.T. 73-74, Delauter's Ex. 23)

75. According to the United States Census Bureau, in 2000 Cumberland County had 86,951 housing units. (N.T. 73-74, Delauter's Ex. 23)

76. According to the United States Census Bureau, in 2005 Cumberland County had 92,328 housing units. (N.T. 73-74, Delauter's Ex. 23)

77. According to the United States Census Bureau, in 2000 Dauphin County had 111,133 housing units. (N.T. 73-74, Delauter's Ex. 23)

78. According to the United States Census Bureau, in 2005 Dauphin County had 114,955 housing units. (N.T. 73-74, Delauter's Ex. 23)

79. According to the United States Census Bureau, in 2000 Lancaster County had 179,990 housing units. (N.T. 73-74, Delauter's Ex. 23)

80. According to the United States Census Bureau, in 2005 Lancaster County had 190,744 housing units. (N.T. 73-74, Delauter's Ex. 23)

81. Shelly Moving & Storage, Inc. has household goods moving authority between points in Dauphin, York, Lancaster and Adams Counties. (Protestant's Ex. 1, N.T. 90-91)

82. Shelly Moving & Storage, Inc. has storage facilities in Malvern, York and Harrisburg, Pennsylvania. (N.T. 91-92)

83. Shelly Moving & Storage, Inc. has 21 straight trucks, 16 tractors, 39 trailers and 4 pack vans. (N.T. 92)

84. Shelly Moving & Storage, Inc. has approximately one hundred full time employees. (N.T. 92)

85. Shelly Moving & Storage, Inc.'s business consists of approximately 30%-40% interstate moves with the balance intrastate. (N.T. 92-93)

86. Shelly Moving & Storage, Inc. has numerous competitors in York, Lancaster, Dauphin and Adams County. (N.T. 93-94)

87. M.F. Rockey Moving Company has household goods moving authority between points in Dauphin, York, Cumberland, Lancaster and Adams Counties. (Protestant's Ex. 2, N.T. 108-109)

88. M.F. Rockey Moving Company has 5 straight trucks, 2 tractor-trailers and 2 packing vans. (N.T. 109)

89. M.F. Rockey Moving Company has approximately sixteen full time employees. (N.T. 109)

90. M.F. Rockey Moving Company's business consists of approximately 20% interstate moves with the balance intrastate. (N.T.109-110)

91. M.F. Rockey Moving Company has numerous competitors. (N.T. 110)

92. Zeigler's Storage and Transfer, Inc. has household goods moving authority between points in Dauphin, Cumberland and Adams Counties. (Protestant's Ex. 3, N.T. 120-121)

93. Zeigler's Storage and Transfer, Inc. has storage facilities in Carlisle, Pennsylvania. (N.T. 121)

94. Zeigler's Storage and Transfer, Inc. has 5 straight trucks, 3 tractors, and six trailers. (N.T. 121)

95. Zeigler's Storage and Transfer, Inc. has approximately sixteen full time employees. (N.T. 121)

96. Zeigler's Storage and Transfer, Inc.'s business consists of approximately 10% interstate moves with the balance intrastate. (N.T.121)

97. Zeigler's Storage and Transfer, Inc. has numerous competitors. (N.T.121-122)

98. Warners Moving & Storage, Inc. has household goods moving authority between points in York County. (Protestant's Ex. 4, N.T. 128)

99. Warners Moving & Storage, Inc. has storage facilities in Red Lion, Pennsylvania. (N.T. 128)

100. Warners Moving & Storage, Inc. has approximately 80 vehicles. (N.T. 128)

101. Warners Moving & Storage, Inc. has approximately fifty full time employees. (N.T. 128)

102. Warners Moving & Storage, Inc.'s business consists of approximately 25% interstate moves with the balance intrastate. (N.T. 129)

103. Warners Moving & Storage, Inc. has numerous competitors. (N.T. 129)

104. Camp Curtin Transfer, Inc. has household goods moving authority between points in Pennsylvania in portions of Dauphin County. (Protestant's Ex. 5)

105. Gastley's Moving & Storage, Inc. has household goods moving authority between points in Pennsylvania in portions of Adams and York Counties. (Protestant's Ex. 6)

DISCUSSION

Delauter's has the burden of proof to establish that it is entitled to the relief it is seeking in this proceeding. 66 Pa. C.S. §332(a). It must establish its case by a preponderance of

the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet its burden of proof, Delauter's must present evidence more convincing, by even the smallest amount, than that presented by the Protestants. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). In this case, Delauter's requests that the Commission, pursuant to 66 Pa. C.S. §1102, approve its application to transport household goods in use between points in York County and from points in York County to points in Lancaster, Dauphin, Cumberland and Adams Counties and vice versa.

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

A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such a certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.

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

The basic criteria the Commission uses in deciding motor carrier applications are set forth in the policy statement codified at 52 Pa. Code §41.14:

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

- (a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.
- (b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record

demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

- (1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.
 - (2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.
 - (3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.
 - (4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).
 - (5) An applicant's record, if any, of compliance with 66 Pa.C.S. (relating to the Public Utility Code), this title and the Commission's orders.
 - (6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.
- (c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.
- (d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§29.331—29.335 (relating to limousine service).

The Commonwealth Court has upheld the validity of a previous version of this policy statement. Seaboard Tank Lines, Inc. v. Pennsylvania Pub. Util. Comm'n., 502 A.2d 762 (Pa. Cmwlth. 1985). The Commission modified the previous policy statement in 2004 in response to the Pennsylvania Supreme Court's decision in Elite Industries, Inc. v. Pennsylvania Pub. Util. Comm'n., 832 A.2d 428 (Pa. 2003) by adding subsections (b)(1)-(6) to 52 pa. Code §41.14. In the Pennsylvania Bulletin at 34 Pa. B. 3912, the Commission stated that it was appropriate for it to place greater emphasis on the factors to be considered in evaluating an applicant's fitness under 52 Pa. Code §41.14(b). In order to provide guidance to the industry

and Commission staff, the Commission stated that it would consider the factors now set forth in 52 Pa. Code §41.14(b)(1)-(6) with regard to the fitness of limousine applicants. The Commission noted that these listed factors did not represent a hard and fast set of rules that must be considered in every application but rather were factors the Commission would ordinarily examine in determining fitness pursuant to 52 Pa. Code §41.14(b). The Commission also stated that since these guidelines were general in nature, they were relevant to the issue of fitness for all motor carriers, and would be used as guidelines for evaluating motor carrier applications generally.

In Elite the Supreme Court of Pennsylvania upheld the Commission's adoption of subsection 52 Pa. Code §41.14(d) which eliminated the requirement that applicants for limousine authority had to demonstrate need for their service. The Commission has not eliminated the requirement to demonstrate need with respect to applicants for household goods authority, so Delauter's must meet the requirements set forth in 52 Pa. Code §41.14(a)-(c).

I. Need for Delauter's proposed service.

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

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

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

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

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

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

When through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant's proposed service will satisfy the supporting witnesses' asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14(a), by establishing that approval of the application will serve a useful public purpose, responsive to a public demand or need. Blue Bird, 72 Pa. PUC at 274.

The supporting customer testimony must be legally competent and credible, and must be probative and relevant to the application proceeding. The supporting witnesses must articulate a demand or need for the type of service set forth in the application. The witnesses must identify Pennsylvania origin and destination points between which they require transportation, and these points must correspond with the scope of the operating territory specified in the application. Blue Bird, 72 Pa. PUC at 274-275.

In the Blue Bird opinion, the Commission stated that it considered "demand" and "need" as used in 52 Pa. Code §41.14(a) to be "interchangeable terms." Blue Bird, 72 Pa. PUC at 272. The Commission held in Blue Bird that customer support is sufficient to satisfy the applicant's burden, and the applicant need not demonstrate the inadequacy of existing services. Under the Blue Bird interpretation of 52 Pa. Code §41.14, customer support testimony is sufficient to support a finding of need even if the service of other carriers is available to the customer. My research has not revealed any Commission or Pennsylvania appellate court decisions that have overruled Blue Bird. The Supreme Court ruling in Elite and the Commission's subsequent modification of 52 Pa. Code §41.14 indicate that the Commission need not follow a rigid set of rules in determining whether to issue a certificate of public convenience, provided that the record contains evidence of a public benefit to be obtained from the service.

I turn now to the evidence Delauter's presented regarding the need for its proposed service. Delauter's did not present testimony from any customer witnesses. The lack of witnesses is understandable to an extent, because individuals, as opposed to businesses, do not have an ongoing need for these services. When an individual needs a household goods mover to move their household goods, they cannot testify in support of a new company and then wait to see if that company's application is granted. They would need to move soon, and once moved, would not need to move again for several years, if ever. Consequently, it can be difficult to produce live customer support witnesses for a household goods application.

Delauter's presented testimony of several individuals to show that the population and number of houses are increasing in the service territory that Delauter's has requested. Scott Grube is a realtor located in York and has been a realtor for twenty-four years. (N.T. 8) Mr. Grube has known John Delauter for approximately fifteen to seventeen years. (N.T. 8) Mr. Grube has used Delauter's to move goods into and out of storage. (N.T. 9) He would recommend Delauter's to anyone needing moving services and would use Delauter's if he were moving. (N.T. 9-10)

Mr. Grube testified that development in York County, particularly, southern York County has grown substantially in the last five years. (N.T. 10-12) There are approximately fifty to sixty new home communities currently under construction in York County. (N.T. 12) In part, this is due to the large numbers of people relocating to York County from surrounding counties and southern Maryland. (N.T. 12-13) Scott Grube has referred some of his clients to Delauter's for moving services but does not know whether Delauter's performed moving services for any of those clients or the nature of those services. (N.T. 14-17)

John Slatky owns and operates a car wash and self storage facility in York and has been a resident of York since 1972. (N.T. 20) Mr. Slatky has referred some of his storage customers to Delauter's to move goods into and out of storage. (N.T. 20-21) Mr. Slatky would recommend Delauter's to anyone needing moving services. (N.T. 21) Mr. Slatky testified that he has observed new housing developments under construction near his storage facility. (N.T. 23-24)

Scott Dietz owns C.C. Dietz Incorporated located in York and has owned C.C. Dietz Incorporated for the last 22 years. (N.T. 26-27) C.C. Dietz Incorporated has been in business for eighty-five years. (N.T. 28) C.C. Dietz Incorporated is engaged in residential construction. (N.T. 27) Scott Dietz testified that he has resided in York his entire life except from 1973 to 1976. (N.T. 28) Scott Dietz has known John Delauter his entire life since they are second cousins. (N.T. 28) Scott Dietz has referred some of his customers to Delauter's. (N.T. 28-29) Mr. Dietz testified that Delauter's moved some office furniture from one part of the York International building to another as part of a project where C.C. Dietz Incorporated was the general contractor for some office renovations. (N.T. 29-30) C.C. Dietz Incorporated has experienced a significant increase in its construction business due to residential development in York County in the last five years. (N.T. 31-32) C.C. Dietz Incorporated has experienced a large number of customers from Maryland purchasing the residences it has constructed. (N.T. 31-32)

Sandy Korman is a vice president for Community Banks in York and has been in the mortgage business for the last twelve years. (N.T. 35-36) Community Banks has experienced a significant increase in its home mortgage business and home builder financing in York County in the last five years. (N.T. 37-39) Delauter's moved Community Banks' office from one building to another. (N.T. 40) Mr. Korman would recommend Delauter's to anyone who needs moving services. (N.T. 40-41)

The general thrust of this testimony is that the population and number of housing units in York County have increased substantially in the last five years. People are moving into York County from Maryland and creating a demand for more housing units. Delauter's argues from this testimony that because there are more people relocating to York County and more housing units being constructed, there must be more need for household goods moving services.

Delauter's presented United States Census Bureau documents to support its assertions of population and housing unit growth. (Delauter's Exs. 21-23) The documents taken from the United States Census Bureau's web site show 2000 and 2005 population figures for York County. (Delauter's Ex. 21 & 22) According to the United States Census Bureau, between 2000 and 2005, the population in York County grew by approximately 19,000 people from 381,751 to 400,670. (Delauter's Ex. 21 & 22, N.T. 71-74)

Another document taken from the United States Census Bureau's website shows the annual housing unit estimates in each Pennsylvania county for the years 2000-2005. (Delauter's Ex. 23) According to the United States Census Bureau, between 2000 and 2005, the number of housing units in Adams County grew by 3,000, the number of housing units in Cumberland County grew by 6,000, the number of housing units in Dauphin County grew by 3,000, the number of housing units in Lancaster County grew by 10,000 and the number of housing units in York County grew by 11,000. (Delauter's Ex. 23, N.T. 73-74)

The documents above tend to show that the population in York County is growing and the number of housing units in Adams, Cumberland, Dauphin, Lancaster and York Counties is growing. Delauter's argues from these documents that because there are more housing units, there are more home sales and a need for household goods moving services. The Protestants disagree.

Protestants' primary opposing argument is that, under the Blue Bird criteria, Delauter's must present witnesses which express a tangible, present personal need for household goods transportation, and that it failed to do so. However, the Commission has rejected this approach with respect to need for household goods moving services in Application of Williamsport Moving Company, Inc., t/d/b/a Keystone Relocation (Williamsport), Docket No. A-00089650F0002AmE, (Order entered July 27, 2004).

In Williamsport, the protestants in a household goods application case had argued, similar to the Protestants here, that supporting witness testimony as to need was too indefinite to satisfy the Blue Bird criteria. The supporting witnesses in Williamsport case had generally testified that they might have a need for a household goods mover in the foreseeable future. The Commission recognized the need to be flexible with respect to evidentiary standards due to the transient nature of need for household goods service, and held that the supporting testimony must be viewed in this light.

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

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

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

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

In Williamsport, the Commission found that the testimony of four witnesses who might have a need for household goods movers in the foreseeable future, when coupled with statistical evidence of area growth, was sufficient to substantiate a finding of need for additional household goods moving service. In this case, Delauter’s similarly presented statistical evidence of housing unit growth in Adams, Cumberland, Dauphin, Lancaster and York Counties and population growth in York County. Delauter’s also presented evidence from a local real estate broker, a home builder and a lending officer that demand for housing in York County had increased. The Commission determined that the use of statistical data to support witness testimony of need was the correct approach in Williamsport and R.J. Coll. I conclude that the testimony of the witnesses in this proceeding, coupled with the statistical evidence presented, is sufficient to establish need for Delauter’s proposed service by a preponderance of the evidence.

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

In Blue Bird, the Commission stated that the number of witnesses sufficient to comprise a representative cross section of the public necessary to support an application will vary with the circumstances of each case, such as the breadth of the intended operating authority, the population density in the intended operating territory, and the scope of the requested operating authority. The Commission reasoned that where the intended operating territory is broad and

heavily populated, and an applicant seeks an expansive grant of operating authority, more witnesses would be required to show a cross section of the public needing the proposed service in the intended operating territory. Where the intended operating territory is restricted, is not heavily populated and the applicant seeks a narrow grant of operating authority, fewer witnesses would be required to show a cross section of the public needing the applicant's proposed transportation in the intended operating territory.

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

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

In this case, Delauter's presented the testimony of a realtor, builder and banker regarding the growing number of houses being constructed in the York County area. As set forth above, the testimony these witnesses provided addresses larger trends than an individual testifying about his or her need for service possibly could. The trend in this area is of increasing housing construction, purchase and financing. The Pennsylvania counties in this region are experiencing significant growth in population and housing construction. This growth indicates a need for Delauter's proposed service throughout the five county area. I conclude that this

testimony, when coupled with the statistical evidence and the other documentary evidence, is sufficient to establish a representative sampling throughout Delauter's proposed territory.

The statistics and other documents indicate that more housing units exist now than in the past. One can reasonably infer that people are relocating to these five counties and that at least some of these people would need and use a household goods mover. Increasing numbers of housing units is an indication of increasing need for household goods moving service.

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

II. Fitness of Delauter's to provide the proposed service.

Delauter's must next demonstrate that it possesses the technical and financial ability to provide the proposed service. The Commission may withhold authority if the record demonstrates that Delauter's lacks the propensity to operate safely and legally. 52 Pa. Code §41.14(b). In evaluating whether Delauter's can satisfy these fitness standards, the Commission will examine whether it has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested; whether Delauter's and its employees have sufficient technical expertise and experience to serve the territory requested; whether Delauter's has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public; whether the applicant has an

appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards; Delauter's record, if any, of compliance with the Public Utility Code, *Commission regulations and the Commission's orders and whether Delauter's or its drivers have been convicted of a felony or crime of moral turpitude and remain subject to supervision by a court or correctional institution.*

A motor carrier that the Commission has previously authorized to provide service, and which is now applying for additional authority, enjoys a rebuttable presumption that *it is technically and financially fit to provide the proposed service. Re: V.I.P. Travel Service, Inc., 56 Pa. P.U.C. 625, 631 (1982).* In this case, Delauter's has authority from the Commission to operate as a common carrier of property between points in Pennsylvania and from the FMCSA to operate as a household goods mover in interstate commerce. In the V.I.P. decision and other Commission decisions following it, the presumption of fitness arose from the fact that the Commission had already approved a previous application based on the *evidentiary criteria set forth in 52 Pa. Code §41.14 or its predecessors and in doing so determined that the carrier met those criteria.* These cases appear to involve a request for territorial expansion rather than, as in this case, a request for an additional type of Commission authority.

The rationale for the presumption of fitness to carriers previously authorized to provide service is equally applicable to cases, like this one, which involve requests for operating rights in addition to those already included in an existing certificate of public convenience. The Commission has already approved the previous application and determined that the carrier was technically and financially capable of providing the service. In this case, since the Commission has already determined that Delauter's was technically and financially capable of transporting property, Delauter's is presumed to be technically and financially capable of transporting household goods.

Even if the presumption did not apply, Delauter's has adequately demonstrated that it meets the fitness criteria. Delauter's provided evidence setting forth the nature of its

facilities and equipment. (Delauter's Ex. A-1, N.T. 47-51) Delauter's has sufficient equipment and facilities to serve York, Lancaster, Dauphin, Cumberland and Adams Counties. Delauter's provided copies of its 2005 federal corporate income tax return and bank statements for its various accounts. (Delauter's Exs. 9, 10, 15-18, N.T. 61-62, 64-67) This information clearly demonstrates that Delauter's has sufficient capital to serve the territory requested. Delauter's provided information on the employees currently working for it. (Delauter's Ex. 6, 7, 11, N.T. 54-59) These employees have experience in the moving industry. Delauter's employees have sufficient technical expertise and experience to serve the territory requested. Delauter's provided information on its vehicle, liability and cargo insurance. (Delauter's Ex. 8, N.T. 59-61) Delauter's is able to secure insurance for all its vehicles. Delauter's provided testimony regarding its equipment maintenance program, and a copy of its motor carrier safety rating from the Commission and its certificate of authority from FMSCA. (Delauter's Exs. 2-5, 19-20, N.T. 51-55, 67-69) Delauter's clearly has a plan to comply with Commission's driver and vehicle safety regulations and service standards.

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

The Protestants assert that the Commission has imposed a civil penalty on Delauter's. (N.T. 82) In 2005, the Commission levied a civil penalty of \$250.00 against Delauter's in the proceeding docketed at A-00121541C0501. However, Delauter's witness explained that it admitted the violation and paid the civil penalty. (N.T. 82) I accord little weight to this evidence because it appears to be an isolated incident. As a result of the civil penalty, Delauter's has now applied for Commission authority to operate between points in Pennsylvania. The civil penalty constitutes some evidence that Delauter's operated illegally in the past.

The Protestants also point out that Delauter's has moved household goods to and from storage facilities. (N.T. 86-87) Delauter's witness, John Delauter, admitted this and explained that he had been advised by counsel that Delauter's could perform this type of service. (N.T. 87)

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

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

I conclude that the evidence of record, taken as a whole, does not demonstrate that Delauter's has a persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders or regulations of the Commission. There is evidence of one violation but I cannot characterize this as a persistent disregard for the Public Utility Code. In addition, John Delauter admitted that Delauter's transported household goods to and from storage facilities not owned by Delauter's. However, he also stated that he performed this service upon advice of counsel that Delauter's could perform this service without Commission authority. I cannot characterize this conduct as a persistent disregard of the Public Utility Code when Delauter's acted in reliance on the advice of counsel. Delauter's has filed this application with the Commission to obtain authority so that it can operate legally between points in portions of the

Commonwealth. In the meantime, Delauter's informs potential customers that it cannot provide household goods move between points in Pennsylvania.

The evidence presented by the Protestants fails to demonstrate that Delauter's lacks the propensity to operate safely and legally. The evidence does not overcome the presumption that Delauter's is technically and financially capable of transporting household goods or, alternatively, outweigh the evidence that Delauter's presented that it possesses the technical and financial ability to provide the proposed service. For the foregoing reasons, I conclude that the evidence establishes that Delauter's possesses the technical and financial ability to provide the proposed household goods moving service by a preponderance of the evidence.

III. Impairment of the Protestants.

According to 52 Pa. Code §41.14(c), the Commission will grant an application to a motor carrier that has demonstrated that the proposed service will serve a useful public purpose, responsive to a public demand or need, that it possesses the technical and financial ability to provide the proposed service, and that it has the propensity to operate safely and legally, commensurate with the demonstrated public need, unless existing carriers show that the entry of a new carrier into the field would endanger or impair their operations to such an extent that, on balance, the granting of authority would be contrary to the public interest. Morgan Drive Away, Inc. v. Pennsylvania Pub. Util. Comm'n., 512 A.2d 1359 (Pa. Cmwlth. 1986) The amount of competition which will best serve the public interest is a matter within the discretion of the Commission. Pennsylvania Pub. Util. Comm'n. v. Purolator Courier Corporation, 355 A.2d 850 (Pa. Cmwlth. 1976).

The burden placed upon Protestants by Section 41.14(c) is quite heavy. Re: Myers Chemical Transport, Ltd. 73 PA P.U.C. 24 (1990) Only the threat of unrestrained and destructive competition contrary to the public interest will preclude the Commission from granting an application pursuant to subsection 41.14(c). The mere potential for diversion of traffic volume from existing carriers to an applicant is insufficient to sustain the protesting

carriers' burden of proof. Re: Richard L. Kinard, Inc., 58 Pa. P.U.C. 548 (1984) In short, it is not enough for the Protestants to show that their operations may be endangered or impaired; they must also show that such endangerment or impairment is so great as to implicate the public interest.

Shelly's witness testified that it has household goods authority in York, Dauphin, Cumberland, Lancaster and Adams Counties. (Protestant's Ex. 1, N.T. 91-92) Shelly's witness stated that there are already numerous competitors in those counties. According to the witness, there are too many competitors and not enough revenues. (N.T. 93-96) In addition Shelly's is aware of two other household goods applications pending before the Commission requesting authority for York County. (N.T. 94) On cross examination, Shelly's witness indicated that there had been an increase in demand for household goods moves in York County. (N.T. 104)

Rockey's witness testified that it has household goods moving authority between points in Dauphin, York, Cumberland, Lancaster and Adams Counties. (Protestant's Ex. 2, N.T. 108-109) Rockey also has numerous competitors. (N.T. 110) According to Rockey's witness, its business has begun to slow down recently. (N.T. 110-111)

Zeigler's witness testified that it has household goods authority in portions of Cumberland, Dauphin, York, and Adams. (Protestant's Ex. 3, N.T. 120-121) Zeigler's witness agreed with Shelly's that there are already numerous competitors. (N.T.121-122) The witness testified that 90% of its business is intrastate moving of household goods. (N.T. 121)

Warners has household goods moving authority between points in York County. (Protestant's Ex. 4, N.T. 128) Warners has storage facilities in Red Lion, Pennsylvania. (N.T. 128) Warners Moving & Storage, Inc. has approximately 80 vehicles and approximately fifty full time employees. (N.T. 128-129) Warners Moving & Storage, Inc.'s business consists of approximately 25% interstate moves with the balance intrastate. (N.T. 129) Warners Moving & Storage, Inc. has numerous competitors. (N.T. 129)

Finally, the Protestants also presented copies of the intrastate household goods authority the Commission has granted to Camp Curtain and Gastley's. (Protestant's Exs. 5 & 6, N.T. 136-137) Neither of these Protestants presented any testimony.

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

The York, Lancaster, Dauphin, Cumberland and Adams County areas are growing both as to the number of housing units and population. This growth has undoubtedly, in part, led to an increase in business. The Protestants simply did not present any evidence that the moving industry in these counties is in such dire straits that a new household goods carrier would be sufficient to endanger or impair the operations of one or more of the Protestants. For these reasons, I conclude that the Protestants have not shown that their operations will be endangered or impaired to such an extent that, on balance, the granting of this authority is contrary to the public interest.

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

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding by virtue of 66 Pa. C.S. §1102(a)(1).
2. The evidence of record establishes that the proposed service will serve a useful public purpose, responsive to a public demand.
3. The evidence of record establishes that Delauter's possesses the requisite financial and technical fitness to provide the proposed service.
4. The record does not show that Delauter's lacks the propensity to operate safely and legally.
5. A grant of authority to Delauter's will not endanger or impair the Protestants' operations to such an extent that the public interest would be affected.
6. This application should be approved.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the caption of this proceeding is modified to read as follows:
Application of John C. Delauter t/d/b/a Delauter's A-1 Services
for the right to begin to transport, as a common carrier, by motor vehicle,
household goods in use between points in York County and from points in
York County to points in Lancaster, Dauphin, Cumberland and Adams

Counties and from points in Lancaster, Dauphin, Cumberland and Adams Counties to points in York County.

2. That the application of John C. Delauter t/d/b/a Delauter's A-1 Services at Docket No. A-00122443 is approved and the certificate issued to applicant granting the following right:

To transport household goods in use between points in York County and from points in York County to points in Lancaster, Dauphin, Cumberland and Adams Counties and from points in Lancaster, Dauphin, Cumberland and Adams Counties to points in York County.

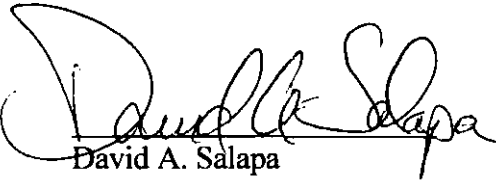
3. That John C. Delauter t/d/b/a Delauter's A-1 Services, shall not engage in any transportation authorized herein until it has complied with the requirements of the Pennsylvania Public Utility Code and the regulations of this Commission relating to the filing and acceptance of a tariff establishing just and reasonable rates and evidence of insurance.

4. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to John C. Delauter t/d/b/a Delauter's A-1 Services, shall not be construed as conferring more than one operating right.

5. That John C. Delauter t/d/b/a Delauter's A-1 Services, shall not engage in any transportation granted herein until it shall have paid all outstanding Public Utility Commission annual assessments and/or civil penalties.

6. That if John C. Delauter t/d/b/a Delauter's A-1 Services has not, on or before 60 days from receipt of this Order, complied with the requirements set forth above, this application shall be dismissed without further proceedings.

Date: April 3, 2007


David A. Salapa
Administrative Law Judge