

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) APPLICATION NO. M-14114
Jim's Moving and Delivery, Inc.,) SUPPLEMENT 2
Omaha, seeking to acquire, through)
transfer, the authority as a common)
carrier in Nebraska intrastate)
commerce granted to Robert D.)
Ambrosek dba Ambrosek Moving Company) GRANTED AND CERTIFICATE
in Certificate M-14146, which reads) M-14146 REVOKED
as follows: COMMON: Household goods)
between all points in Nebraska over)
irregular routes. Applicant requests)
temporary operating authority pending)
the grant of the permanent authority.) ENTERED: SEPTEMBER 1, 1998

APPEARANCES: For the Applicant:

Marshall D. Becker, Esq.
477 Continental Building
109 S. 19th Street
Omaha, NE 68102

For the Staff:

Deonne Bruning
300 The Atrium, 1200 N Street
Lincoln, NE 68509-4927

BY THE COMMISSION:

By application filed April 30, 1998, Jim's Moving and Delivery, Inc., seeks authority to acquire, through transfer, the authority granted to Robert D. Ambrosek dba Ambrosek Moving Company in Certificate M-14146. Notice of the application was published in The Daily Record, Omaha, Nebraska, on May 1, 1998, pursuant to the rules of the Commission. Protests to the application were filed by Star Warehousing dba Apartment Mover of Lincoln, Borley Moving & Storage, Inc., Chieftain Van Lines, and Gordon Moving & Storage Co., Inc. Hearing on the application was held July 15, 1998, in the Commission Library with appearances as shown.

E V I D E N C E

Applicant produced two witnesses.

Robert Ambrosek testified: He applied for authority before the Commission under the name Robert Ambrosek dba Ambrosek Moving Company as a common carrier in Nebraska intrastate commerce in the transportation of household goods, between points in Nebraska over irregular routes. Mr. Ambrosek was granted this authority on November 25, 1997, pursuant to Application No. M-14146. He has operated under Certificate M-14146 ever since it was granted, during which time, he made two moves. He produced the billing statements from the two moves, which were received into evidence

as Exhibits 1 and 2. He stated he transferred his Certificate because of financial problems. He was unable to get his name in the Yellow Pages of the phone book before it was published, which was devastating to his business. He advertised in papers and with realty companies. No limits were placed on the advertisements and he never turned down a load.

Brad Woodle testified: He is the owner of the applicant. He holds authority from the Commission to move household goods within a 20 mile radius of the Omaha metro area. Application No. M-14114, was granted on January 7, 1997. He is fit, willing and able to perform the authority sought. He has an office and four moving vans in Omaha. He has owned the company for 18 years, and desires to provide statewide service. He produced a copy of the application, which was received into evidence as Exhibit 3. Page two of Exhibit 3 is a financial statement showing the financial condition of the company. He produced a copy of the contract of sale for the Certificate, which was received into evidence as Exhibit 4. If granted authority, he would hold himself out as transporting household goods between all points in the state. He will advertise in phone books in various cities around the state.

Two witnesses appeared on behalf of the protestants.

Dennis Leslie, vice-president of Chieftain Van Lines, Inc., stated as follows: The Nebraska Supreme Court recently affirmed the Commission's action denying Nebraskaland authority because there was no public need and necessity. In Re Nebraskaland Leasing & Associates, 254 Neb. 583 (1998). He believes that the applicant has not put on any evidence to prove need.

Jack Andrews, chairman of Star Warehousing Co., stated as follows: He believes that need has not been shown and that only two moves were made in five months.

O P I N I O N A N D F I N D I N G S

Neb. Rev. Stat., Section 75-318 in pertinent part says:

It shall be lawful, only under the conditions specified in this section, for any motor carrier or nonmotor carrier, or two or more motor carriers to: *** (2) Purchase, ... the ... certificates, ... of another motor carrier; or *** Whenever a ... purchase ... of the ... certificates ... is proposed, the ... person seeking authority therefore shall present an application to the commission, and thereupon the commission shall notify such carriers and other parties known to have an interest of the time and place for a public hearing in accordance with such rules as the commission shall adopt. If, after such hearing, the commission finds that the transaction proposed will be consistent with the public interest and does not unduly restrict competition and

that the applicant is fit, willing, and able to properly perform the proposed service, it may enter an order approving and authorizing such ... purchase, ... of (a) ... certificate ... upon such terms and conditions as it shall find to be just and reasonable; Provided, that if any of the certificate or permits proposed to be ... transferred ... are dormant the commission may approve an application for ... transfer ... only upon proof of and a finding that such ... transfer ... is or will be required by the present and future public convenience and necessity, in the same manner as provided in Section 75-311; and provided further, that if the proposed ... transfer ... of the certificate ... will permit or result in a new or different service or operation as to territorial scope than that which is or may be rendered or engaged in by the respective parties, or, as to passenger motor carriers will tend to enlarge competition over that then existing, the commission may approve such an application for ... transfer ... only upon the basis of proof of and a finding that the proposed ... transfer ... is or will be required by the present and future public convenience and necessity, in the same manner as provided in Section 75-311. ***

Protestants did not offer any evidence that the applicant is not fit, willing, or able to properly perform the service proposed. The evidence shows that applicant is currently a certificated carrier, and having four vans shows that the applicant is well equipped. Exhibit 3 shows applicant is in a very stable financial position. Clearly, applicant is fit, willing, and able properly to perform the additional service proposed and to conform with the statutes and rules of the Commission thereunder.

Protestant, Dennis Leslie, argues that because of the Nebraska Supreme Court's ruling in Nebraskaland, the applicant must prove public convenience and necessity. However, that case involved an equipment lease agreement and not a transfer of authority as in the present application. The need requirement does not apply to this transfer of operating authority. Neb. Rev. Stat., Section 75-318 is clear that when an applicant already having authority and seeking to acquire by transfer, a certificate with a larger territorial scope, the applicant needs to prove only that it is fit, willing, and able. The showing of public convenience and necessity is not required.

Nothing in the testimony of the protestants showed that approval of this transfer would not be in the public interest. Evidence shows that the authority is not dormant. There has been no showing that transfer of the authority requested would result in any significant new or different service. The Motor Carrier Act was not enacted to stifle competition nor preserve the status quo. It is in the public interest that carriers grow and expand their service within the limits of their authorities. The Commission

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files show that none of these protestants filed protests to the granting of Robert D. Ambrosek dba Ambrosek Moving Company's authority. There was no showing that Jim's Moving and Delivery Co. would operate the Ambrosek's authority so as to diminish the traffic now enjoyed by the protestants. If the protestants continue to render good service to their present customers, nothing in this record would indicate that they stand to lose traffic to the applicant. If they do not continue to render the service required by their customers, it is in the public interest that the Commission maintain other carriers in the field to provide the level of service required by the moving public.

After due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing, and able properly to perform the proposed service.
2. The proposed transfer of operating rights will be consistent with the public interest and will not unduly restrict competition.
3. The certificate issued in Application M-14146 is not dormant.
4. A certificate should be issued in Application M-14114, Supplement 2 authorizing the following operations:

CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

COMMON: Household goods between all points in Nebraska over irregular routes.

5. The certificate issued in Application M-14146 should be revoked and cancelled.

O R D E R

IT IS, THEREFORE, ORDERED, by the Nebraska Public Service Commission that Application M-14114, Supplement 2 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 Jim's Moving and Delivery Co., Inc., in Application M-14114, Supplement 2, authorizing the operations set forth in Paragraph No. 4 of the foregoing findings; and that to avoid a lapse in authority, the Certificate of Public Convenience and Necessity issued in Application M-14146 shall be revoked and cancelled simultaneously with the issuance of a Certificate of Public Convenience and Necessity in Application M-14114, Supplement 2.

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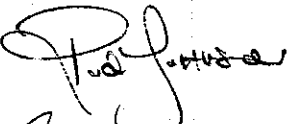
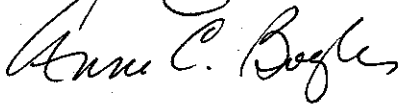
IT IS FURTHER ORDERED that applicant shall fully comply, within a reasonable time from the effective date of this Order, with Neb. Rev. Stat., Sections 75-305 (fees), 75-307 (insurance), and 75-308 (rates), (Reissue 1996), and with the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the operations 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 1st day of September, 1998.

NEBRASKA PUBLIC SERVICE COMMISSION

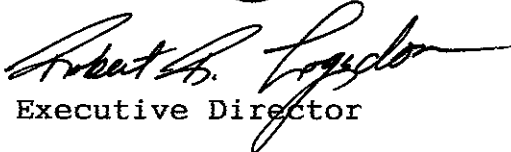
COMMISSIONERS CONCURRING:

//s//Lowell C. Johnson
//s//Frank E. Landis


Chairman

ATTEST:


Executive Director

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