

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) Application No. M-14107  
TTEMM, Inc. dba Two Men and a Truck ) Supplement 1  
Omaha, Nebraska seeking to extend )  
the authority as a common carrier )  
in Nebraska intrastate commerce in ) Granted  
the transportation of household )  
goods in and within a 60-mile radius )  
of Omaha over irregular routes. ) Entered: January 12, 1998

APPEARANCES: Marshall D. Becker  
600 Professional Tower  
105 S. 17th Street  
Omaha, NE 68102  
Legal Counsel for Applicant

BY THE COMMISSION:

By application filed August 19, 1997, TTEMM, Inc., dba Two Men and a Truck, Inc. of Omaha, Nebraska, seeks to extend its authority as a common carrier in Nebraska intrastate commerce in the transfer of household goods between points within a 60-mile radius of the Omaha metropolitan area over irregular routes. Notice of this application was published in The Daily Record, Omaha, Nebraska, on August 20, 1997. Protests to the application were filed by Star Warehousing Company; Benson Transfer and Storage Company; Gordon Moving & Storage Company and Ford Van Lines. A hearing on the application was held on December 3, 1997, in the State Office Building, Omaha, Nebraska, with appearances as shown.

OPINION AND FINDINGS

Applicant produced two witnesses. First, the owner, Eileen Marrison testified: TTEMM currently has authority to operate as a common carrier of household goods within a 15-mile radius of the Omaha metropolitan area. Applicant is seeking to extend its authority to 60 miles because she has had to refer numerous potential customers to competitors that have the appropriate authority. She has received approximately one telephone call, per week from Nebraska City requesting service. She has also received requests to provide service in Lincoln which had to be turned down due to the lack of authority. Further, she stated the rates presently offered by large, well known moving companies are similar to those charged by TTEMM making it difficult to compete. She stated having expanded authority would make it easier to compete with the large moving companies.

Bernadette A. Tate testified: She is an attorney with the law firm, Kutac Rock in Omaha. She has used TTEMM twice and was pleased with the services that were provided. She has recommended TTEMM to others in her law firm. Several colleagues, as well as friends have used TTEMM and have been extremely satisfied with the services that has been provided. She said one colleague inquired as to whether or not TTEMM was able to provide service to Lincoln.

This protestant appeared in opposition to this application.

John Wavra, president of Gordon Moving and Storage, testified: It unnecessary to grant the application because Nebraska is already well represented by moving companies currently in operation.

Neb. Rev. Stat. Section 75-311 (Reissue 1996) in pertinent part provides:

A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied. \*\*\*

The evidence shows that applicant has considerable experience in the household goods moving industry. She has the equipment and the capacity to add equipment necessary to perform the service provided. The applicant appears to be financially sound. The protestants did not challenge applicant's fitness, willingness and ability.

An indication of public interest, convenience and necessity is a determination of existing need, or need which will likely occur within the reasonably immediate or foreseeable future. The witnesses that appeared in support of the applicant confirm that applicant's service has been and should be continued. The evidence further shows that applicant's service will be needed within a 60-mile radius of Omaha, in areas such as Nebraska City. We find the evidence supports a grant of authority.

From the evidence adduced, and being fully informed in the premises, the Commission is under the opinion and finds:

1. Applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of Neb. Rev. Stat. Sections 75-301 to 75-322, (Reissue 1996), and the requirements, rules and regulations of the Commission thereunder.
2. The proposed intrastate service is or will be required by the present or future public convenience and necessity to the following extent:

CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

Household goods between points in and within a 60-mile radius of Omaha, Nebraska, over irregular routes.

3. The applications should be granted.

O R D E R

IT IS THEREFORE ORDERED, by the Nebraska Public Service Commission that Application No. M-14107, Supplement 1 be, and it is hereby, granted; and that upon compliance with the terms and conditions set forth in this Order, a certificate of public convenience and necessity shall be issued to TTEMM, Inc. dba Two Men and a Truck, Omaha, Nebraska, in Application M-14107, authorizing the operations set forth in the foregoing findings.

IT IS FURTHER ORDERED that applicant shall not be issued the certificate of public convenience and necessity authorized by the Commission unless and until applicant has fully complied, within a reasonable time from the effective date of this Order, with Neb. Rev. Stat., (Sections 75-305 (fees), 75-307 (insurance), and 75-308 (rates), (Reissue 1996) and with the rules and regulations of the Commission; and if upon expiration of such time applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to applicant, be of no further force and effect.

IT IS FURTHER ORDERED that applicant shall not conduct operations until a certificate of public convenience and necessity is issued.

IT IS FURTHER ORDERED that applicant shall render reasonably continuous and adequate service to the public pursuant to the authority authorized.

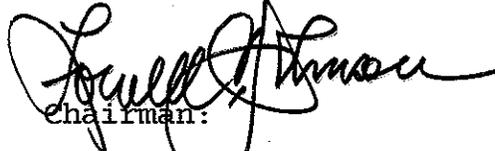
IT IS FINALLY ORDERED that the certificate of public convenience and necessity authorized herein shall be subject to the terms, conditions and limitations which have been, or may hereafter be, prescribed by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of January, 1998.

## NEBRASKA PUBLIC SERVICE COMMISSION

## COMMISSIONERS CONCURRING:

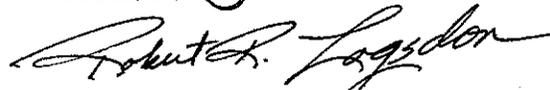
//s//Anne C. Boyle  
 //s//Lowell C. Johnson  
 //s//Rod Johnson

  
 Chairman:

## COMMISSIONERS DISSENTING:

//s//Frank E. Landis

ATTEST:

  
 Executive Director

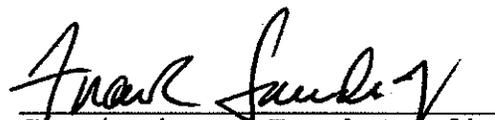
## DISSENT OF COMMISSIONER LANDIS:

I cannot agree with the majority's conclusion that applicant's evidence meets the public convenience and necessity test set forth in Neb. Rev. Stat. Section 75-311(1) (Reissue 1996).

In determining public convenience and necessity, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. In Re Application of Kilthau, 236 Neb. 811 (1991).

Of the three public convenience and necessity factors, not all need to be addressed because an affirmative response to the second factor negates any response to the first factor. Regarding public demand or need, the question of adequacy of service of existing carriers is implicit in the issue of whether public convenience and necessity demand the service of an additional carrier in the field. The existence of an adequate and satisfactory service by motor carriers already in the area is complete negation of public need and demand for added service by another carrier. Kilthau, supra at 816.

While it is clear from the evidence that the applicant is certainly fit to provide the service requested, it is equally clear that the applicant has not shown that there are citizens in the area that she wishes to serve who are being denied adequate or satisfactory service. Absent such a showing, the application should be denied.

  
 Commissioner Frank Landis