

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of General Delivery, Inc., Omaha, Nebraska, seeking authority as a common carrier in Nebraska intrastate commerce in the transportation of household goods between points in and within a 25-mile radius of Omaha over irregular routes. ) APPLICATION NO. M-14143  
)  
) GRANTED AS AMENDED  
) ENTERED: NOVEMBER 4, 1997

APPEARANCES: None

BY THE COMMISSION:

OPINION AND FINDINGS

By application filed January 22, 1997, General Delivery, Inc., Omaha, Nebraska, seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of household goods between points in and with a 25-mile radius of Omaha over irregular routes. Notice of the application was published in the Daily Record, Omaha, Nebraska, on July 24, 1997. Protests to the application were filed on August 21, 1997, by Gordon Moving and Storage Company, Inc. and on August 22, 1997, by Chieftain Van Lines. Hearing on the application was held on October 3, 1997, in Omaha with appearances as shown.

Applicant produced one witness in support of his application, Jay Jensen, who testified: He amends the application by reducing the territorial request from 25 miles to a five-mile radius of Omaha. He and his wife own and operate the applicant. He is a graduate of Creighton University in 1991 with a degree in business. He purchased General Delivery in 1992. Applicant is an established parcel delivery service with a 30-year history. It delivers products produced by Omaha printing companies and other customers such as GE Supply, Computer Land, Methodist Health Systems and others. Applicant has two employees and three trucks. It specializes in same-day commercial pick-up and delivery. He has occasional requests from customers' associates to help do moves of business and/or household furnishings. He wants to serve customers with any of their delivery needs. He wants to comply with the applicable rules and regulations for the business. His largest truck is a 15-foot box van. About once a month he is asked to perform the movement of household goods. He would perform the moving business after hours and on weekends. He performed occasional household goods moves since 1992 when such operations were exempt. He was notified by the Commission that he needed authority after the grandfather period expired. The retained earnings and stock of \$41,502.00 shown on the corporate balance sheet of December 31, 1996, has not changed substantially. He expects to do better than the \$31,140.00 profit shown on his last profit and loss statement. Applicant operates three trucks.

Protestant Gordon Moving and Storage Co. Inc. produced one witness, John Wavra, who testified: He questions the applicant's ability to move household goods with parcel vans. General Delivery of freight is a lot different than handling household goods. He has no real problems with the applicant. He rarely protests on the basis of fitness. His protest is on the basis of need. The Legislature gave more than adequate time for anybody interested in moving within a five-mile radius to obtain

grandfather authority. More than a year has passed since the grandfather period expired. The applicant produced no witnesses to establish any kind of a need. There are already 30 movers in the vicinity of Omaha with a five-mile radius authority. Applicant has a yellow page ad this year. If the applicant can prove to the Commission that he was in business through freight bills, then he has an argument.

Protestant Chieftain Van Lines produced one witness, Dennis Leslie, who testified: Need has not been shown. Applicant does not need any authority to make moves of business furniture. No need was shown nor any evidence shows that applicant has done household goods moving prior to the application. Applicant has not shown that he has all the equipment and pads that go with the household goods moving business. Applicant will be a selective mover.

Scott Vaughn offered a comment: Applicant is probably capable of doing the business. Applicant did not prove a need. There are too many household goods movers in Omaha now. No more household goods movers are needed in Omaha.

Eileen Marrison testified: She is affiliated with Two Men and A Truck. She feels that there are enough local moving companies to take care of the basic needs. Applicant can already do commercial moves. If applicant could prove that he has made household goods moves in the past with billings, her firm would have no problem with the application.

Following the statements of protestants and public witnesses, Mr. Jensen offered the following rebuttal: He has the equipment needed for household goods moving. He has approximately 50 pads. He also has appliance dollies. He has a record of the moves he has made and will furnish a list of them through his accountant as a late-filed exhibit. He does not have the yellow page ad attributed to him by protestants.

Applicant's late-filed Exhibit No. 2 shows that applicant performed household goods moving within Omaha during 1995, 1996 and 1997.

Although applicant did not avail itself of the grandfather rights in Neb. Rev. Stat. 75-304.02 (Reissue 1996) which provides:

(1) Any mover of household goods operating in a city or village of this state or within a radius of five miles of the corporate limits of such city or village and engaged in the transportation for hire of household goods in such city or village or within such five-mile radius prior to January 1, 1996, may continue operations for a period of up to one year after April 4, 1996, without obtaining a certificate of public convenience and necessity or a permit issued by the commission authorizing such operations. Beginning on and after one year after April 4, 1996, such mover of household goods shall be subject to sections 75-301 to 75-322.

(2) During the one-year period after April 4, 1996, the commission shall grant the authority to engage in the transportation for hire of household goods in such city or village or with such five-mile radius to any such mover of household goods which applies to the commission and furnishes evidence of its operations in a manner and form as directed by the commission by rule and regulation. The authority to engage in the transportation of household goods shall become effective one year after April 4, 1996.

It appears that the applicant could have qualified under that statute. Mr. Jensen testified that he was not aware of the statute and filed this application only after being apprehended after the grandfather period had actually expired. Therefore, this application must be construed according to Neb. Rev. Stat. 75-311 (Reissue 1996) which in pertinent part provides:

(1) 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 the applicant is an experienced motor carrier, primarily of general freight, which is peddled in and around the city of Omaha.

The evidence further shows that the applicant has occasionally moved household goods within the same area. Mr. Jensen testified that the applicant possesses the equipment to make small household goods movements in and about the city. The applicant's balance sheet shows retained earnings and stock of more than \$40,000.00 which should be adequate to finance the proposed operations. The protestants did not seriously challenge the fitness, willingness, nor ability of the applicant.

Mr. Jensen testified that he did not receive notice that his operations were subject to 75-104.02 prior to his apprehension by the Commission sometime after the grandfather period expired. Evidence shows that Mr. Jensen took steps to comply with the law after he was made aware of it by the Commission. Although the protestants deplored the proliferation of the movers in Omaha, the evidence does not show that a grant of this authority would have any significant impact on the operations of the protestants. The spirit, if not the letter of the grandfathering law, would be served by granting this application.

From the evidence adduced and being fully informed in the premises, the Commission is of 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. 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:

Transportation of household goods between points within a five-mile radius of Omaha over irregular routes.

3. The application should be granted as amended.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application No. M-14143 be, and it is hereby, granted as amended; 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 General Delivery, Inc., Omaha, Nebraska, in Application M-14143 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 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 the 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 FURTHER ORDERED that the Certificate of Public Convenience and Necessity authorized shall be subject to the terms, conditions, and limitations which have been, or may hereafter be, prescribed by the Commission.



APPLICATION NO. M-14143

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MADE AND ENTERED at Lincoln, Nebraska, this 4th day of November, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

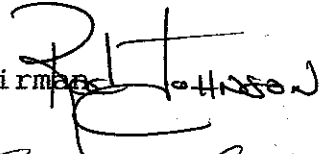
COMMISSIONERS CONCURRING:

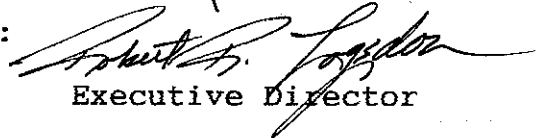
//s//Rod Johnson  
//s//Frank E. Landis

COMMISSIONERS DISSENTING:  
//s//Daniel G. Urwiller

Chairman



ATTEST:

  
Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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