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March 15, 2007

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

**Re: Application of John C. Delauter t/d/b/a Delauter's A-1 Services
Docket No. A-00122443**

A 00121541 F0002

Dear Secretary McNulty:

Please find enclosed herewith the original and nine copies of the Brief on behalf of Protestants Camp Curtin Transfer, Inc., Gastley's Moving & Storage, Inc., M.F. Rockey Moving Company, Shelly Moving & Storage, Inc., Warners Moving & Storage, Inc., and Zeigler's Storage & Transfer, Inc. in the above matter. In accordance with the Certificate of Service, copies have been served upon the Administrative Law Judge and the attorney for Applicant.

Sincerely,

J D Campbell
James D. Campbell, Jr.
CALDWELL & KEARNS

JDC:ml
Enclosures
cc: Honorable David A. Salapa
Edward A. Paskey, Esquire
Protestants

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: APPLICATION OF JOHN C. DELAUTER T/D/B/A
DELAUTER'S A-1 SERVICES

A-00121541F0002

DOCKET NO. A-00122443

BRIEF ON BEHALF OF PROTESTANTS CAMP CURTIN TRANSFER, INC.,
GASTLEY'S MOVING & STORAGE, INC., M.F. ROCKEY MOVING COMPANY,
SHELLY MOVING & STORAGE, INC., WARNERS MOVING & STORAGE, INC.,
AND ZEIGLER'S STORAGE & TRANSFER, INC.

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I. STATEMENT OF THE CASE

By the present Application John C. Delauter, t/d/b/a Delauter's A-1 Services (hereinafter "Delauter" or "Applicant"), seeks authority to begin to transport, as a common carrier, by motor vehicle, household goods in use, between points in the County of York, and from points in said County to points in the Counties of Lancaster, Dauphin, Cumberland and Adams, and vice versa.

Protests having been filed, the case was assigned for hearing to Administrative Law Judge David A. Salapa, and a hearing was duly scheduled and held in Harrisburg, November 16, 2006. At the conclusion of the testimony, it was agreed that the record would be closed and briefs would be filed, subject to the potential need for an additional hearing if there were additional protests in response to a republication of the application to correct procedural matters. No such additional protests materialized.

II. STATEMENT OF THE QUESTIONS INVOLVED

- A. HAS THE APPLICANT CARRIED ITS BURDEN OF DEMONSTRATING FITNESS?
(Answered in the negative by the Protestants.)

- B. HAS THE APPLICANT CARRIED ITS BURDEN OF DEMONSTRATING THAT APPROVAL OF THE APPLICATION WILL SERVE A USEFUL PUBLIC PURPOSE, RESPONSIVE TO A PUBLIC DEMAND OR NEED? (Answered in the negative by Protestants.)

- C. DID THE BURDEN OF PROOF SHIFT TO PROTESTANTS TO ESTABLISH THAT THE GRANTING OF AUTHORITY WOULD BE CONTRARY TO THE PUBLIC INTEREST? (Answered in the negative by Protestants.)

III. REVIEW OF TESTIMONY

A. APPLICANT'S SUPPORTING WITNESS TESTIMONY

Applicant presented four public witnesses in support of the Application.

The first was Scott Grube, a Realtor with Morgan Colins, 908 South George Street, York, Pennsylvania. Mr. Grube testified that he has been a Realtor for 24 years and has resided in York County for 44 years. (R.8) He has known Mr. Delauter and been familiar with his business for 15 to 17 years. He has referred clients of his to Mr. Delauter's business for the moving of goods "into and out of storage" and was completely satisfied with those services. (R.9) He understood that Mr. Delauter had filed this Application with the Commission, and if it were granted, he could recommend Mr. Delauter to persons needing moving services. (R.10) Mr. Grube has observed the residential development in York County in recent years and although it has recently slowed down, it is still a steady, very active market. (R.11) There are 50–60 new residential developments that are currently ongoing in York County involving new construction. (R-12) Based upon his observation of the residential market, he felt that there was a need for additional carriers to assist persons moving into those new residences. (R.13-14) He had recently recommended Mr. Delauter to three local business executives who used Mr. Delauter's moving services. (R.14)

On Cross, it appeared that a substantial number of the moving situations he was aware of involved intra-York County transportation. He was not aware that the Application, as originally filed and advertised did not involve transportation between points in York County, but he still supported the Application. (R.16-17) He was not aware that Mr. Delauter has no present household goods authority between points in York County, and several of the people that he had recommended to Mr. Delauter had used his services for the transportation of household goods

between points in York County. (R.16-17) He didn't know whether these services had been from household to household or from storage to a residence. (R.18-19)

John Slatky owns a car wash and small self-storage facility in York Township, York County. (R.19-20) In the past he has recommended Mr. Delauter's services to persons storing goods at his facility. If this Application were approved, he would continue to recommend Delauter's services to persons needing moving services. (R.21) He felt that a lot of residential growth was going on in York and Lancaster Counties. (R.22) The Delauter service he was familiar with was service to and from his storage unit facility. (R.25)

Scott Dietz testified that he is the owner of a construction company in York. It is a family business that has been in business for 85 years. (R.26-27) Most of the company's business is residential construction. (R. 27) He is Mr. Delauter's second cousin, has known him all his life, and is familiar with his business. (R.28) He had referred Mr. Delauter's services to a company known as York International which was moving office equipment from one area of a construction site being renovated to another; and the service received was satisfactory. (R.29-30, 33) He had no present plans to move and did not know of anyone else in need of moving services. (R.30) Although he is not presently involved in construction of residential developments, there is a lot of residential development going on in York County. (R.31-32)

Sandy Korman testified that he is the Senior Vice President of the Mortgage Division for Community Bank, York, Pennsylvania. He had previously founded a mortgage brokerage, known as Erie Financial which was bought out by Community Bank about three years ago.

(R.35) He has lived in York County for 20 years. (R.36) He has observed the residential construction that has been going on in York County and surrounding counties in recent years.

(R.37) Community Bank provides financing for residential builders in York County and its surrounding counties. (R.38-39) Mr. Korman had occasion to use Mr. Delauter's services about five times to move his offices into larger facilities as the company grew, and then to their present building as a part of Community Bank. He was satisfied with the service and would recommend Delauter to others who might need residential moving services if this Application were granted.

(R.40-41)

B. APPLICANT'S OPERATING TESTIMONY

John Delauter testified that he is self-employed, trading under the name Delauter's A-1 Moving Helpers. (R.42) The Application filed in this case was under a corporate name, but that corporation has since been dissolved and he is presently operating as a sole proprietor. (R.43) Previous to incorporating, he had operated his business as a sole proprietor since its beginning in 1993. (R.43-44) Delauter's A-1 Moving Helpers holds PUC Authority at A-00121541. It offers a helper's service to anyone needing residential or commercial help as well as loading and unloading storage units. There are 5 full-time employees and 2 or 3 part-time employees. (R.45) Mr. Delauter is the sole manager of the business. His wife, Patricia, "takes care of all of the paperwork" – payroll, licensing, insurance, etc. (R.46-47)

Delauter operates 2 vehicles, a 24 foot box truck and an F-550 with a 32 foot cargo trailer, and it has hand trucks, pads, and other accessorial equipment. (R.47) Offices and vehicle storage are located at 388 Newcomer Road, Windsor, York County, which is also the Delauter residence. (R.47-48)

Mr. Delauter then sponsored the following exhibits which were discussed in his further testimony. Delauter Exhibit 1 shows Applicant's equipment and its facility which is used to house the equipment when it is not in use on the trucks. The first page of Exhibit 1 shows the box truck, garage, truck and trailer, and radio equipment. Page 2 of Exhibit 1 shows the inside of the truck, and the trailer, and some accessorial equipment. Page 3 shows an aerial view of Applicant's facilities, its office, and cargo trailer. (R.50-51) Applicant's Exhibit 2 shows an emissions control test. Exhibit 3 shows the company's vehicle registrations. (R.51-52) Delauter Exhibit 4 is an example of the PUC logs kept by employees. (R.52-53) Rivers Trucking of Red Lion services Applicant's vehicles. Exhibit 5 shows copies of maintenance and repair receipts. (R.54) Employees have background checks and driving record checks and must sign a paper saying that they understand how to operate the company's vehicles. (R.54-55) Exhibit 6 shows ten year driving records of Delauter's employees. (R.56) Exhibit 7 is the Driver's Agreement which must be signed each year. (R.56-57) Exhibit 11 shows the background checks Mr. Delauter had referred to. (R.58-59) Page 1 of Exhibit 8 is Applicant's Certificate of Liability Insurance; Page 2 of Exhibit 8 is the Vehicle Listing. (R.59-60) Books, records, bank account information, etc., are maintained in Quick Books format. Dallastown Tax Service prepares tax returns. Exhibit 9 is an M&T Credit Line statement. (R.62) Exhibit 10 is an M&T Merchant Statement related to Delauter's ability to take credit card payments for services. (R.62) Exhibit 12 is a Quick Books receipt; Exhibits 13 and 14 are examples of company phone bills. (R.62-63) Exhibit 15 is the company's corporate tax return for the year 2005, when it was incorporated. (R.64) Exhibit 16 shows the company's payroll tax account. (R.65-66) Exhibit 17 is Mr. and Mrs. Delauter's personal tax account. (R.66) Applicant's Exhibit 18 is the business account bank statement. (R.66-67) Exhibit 19 is a copy of Delauter's federal authority to transport

household goods granted November 2, 2006. (R.67) Exhibit 20 is a PUC safety inspection. (R.67-68) The company has never filed a petition in bankruptcy, whether as a corporation or as a sole proprietorship. (R.68) The present Application was filed so that the company can be a full service moving company, not just a helper. (R.69) Mr. Delauter has been a resident of York County all his life and has witnessed residential development in the county. Growth has been substantial. (R.69-70)

Exhibit 24 was a Verizon yellow page ad showing a current ad for Applicant's service. (R.70) "It states, All your in and out storage needs." (R.71) Exhibit 21 is a U.S. Census Bureau Report for 2000 for York County; it shows 156,720 housing units. Exhibit 22 is a similar report for 2005, which shows 168,875 housing units. (R.72-73) During the same period, the County's population increased from 381,751 to 400,670. (R.73) Applicant's Exhibit 23 is an Exhibit of Housing Units for all Pennsylvania counties for 2000 and 2005 showing increases. (R.74)

On cross-examination, it appeared that Mr. Delauter was not aware that his Application, as advertised, did not include intra-York County transportation. After an off the record discussion, Applicant agreed to cause the Application to be readvertised in the Pennsylvania Bulletin showing its correct name as a sole proprietorship and the Authority it wished to apply for. (R.75-80) This was subsequently done, pursuant to order of the presiding officer, and no additional protests were filed.

When cross examination resumed, Mr. Delauter testified that he presently holds no household goods authority. However, he has transported household goods from one house to another in Pennsylvania, for compensation. (R.80) In the case of Witness Grube, however, the only transportation rendered for his clients had been as a mover's helper, supplying the manpower and equipment if a customer rented his own truck. (R.81)

He had transported household goods from one house to another originating in Red Lion and destined to West York, both in York County, for compensation, allegedly because the individual could not get a rental truck. He was fined and told by the PUC not to do that again without a license. That was in April, 2006, while the present Application was pending. (R.82)

Mr. Delauter testified that his corporation was formally dissolved through the Department of State. (R.83)

He admitted that he had been transporting household goods from individual residences to a place of storage and also goods that were in storage from the place of storage to a new residential location. He had been doing this "since we got our common carrier, yes" (R.86) None of the storage facilities in question were owned by his company or by him. None involved transportation to or from his facilities on Newcomer Road. (R.87)

C. PROTESTANTS' TESTIMONY

Four representative Protestants presented testimony in behalf of the six Protestants who are parties of record.

Charles Morris, Director of Sales and Marketing for Shelly Moving & Storage, Inc., had been with Shelly for 22 years. His company provides interstate and intrastate and international moves of household goods. (R.89)

Mr. Morris identified Protestants' Exhibit 1 as Shelly's present PUC operating authority. As pertinent to this case, Shelly has the right to do moves between points in York County and also to and from the counties of Adams, Dauphin, Cumberland and Lancaster. (R.90-91) Its trucks and facilities are located in Malvern, York and Harrisburg, (R.91) and it operates

approximately 80 vehicles of various type, employing 100 full-time and 50 part-time employees. About 60 percent of its moves are intrastate. (R.92) Shelly presently has substantial competition for its intrastate services, specifically including transportation between points in York County as well as transportation within the total Application territory. Competitors include Warners in Red Lion, Worley in York, Zeigler's in Carlisle, Rockey in New Cumberland, and Parks out of Harrisburg. Also, in Lancaster County, there are Groff, and Treier, and in Adams County, Gastley's Moving, and numerous others that have authority in Cumberland and Dauphin County, including Harrisburg Storage, George Weaver, Ace Moving, Fiamingo's, Lindeman's and Penn Hershey Transfer. In addition, there are at least two other pending applications involving York County. (R.93-94)

Shelly has not had trouble meeting its customers' needs in the application territory in spite of growth within counties such as York. "The present carriers have stepped up to the plate to handle the additional workloads, so to speak. Adding crew members, adding equipment as necessary, in order to do that." (R.94-95) In addition, Mr. Morris pointed out that 50 to 60 percent of the people who are moving do not engage common carriers, but move themselves. Shelly's customers, he has found, are concerned with experience, stability and longevity. Even though there may be growth in an area, there is still only a certain market of people who will seek the services of common carrier movers. And Shelly has added people and equipment as necessary to meet the public need. (R.95-96)

Shelly has been able to service the Application territory and believes that there are enough competitors currently within this area to take care of the available business. The consumer will not benefit from a weakening of the existing carriers. (R.97-98)

(Shelly's Authority was admitted as Protestants' Exhibit 1)

Gary Henline, General Manager of M.F. Rockey Moving Company, testified he had been with the company for 27 years. (R.107) Rockey's authority basically includes all points within 50 miles of New Cumberland which embraces most of the territory involved in this Application. (R.108) Its terminal facilities are located in New Cumberland and it operates 5 straight trucks, 2 tractor trailers, and 2 packing vans from that facility, using 16 full-time and 4 to 5 part-time employees. (R.109)

About 80 percent of its business is intrastate and 20 percent interstate. Rockey has no trouble meeting the needs of the public. As Mr. Henline stated: "I just don't feel there's a need for another carrier in the market place at the present time. It's tough to go out there and keep the people we have busy now...the moves are starting to slow down." (R.110-111)

(Rockey's intrastate authority was admitted into evidence as Protestants' Exhibit 2)

Brenda Zeigler Davidson, President of Zeigler's Storage & Transfer, Inc., testified that her company is located in Carlisle, Cumberland County, providing interstate and intrastate moving and warehouse services, which it has done since 1887. (R.119) Its authority is primarily in Cumberland, Adams and Dauphin Counties. It operates 14 vehicles and employs 16 full-time and 5 part-time employees. Ninety percent of its business is intrastate. (R. 121) Zeigler's has no difficulty meeting the demands placed upon it by the shipping public. There is already substantial competition. When people are moving, "they, many times, call 5 or 6 movers to get an estimate for their moves. And they have the choice of very competent moving companies out there." (R.122)

(Zeigler's authority was admitted into evidence as Protestants' Exhibit 3)

Steven Warner, General Manager of Warner's Moving & Storage, Inc., testified that his company is engaged in household goods and commercial moving in intrastate and interstate commerce, and overseas as well. (R.127) Based in Red Lion, York County, it operates approximately 80 vehicles, employing 50 persons full-time and 30 part-time. (R.128) About 70 to 75 percent of its business is intrastate. (R. 129) Mr. Warner testified, with respect to the move which Delauter had handled for an individual from Red Lion to West York, that Warner's had provided this individual with an estimate and when they called back to confirm that they were to do the move, she stated that she would rather use Delauter because they gave her a flat rate quote rather than the hourly rate provided in Warner's tariff. (R.129-130) He testified that competition is extremely high already, with competent, legally authorized carriers presently available.

(R.131)

(Warner's authority was admitted into evidence as Protestants' Exhibit 4)

Following the admission of the operating authorities of Camp Curtin Transfer, Inc. (Protestants' Exhibit 5) and Gastley's Moving & Storage, Inc. (Protestants' Exhibit 6) the Protestants rested.

IV. PROPOSED FINDINGS OF FACT

1. Applicant is a sole proprietor based in Windsor, Pennsylvania. It holds common carrier trucking authority from the Commission and was recently granted inter-state operating authority. (R.42-47, 67)

2. Applicant has been fined by the Pennsylvania Public Utility Commission for an unlawful household goods move from Red Lion to West York, taking away a move that Protestant Warners had quoted, by offering a flat rate which undercut Warners' hourly rate based upon its tariff. (R.82, 129-130)

3. This transportation was rendered during April 2006, following the filing of this household goods Application, in which Applicant stated under the equivalent of an oath, (18 Pa. C.S. §4904) that he was not now engaged in any intrastate transportation of household goods in use for compensation between points in Pennsylvania and will not engage in said transportation unless and until authorization is received from the Pennsylvania Public Utility Commission. (R.82, PUC Form 189-H, Paragraph 12)

4. Applicant, while holding itself out to the public through advertising, and otherwise, as a "mover helper", has routinely provided intra-state household goods transportation from residences to storage facilities and from storage facilities to residences. (R.86)

5. None of the transportation to and from storage facilities involve storage facilities owned or leased by applicant, which has no such facilities. (R.87)

6. All four of Applicant's supporting public witnesses were drawn from York County. (R.8, 19, 26, 36)

7. None of Applicant's supporting public witnesses testified to any personal need for household goods transportation between any two points in Pennsylvania, nor did any represent an organization or other entity requiring such service. (R.8-41)

8. Applicant presented no request testimony.

9. Protestant Shelly Moving & Storage, Inc., represented by witness Morris, has authority to transport household goods moves between points in York County and also to and

from the counties of Adams, Dauphin, Cumberland and Lancaster. (R.90-91, Protestant's Exhibit 1)

10. In addition to Shelly's terminals in Harrisburg and Malvern, it has a base of operations located in York, which is central to the application territory. (R.123)

11. Within the application territory, Mr. Morris identified 14 present carriers competing for the business within the application territory, in addition to potential competition resulting from at least two other pending applications involving York County. (R.93-94)

12. Shelly and the other existing carriers have had no trouble meeting customers' needs in the application territory in spite of population growth. (R. 94-95)

13. Fifty to sixty percent of the people who are moving do not engage common carriers, but move themselves; and those who do use common carriers are concerned with experience, stability, and longevity. (R.95-96) The consumer will not benefit from a weakening of the existing carriers. (R. 97-98)

14. M.F. Rockey Moving Company, represented by witness Henline, holds authority within 50 miles of New Cumberland which embraces most of the territory involved in this application. (R.108, Protestant's Exhibit 2)

15. Rockey has difficulty keeping its present employees busy at the present time as moves are starting to slow down. (R. 110-111)

16. Zeigler's Storage & Transfer, Inc., represented by witness Davidson, has authority primarily in Cumberland, Adams and Dauphin Counties, from which no supporting witness appeared. Her company has had no difficulty meeting the demands placed upon it by the shipping public; there is already substantial competition and consumers have the choice of very competent moving companies at the present time. (R.122)

17. Warners Moving & Storage, Inc. is based in Red Lion and is a primary carrier serving York County.

18. This company had lost an intra-York County move to Delauter as a result of a lower price quotation, as Mr. Delauter had previously admitted. (R.129-130)

19. Competition is extremely high at the present time, with numerous competent legally authorized carriers presently available. (R.131)

20. In addition to Shelly, Rockey, Zeigler's and Warners, the two remaining Protestants, Camp Curtin Transfer, Inc. and Gastley's Moving & Storage, Inc. both hold authority to provide household goods transportation services within the application territory. (Protestants' Exhibit 5 & 6)

V. ARGUMENT

A. **APPLICANT HAS FAILED TO ESTABLISH ITS FITNESS TO RECEIVE OPERATING AUTHORITY FROM THIS COMMISSION.**

The Commission's Transportation Regulatory Policy requires that an applicant must establish 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. 52 Pa. Code §41.14(b)

This Applicant has operated a household goods moving service, without requisite authority, in plain violation of the Public Utility Code and the Commission's Rules and Regulations for approximately 14 years. As previously noted, every applicant certifies, under oath, that "it is not now engaged in any intra-state transportation of household goods in use for compensation between points in Pennsylvania and will not engage in said transportation unless

and until authorization is received from the Pennsylvania Public Utility Commission....

Applicant further certifies that it understands the requirements of the Pennsylvania Public Utility Commission ... and that it may be subject to civil penalties, suspension or cancellation of the certificate for failure to comply with Commission requirements.” (PUC Application Form 189-H paragraph 12)

Mr. Delauter freely admitted, and his supporting witnesses confirmed, that he has routinely transported household goods to storage facilities from residences, and to residences from storage facilities, since he obtained his “common carrier” in 1993.

None of the storage facilities in question are owned by him (or his prior corporation) and none of the storage moves were to or from his facilities located at his residence in Windsor.

When presented with the opportunity, this Applicant undercut the estimate of Protestant Warners and took a move quoted by Warners from one residence to another within York County.

Fourteen years of callous disregard for the Public Utility Code clearly demonstrates that the Applicant lacks a propensity to operate safely and legally. On this basis alone, the application should be denied.

B. APPLICANT HAS FAILED TO ESTABLISH A NEED FOR THE PROPOSED SERVICE.

An Applicant seeking motor common carrier has the burden of demonstrating that approval of the Application will serve a useful public purpose, responsive to a public demand or need. 52 Pa. Code §41.14(a)

The record in this case is absolutely bereft of any evidence of any public need for the proposed service. No witness appeared from Adams County. No witness appeared from Cumberland County. No witness appeared from Dauphin County. No witness appeared from

Lancaster County. With respect to York County, a realtor appeared who stated that he had referred clients to Mr. Delauter for the moving of household goods into and out of storage, a service which Mr. Delauter cannot legally provide since he has no storage facilities of his own, although this witness later testified that he did not know whether the services had been from household to household or from storage to a residence.

A witness appeared who owned a car wash and storage facility and who had referred his customers to Mr. Delauter for household goods movements to and from his storage unit facility, a service which Delauter cannot legally provide.

Another witness, a cousin of Mr. Delauter, had referred Delauter's services to a company for a commercial office move which Delauter can already provide under its common carrier authority. He presented no evidence of any kind with respect to residential moves.

The final witness testified that he had used Delauter's services for commercial moves on several occasions.

Applicant presented no request testimony.

Applicant did present two census reports indicating that York County's housing units and population had both increased between 2000 and 2005, and a separate exhibit showing housing units for all Pennsylvania counties which indicated increases between 2000 and 2005.

In the absence of any substantive need witnesses or request testimony, population tables alone are clearly insufficient to establish need for a proposed transportation service under the Public Utility Code and the Transportation Regulatory Policy of the Commission.

An instructive case is Application of Raymond J. Coll, A-00119828 (2004) (wherein the Commission sustained the Initial Decision of the Administrative Law Judge denying the Application). That case involved the transportation of household goods between points in six

Pennsylvania counties and from points in those counties to other points in Pennsylvania and vice versa. In his Initial Decision, the Judge stated

Other than Ms. Grande who hands out a sheet of recommendations over which she had not [sic] control, no witness testified about Beaver, Butler, Fayette or Washington County. Two witnesses testified about Westmoreland County and six about Allegheny County. Even if the witnesses did have current moving needs, I find that, based on the wide breath [sic] of the proposed application area, they do not represent a cross section of the public on the issue of public demand/need for the proposed service.

As noted, these witnesses had personal reasons to testify unrelated to their alleged need for service and none expressed a current need for household goods moving services. ***The speculative nature of their testimony does not support a need for the proposed service. In addition to their testimony not being probative on the issue of their need for household goods moving services, the personal interest of the witnesses reduces the credibility of their testimony. (I.d. @ 36-37), quoted at slip opinion, page 4

The Commission went on to state:

In most cases, it is preferred that witnesses testifying to a need for service have control or some specific responsibility in the selection of carriers to meet a need for transportation service. There may be situations when a specific witness may not have direct control over carrier selection but can still present competent need testimony. Here it is not only the specific witnesses that do not have control over selection of the carrier, the organizations they represent do not have that responsibility. Whether one wishes to label this issue competency or weight, the simple fact is that the two witnesses sponsored by the applicant are too far removed from the carrier selection process to provide the type of need testimony sufficient to support an application of this geographical scope.

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 this 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 observe that household goods need evidence must be viewed in a fashion 'commensurate

with the nature of the service to be provided.’ Williamsport slip opinion at 9.

Thus, Williamsport stands for the proposition that we will not require a rote, formulaic approach to need testimony in household goods applications. But, we will require that need testimony bear some clear nexus between the role of the witness in obtaining transportation services and the proposed service under review. Here, where the two witnesses are not affiliated with the organizations which actually arrange for the transportation services, that nexus is too tenuous to be deemed competent need testimony. Slip Opinion, pp 7-8

Referring again to Application of Williamsport Moving Company, Inc., A-00089650, F.2 AM-E(2004), the Commission stated that statistical data “together with more traditional need testimony, supported a grant of authority in that case.” (Coll, Slip Opinion, pp 12-13)

Most importantly, as we found in our ruling on the Applicant’s first Exception, the traditional need testimony does not reach the level required. Thus, while Williamsport stands for the proposition that statistical data and analysis may be used to supplement need testimony in a given case, the Applicant failed to provide the necessary quality of need testimony in the first instance. Coll, Slip Opinion, pp 13; emphasis added

It is clear that the Applicant has failed to carry its burden of proof as to need.

Application of Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262 (1990). The Commission held in Blue Bird that the testimony of supporting witnesses must be probative and relevant to the application proceeding. Witnesses supporting an application must be legally competent and credible. They must testify with respect to tangible, concrete transportation needs between specific points of origin and destination. Coll confirms that even witnesses in household goods cases must be tested against this standard.

C. AS A CONSEQUENCE OF APPLICANT'S FAILURE TO CARRY ITS BURDEN OF PROOF AS TO FITNESS AND NEED, THERE AROSE NO DUTY ON THE PART OF PROTESTANTS TO PROVE THAT GRANT OF THE APPLICATION WOULD BE INCONSISTENT WITH THE PUBLIC INTEREST.

The evidence presented by Protestants demonstrates that this Application territory is abundantly served by existing, competent carriers who compete for the available traffic. There is no complaint to be found upon this record that these existing carriers have not served the public well. Certainly, in the absence of any proof of need for an additional service, there is no basis for approval of the Application.

Although Protestants may have a heavy burden under the Commission's Transportation Regulatory Policy, that burden never appears until the Applicant has proven fitness and need by substantial evidence having rational probative force. Here, the Applicant has utterly failed to establish either fitness or need for the proposed service.

VI. PROPOSED CONCLUSIONS OF LAW

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

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

3. Applicant in the present proceeding has failed to carry its burden of establishing its fitness to receive a certificate.

4. Applicant has failed to carry its burden of demonstrating that approval of the Application will serve a useful public purpose, responsive to a public demand or need.

5. The supporting witnesses who testified for the Applicant did not present substantial evidence having rational probative force of any need or demand for the service proposed by the Applicant.

6. Applicant presented no request testimony which would warrant approval of the Application.

7. In the absence of traditional supporting witnesses with personal need for service or request testimony, statistical evidence showing growth in a particular region will not support the grant of operating authority.

8. In the absence of proof of need by the Applicant, the burden of proof does not shift to Protestants to establish that approval of the Application would endanger their operations to such an extent that, on balance, the granting of authority would be contrary to the public interest.

VII. PROPOSED ORDER

Upon consideration of the foregoing, we now issue this Order:

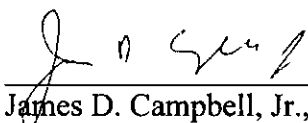
That the Application of John C. Delauter t/d/b/a Delauter's A-1 Services is denied for lack of fitness and necessity.

VIII. CONCLUSION

Applicant has failed to establish that it is a fit and proper person to receive authority from this Commission and has similarly failed to establish need for the proposed service as required under the Commission's Transportation Regulatory Policy, and the cases which have interpreted that policy, specifically Blue Bird. The Application, therefore, should be denied.

Respectfully submitted,

By:



James D. Campbell, Jr., Esquire

CALDWELL & KEARNS

Attorney I.D. No. 07051

3631 North Front Street

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(717) 232-7661

Attorney for Camp Curtin Transfer, Inc., Gastley's Moving & Storage, Inc., M.F. Rockey Moving Company, Shelly Moving & Storage, Inc., Warners Moving & Storage, Inc., and Zeigler's Storage & Transfer, Inc.

Date: 3/15/07

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

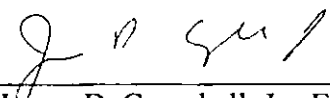
IN RE: APPLICATION OF JOHN C. DELAUTER : A-00122443
T/D/B/A DELAUTER'S A-1 SERVICES :

CERTIFICATE OF SERVICE

James D. Campbell, Jr. hereby certified that he caused two copies of the foregoing Brief to be served to the following parties by the United States Postal Service, First Class, Mail, postage prepaid addressed as follows:

Honorable Judge David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Edward A. Paskey, Esquire
Kagen, MacDonald & France, PC
2675 Eastern Blvd.
York, PA 17402



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Date: 3/15/07

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March 15, 2007

VIA FED-EX

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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Harrisburg, PA 17105-3265

RECEIVED

MAR 15 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Main Brief *A00121541 F0002*
John C. Delauter; PUC Number A-00122443

Dear Mr. McNulty:

Enclosed please find an original and nine copies of the Main Brief of Delauter's A-1 Services.

Sincerely,

KAGEN, MACDONALD
& FRANCE, P.C.

Edward A. Paskey

Edward A. Paskey

EAP:jif

Enclosure

c: James D. Campbell Jr., Esquire
Judge David A. Salapa

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III. **ARGUMENT:**

The basic criteria to be used to determining Motor Carrier Applications is set forth at 52 Pa. Code §41.14. Section 41.14 reads, in pertinent part:

Section 41.14. Evidentiary criteria used to decide Motor Common Carrier Applications.

(a) An applicant seeking motor common carrier authority has the 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 possess the technical and financial ability to provide the proposed services, 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 field would endanger or impair the operation 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 been analyzed by the Pennsylvania Supreme Court in Elite Industries, Inc., v. PA Public Utilities Commission, 574 Pa. 476, 832 A.2d 428 (2003).

Citing Seaboard Tank Lines, Inc. v. PA Public Utilities Commission, 93 Pa. Commonwealth Ct. 601, 502 A.2d 762 (1985) as follows:

The PUC's mandate with respect to the granting of certificates of public conveniences is a broad one :”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.” The legislature, however, provided no definition of specific what the criteria were

to be utilized in determining the propriety of granting of certificate, leaving the formulation of such criteria to the PUC. It is true, as discussed above, that courts have consistently articulated the "inadequacy" requirement as an element of a utilities' application for authority. Nevertheless, it is evident that the policy of the legislature pursuant to which the original criteria were established does not show any intention that expended service be allowed only when existing service is inadequate. Rather, we believe that the policy consists of the more broad intention that the utilities not be allowed to engage in unrestrained or destructive competition, which activity was thought to be, by its very nature, at odds with the public interest.

In the case of 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' a certain transportation demands/need the applicant has sustained his burden of proof under Section 41.14 (a), by establishing that approval of the application will serve a useful public purpose, responsive to the public demand or need.

Bluebird 72 Pa. PUC at 274. Additionally, the Bluebird opinion also expressed the commission's interpretation that it considered the word "demand" and "need" as used in 52 PA Code §41.14 (a) to be "interchangeable terms." See Bluebird, 72 Pa. PUC at 272. Also, under the Bluebird interpretation of Section 41.14(a), shipper support is sufficient to

satisfy the application's burden, and the applicant need not demonstrate either the inadequacy of existing services or alternatives of inadequacy. Under the commission's interpretation of Section 41.14 in the Bluebird case, shipper's support testimony is sufficient to support a finding of need even if the shipper has available to at the services of other carriers. Importantly, the Honorable Court should consider the ruling in Philboro Coach Corp. v. PA. Public Utility Commission, 67 Pa. Commonwealth Ct. 176, 446 A.2d 725 (1982) in that shipper's support testimony is not always necessary to support a finding of "need". Finally, the Court should consider the case of Application of Broadway Moving and Storage, Inc., 1987 Pa. PUC Lexis 111 (1987) in which the commission considered as evidence of need the testimony of two real estate brokers who arranged for, or referred clients to, moving services within the areas proposed to be served. The Philboro and Broadway cases indicate that need may be found on the basis of testimony other than traditional shipper's support testimony.

In our case, Mr. Delauter provided testimony from a real estate agent that services York County, a residential and commercial builder, a storage facility owner, and the vice president of a mortgages division of Community Bank which services all the surrounding counties of York. All of Delauter's witness testified to the boom in residential development in and around York County. The general theme of the testimony of all of Delauter's witness is that York County has been, and is expected to continue to grow both in terms of population and residential constructions. The exhibits submitted by Delauter clearly show that the number of residential units increased by over ten thousand units from the period of 2000 to 2005. None of the witnesses, based on their personal or professional experiences, could foresee a slow down in the residential development market in York

County.

From this testimony, Delauter submits that because there are more people and residential construction in York, Lancaster, Dauphin, Cumberland, and Adams Counties, there must be a corresponding need for additional household goods moving services to service the influx of people and commensurate increase in residential development. Logic stands to reason that an increase in population results in an increase demand in residential construction, as well as commercials and business activity, which translates into a indication of the increasing need for household goods moving service. It is not Delauter's burden to prove that the existing services are inadequate to meet the increasing needs. But while all of the Protestants testified that they have not had a need difficulty in servicing the needs of its clients based on the increase of population in York and the surrounding counties, as well as the residential development, none indicated that their business expanded in any respect in order to accommodate the influx of population and residential development in and around York County. Likewise, all of the Protestants agreed that their businesses have survived additional household to household common carriers over the years. None of the Protestants provided any testimony that their revenues had decreased or remained constant despite the tremendous growth in York and the surrounding counties.

For the foregoing reasons, Delauter's submit that the evidence of record established that the approval of this application will serve a useful public purpose, responsive to a public demand or need.

Delauter's must also demonstrate that it possess the technical and financial ability to provide the proposed services and, in addition, authority may be withheld if the record

demonstrates that the applicant lacks the propensity to operate safely and legally. 52 Pa Code §41.14(b). Delauter's is a certified motor carrier both by the PUC and United States Department of Transportation. A certificated motor carrier that is applying for additional authority enjoys a rebuttal presumption that it is technically and financially fit to provide the proposed service. Re: VIP Travel Services, Inc., 56 Pa PUC 625, 632 (1982). Because Delauter's is a certificated carrier that is now providing service, it has the benefit of the presumption referenced in VIP. The testimony from Mr. Delauter, as well as the exhibits clearly indicate that it has the property, equipment, and personal to run the proposed services. Additionally, Delauter's submitted exhibits to attest to its financial stability as well. Despite the fact that Delauter's was provided with one citation which it readily admitted it committed only because the individuals requesting the household to household move were in dire straits, this alone should not cause the presumption enjoyed by Delauter's to be overcome. One citation in the span of almost 14 years is hardly a propensity to operate legally by the applicant.

IV. **SUMMARY:**

Delauter's has established the basic criteria to be used in determining its motor carrier application as set forth in 52 Pa. Code §41.14. The increase in population in York and surrounding counties, accompanied by tremendous growth in terms of residential construction translates into an increased need for service providers to transfer goods from household to household. Delauter's enjoys the presumption of being technically fit to provide the service. The financial stability and adequate resources of applicant was clearly established of record. Finally, the Protestants provided no statistical or financial data to support their claim that the approval of the application would endanger or impair the

operations of an the protestors.

V. **PROPOSED FINDINGS OF THE FACT:**

1. John Delauter is self employed as a moving helper under the business name Delauter's A-1 Moving Helpers A/K/A Delauter's A-1 Services. (See Transcript, hereinafter "TR" 42)

Delauter's A-1 Services were established in 1993. (TR 44). For a brief period of time, Delauter's was an incorporation but has since been dissolved at the end of 2005 with the business reverting to a sole proprietorship. (TR 43-44).

2. Delauter's currently has a common carrier license through the Pennsylvania Utility Commission, license number A-00121541 and through the US Department of Transportation. (TR 44-45). By this application, Delauter's seeks the 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 County and from points in Lancaster, Dauphin, Cumberland and Adams County to points in York County.

3. For tax year 2005, Delauter's reported a total amount gross receipts and sales for the corporation of \$190,402.00. (TR 65). Delauter's maintains a line of credit at M&T Bank with an existing line of \$35,000.00. (TR 62; Delauter's Exhibit 9). Delauter's also maintains a business account at M&T Bank (TR 62; Delauter's Exhibit 10). Delauter's maintains their internal accounting system by use of QuickBooks (TR 62-63; Delauter's Exhibit 12). Delauter's also maintains separate accounts for payroll taxes, personal taxes, and business account through M&T Bank (TR 65-67; Exhibit 16,17, and 18).

4. Delauter's possesses a certificate from the U.S. Department of Transportation granting it the authority as a common carrier of household goods, certificate

of evidence of a carrier's authority to engage in transportation as a common carrier of household goods by motor vehicles, interstate and foreign commerce. (TR 67; Delauter's Exhibit 19).

5. Delauter's has been inspected by the Pennsylvania Utilities Commission and was issued an evaluation indicating their fitness and safety to conduct their business as licensed by the PUC. (TR 67-68; Delauter Exhibit 20).

6. Delauter's offers itself as a full service company in terms of providing assistance in loading and unloading, but not transportation, of household goods for residential help and commercial moving. (TR 45).

7. Delauter's maintains general liability, automobile liability, workers compensation and employee liability insurance through Glatfelter's Insurance Agency (TR 59-60; Delauter's Exhibit 8).

8. Delauter's maintains an office and storage facility for its equipment at 38 NewComer Road in Red Lion, York County, Pennsylvania. (TR 48).

9. Delauter's has five (5) full time employees and several part-time helpers who work on the weekends numbering between two (2) to three (3). (TR 45).

10. Delauter's conducts criminal background checks on all of its employees (TR 55; Delauter's Exhibit 6 and 11), conducts ten (10) year driving records of all of the individuals employed by the business (TR 56; Delauter's Exhibit 6) has all of his employees sign a driver's agreement indicating that they have read all the appropriate Federal and State rules and regulations and agreed to abide by them. (TR 56-57; Delauter's Exhibit 7).

11. Delauter's advertises it business in the local Verizon Yellow pages. (TR 70; Delauter's Exhibit 24).

12. Delauter's currently utilizes two (2) business vehicles, a small 24 foot box truck and Ford F-550 with 32 foot cargo trailer. (TR 47; Delauter's Exhibit 1). The vehicles are inspected with in accordance with Pennsylvania, U.S. DOT requirements. (Delauter's Exhibit 2, 3). Delauter's utilizes professional services for the maintenance of its vehicles (TR 53) and requires employees to fill out a daily log indicating the time the vehicles were logged in and out of use (TR 52-53; Delauter's Exhibit 54).

13. Delauter's provides moving pads and dollies to its customers (TR 57; Delauter's Exhibit 1).

14. Scott Grube is a realtor for Morgan Collins in York, Pennsylvania, (TR 7). Mr. Grube has been a realtor in York County for 24 years and is licensed to practice as a realtor in the Commonwealth of Pennsylvania. (TR 8). Mr. Grube has known Mr. Delauter for approximately 15-17 years and has utilized Mr. Delauter's services for purposes of moving goods in and out of storage. (TR 8-9). Mr. Grube has been satisfied with the services of Delauter's and has never had any items damaged. (TR9). If Delauter's application had been granted, Grube would recommend Delauter's to his friends, relatives, or acquaintances who would need moving services, as well as customers of his real estate practice. (TR 9-10). Mr. Grube would consider requesting a quote from Delauter's for the purposes of moving household goods from household to household. (TR 10). Mr. Grube testified that the amount of real estate development in York County over the last five (5) years has "sky rocketed". (TR11). Based on his experience, Mr. Grube is aware of 50 to 60 new home communities that are represented through out York County in terms of residential development. (TR 12). Based on Mr. Grubes observations and experience, he does not foresee and slow down or lack of development for new housing construction for

York County in the foreseeable future. (TR 13). Mr. Grube opined that based on his profession and the amount of development in the residential real estate market in York County he perceives that there is a need or public demand for additional carriers to assist individuals that are moving into a newly constructed residence. (TR 13-14).

15. John Slatky is self employed and maintains a business of a self service car wash and a small self storage facility. (TR 20). Mr. Slatky has been a resident of York County since 1972. (TR 20). Mr. Slatky had in the past recommended Delauter's Services to individuals who were storing goods in his facility and has never heard any individual register dissatisfaction about the services that Delauter's provided. (TR 20-21). Slatky would have no reservation from recommending Delauter's Services to his friends, relatives and acquaintances who need moving services if the application were granted (TR 21). Slatky has had the opportunity to observe the amount of residential development in York County over the last five (5) years and describes that growth, and also the growth in Lancaster County as "tremendous". (TR 22). Slatky does not see a decline or slow down in residential development in York County over the next two (2) to three (3) years (TR 22-23).

16. Scott Deitz is the owner of a construction company located in York County known as C.C. Deitz, Incorporated, which is family owned corporation in which he has personally owned for the last 22 years. (TR 26-27). The family business has been in existence for 85 years. (TR 27). CC Deitz, Inc. is engaged in custom residential construction, remodeling, new homes, new additions, and a small amount of commercial construction. (TR 27). Mr. Deitz has had the opportunity to refer Delauter's business in the past to assist in the move of commercial items from the York International facility in

York approximately 3 to 4 years ago. As he was the general contractor of the project. (TR 28-29). To his knowledge, none of the items were damaged or broken during the move and he had not heard any complaints about the quality of the services Delauter's provided. (TR 29-30). Mr. Deitz would be willing to recommend Delauter's to friends, relatives or acquaintances who would be in the need of moving services if the application were granted. Mr. Deitz describes the residential development in York County over the last five (5) years as "the explosion of the housing market in our whole general region." (TR 31). Mr. Deitz describes that drive "anywhere in the York County area, drive one (1) mile radius and you will see some kind of new development going on." (TR 31). Based on his observations in the real estate market, he does not foresee a slow down of the residential development in the foreseeable future in York County. (TR 31).

17. Sandy Korman is the Senior Vice President of the mortgage division of Community Bank and Blue Ball, Lancaster County. His professional address is 4185 West Market Street, York, Pennsylvania. (TR 35). Mr. Korman has been a resident of York County for the last 20 years. (TR 36). In Mr. Korman's professional capacity, he has held a position on the PA State Board of the State Mortgage Bankers and has been in tune with the residential mortgage market in surrounding states and counties including York, Harrisburg (Dauphin), Lancaster, Chambersburg (Cumberland) and Adams Counties. (TR 36). Mr. Korman has witnessed first hand in his professional capacity the amount of development in York, Dauphin, Lancaster and to a lesser extent, Adams County. Mr. Korman's bank does not share a vision that the amount of residential development in York and the surrounding counties will experience a decrease or slow down in the amount of residential development, not anywhere in the next five years. Mr. Korman has utilized the

services of Delauter's for five (5) separate occasions to move his business offices to different locations as the business grew. (TR 40). He has had no dissatisfaction with the services provided by Delauter's (TR 40). If this application was granted, Mr. Korman would recommend Delauter's Services to friends, relatives, and acquaintances who would need a residential moving services. (TR 40-41).

18. From the year 2000- 2005 United States Census Bureau documented an increase in the total housing units in York County from 156,720 to 168,875 residential units. (Delauter's Exhibits 21-22). Total population in York County in 2000 was 381, 751 an increase to 400,670 in the year 2005 (Delauter's Exhibit 21-22). The Census Bureau has also published statistics for Adams, Cumberland, Dauphin, Lancaster, and York Counties indicating the population in all counties has increased between 2000 and 2005 and none of the counties have experienced a decrease in the number of housing units. (TR 73-74; Delauter's Exhibit 23).

Annual Estimate of Housing Units for Counties In Pennsylvania

<u>County</u>	<u>July 1, 2005</u>	<u>April 1, 2000</u>
Adams County	38,693	35,831
Cumberland County	92,328	86,951
Dauphin County	114,955	111,133
Lancaster County	190,744	179,990
York County	168,875	156,720

VI. **PROPOSED CONCLUSION 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 the record establishes that the proposed services will serve a useful public purpose, responsive to a public demand;
3. The evidence of record establishes that the proposed services will serve a useful public purpose, responsive to a public demand;
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; and
6. The application should be approved.

VII. **PROPOSED ORDERING PARAGRAPHS SPECIFICALLY IDENTIFYING THE RELIEF SOUGHT:**

1. That the application of Delauter's A-1 Services at Docket No A-00122443 is approved and the certificate issued to applicant at A-00122443 is amended to include the following right:

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

2. That Delauter's A-1 Services shall not engage in any transportation

authorized herein until it has complied with the requirements of the Pennsylvania Public Utilities Code and regulations of this Commission relating to the filing and acceptance of a tariff establishing just and reasonable rates.

3. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to Delauter's A-1 Services shall not be construed as conferring more than one operating right.

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

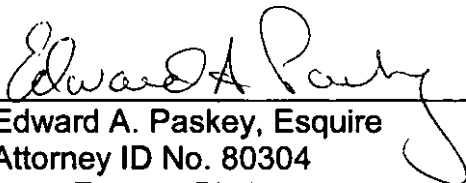
5. That if Delauter's A-1 Services has not, on or before 60 days from receipt of this Order, complied with the requirements set forth above, this application shall be dismissed without further proceedings.

VIII. **CONCLUSION WITH REQUESTED RELIEF:**

Wherefore, this Honorable Court should conclude that Delauter's has satisfied its burden set forth in the policy statement codified at 52 Pa. Code §41.14 and Application at A-00122443 be approved.

Respectfully Submitted:

KAGEN, MACDONALD & FRANCE, P.C.



Edward A. Paskey, Esquire
Attorney ID No. 80304
2675 Eastern Blvd.
York, PA 17402-2905
Phone: (717) 757-4565

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION

In the Matter of:

Application of Delauter's A-1 Services, Inc. : A-00122443
A Corporation of the Commonwealth of :
Pennsylvania, for the right to transport, as a :
common carrier, by motor vehicle, household :
goods in use, from points in York County to :
points in Lancaster, Dauphin, Cumberland and :
Adams Counties and vice versa. :

CERTIFICATE OF SERVICE

AND NOW, to wit, this 15th day of March, 2007, I, Edward A. Paskey, Esquire, do hereby certify that I have this date served a copy of the foregoing Main Brief of Delauter's A-1 Services by depositing same in the United States Mail, First Class mail, postage prepaid, addressed to counsel of record as follows:

James D. Campbell, Jr., Esquire
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA 17110

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

David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 326
Harrisburg, PA 17105

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Respectfully Submitted:

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OF COUNSEL
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March 29, 2007

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

ORIGINAL

**Re: Application of John C. Delauter t/d/b/a Delauter's A-1 Services
Docket No. A-00122443**

Dear Secretary McNulty: *A-00121541 F0002*

Please find enclosed herewith the original and nine copies of the Reply Brief on behalf of Protestants Camp Curtin Transfer, Inc., Gastley's Moving & Storage, Inc., M.F. Rockey Moving Company, Shelly Moving & Storage, Inc., Warners Moving & Storage, Inc., and Zeigler's Storage & Transfer, Inc. in the above matter. In accordance with the Certificate of Service, copies have been served upon the Administrative Law Judge and the attorney for Applicant.

Sincerely,

J D Campbell
James D. Campbell, Jr.
CALDWELL & KEARNS

JDC:ml
Enclosures
cc: Honorable David A. Salapa
Edward A. Paskey, Esquire
Protestants

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: APPLICATION OF JOHN C. DELAUTER T/D/B/A
DELAUTER'S A-1 SERVICES

DOCKET NO. A-00122443

ORIGINAL

REPLY BRIEF ON BEHALF OF PROTESTANTS CAMP CURTIN TRANSFER, INC.,
GASTLEY'S MOVING & STORAGE, INC., M.F. ROCKEY MOVING COMPANY,
SHELLY MOVING & STORAGE, INC., WARNERS MOVING & STORAGE, INC.,
AND ZEIGLER'S STORAGE & TRANSFER, INC.

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James D. Campbell, Jr., Esquire
CALDWELL & KEARNS
Attorney I.D. No. 07051
3631 North Front Street
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(717) 232-7661 - Phone
(717) 232-2766 - Fax

I. INTRODUCTION

Two points raised in Applicant's Main Brief require response. First, the conclusion that Applicant has proven need for its proposed service is not supported by evidence meeting the legal standard. Second, the record establishes that Applicant has transported household goods for compensation for 14 years without holding the requisite authority from the Commission to do so, thereby establishing its lack of fitness to receive a certificate.

II. ARGUMENT

A. **There is no evidence having rational probative force which would establish need for the proposed service.**

Applicant's supporting witnesses were comprised of a realtor friend, two business acquaintances, and a cousin, all of whom were from York County. Not a single one of these supporting witnesses presented evidence of any tangible present personal need for transportation of household goods between any points in the Application territory. Nor did any make arrangements for the transportation of household goods between any two points in the Application territory.

In the absence of substantive testimony from witnesses, Applicant seeks to rely on statistical data indicating that the population in the Application territory is increasing, as are the number of housing units. No evidence was presented that any of this increasing population or any of these new housing units are not completely and adequately served by the existing carriers and no complaints of any kinds may be found on this record to indicate that the existing carriers have not adjusted and made such increases as may be necessary in terms of equipment and personnel, to address growing needs.

How can it be said that there is any need for the proposed service in the absence of any public witness coming forward to testify that they have a demand or need for such service?

The cases cited by Applicant do not support the conclusion it seeks. As Applicant observes in Blue Bird, shipper's support testimony is sufficient to support a finding of need even if the shipper has available to it the services of other carriers. However, there is no supporting shipper witness testimony in this record.

Applicant's reliance upon Philboro Coach and Broadway Moving, is misplaced. In Philboro, the Applicant presented three types of testimony in support of its application: request testimony (no request testimony was presented in this case); evidence of inadequacy of the existing service due to shortages of equipment (no evidence of inadequacy of existing service appears in this record); and the testimony of travel agents actually arranged for transportation for others (no testimony appears in this record of any transportation arranged for others by any of Applicant's witnesses).

In Broadway Moving, the two realtors who appeared actually made arrangements for clients, unlike witness Grube who simply referred people to Applicant and was not clear in his testimony as to how they were served, and was later contradicted by Applicant as to the service he had provided to people referred by Mr. Grube.

Other cases such as Lime Light Limousine, Inc. v. Pennsylvania Public Utility Commission, 570 A.2d 1378 (1990) involved testimony from persons other than actual users of the proposed service. In Lime Light, these witnesses established inadequacy of existing service based upon inability of existing carriers to supply equipment, and these deficiencies were presented through the testimony of person actually making transportation arrangements for other people. No such evidence whatsoever appears in this record.

In Williamsport Moving, cited in Protestants' Main Brief, the census population exhibits were supplemented by evidence of inadequacy of existing service. As argued in our Main Brief, Coll, supports the proposition that there has to be something of substantive testimony bearing upon need to give viability to mere statistical evidence which essentially proves nothing as to need.

B. The evidence of record establishes lack of fitness, not fitness.

Applicant testified that he had been transporting household goods for compensation ever since he had received his "Common Carrier," some 14 years ago. Witness Slatky regularly referred persons to Mr. Delauter for transportation to or from his storage unit facility.

In its Main Brief, Applicant offers a Proposed Finding of Fact that Delauter offers itself as a full service company in terms of providing assistance in loading and unloading, but not transportation of household goods for residential help and commercial moving. (Applicant's Proposed Finding of Fact Number 6)

This Finding of Fact completely contradicts the testimony of Mr. Slatky and Mr. Delauter himself, who testified that he has been transporting household goods ever since he received his "Common Carrier."

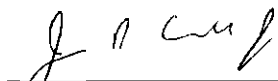
Applicant also argues in its Brief that Delauter's only citation from the Commission was committed "because the individuals requesting the household to household move were in dire straits" As Protestant Warner testified, this was not an instance of anyone being in "dire straits"; it was simply an opportunity for Delauter to undercut the Warner proposal based upon its tariff, and take away a move which Warner was ready, willing, and able to provide based upon its previous provision of a quote to the shipper. One wonders how many such instances may have occurred without the imposition of a citation of the Commission.

III. CONCLUSION

Applicant's evidence establishes its lack of fitness and further, it presented no evidence of any tangible, concrete transportation needs between specific points of origin and designation within the Application territory. As a consequence, the Application must be denied.

Respectfully submitted,

By:



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Date: March 29, 2007

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: APPLICATION OF JOHN C. DELAUTER : A-00122443
T/D/B/A DELAUTER'S A-1 SERVICES :

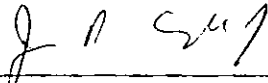
CERTIFICATE OF SERVICE

James D. Campbell, Jr. hereby certified that he caused two copies of the foregoing Reply Brief to be served to the following parties by the United States Postal Service, First Class, Mail, postage prepaid addressed as follows:

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