

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. M-14176
of Aksarben Moving & Delivery,)
Inc., Carter Lake, Iowa, seeking)
authority as a common carrier in) DENIED
Nebraska intrastate commerce in)
the transportation of household)
goods between points in and)
within a 15-mile radius of Omaha)
over irregular routes in)
straight trucks.) Entered: December 3, 2002

APPEARANCES:

For the Applicant:

Thomas Green II
311 Chicago Circle
Omaha, Nebraska 68154

For the Commission Staff:

Shana Knutson
300 The Atrium Building
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

B A C K G R O U N D

By application filed July 5, 2002, Aksarben Moving & Delivery, Inc. (Aksarben Moving or Applicant), of Carter Lake, Iowa, seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of household goods between points in and within a 15-mile radius of Omaha over irregular routes in straight trucks. Notice of the application was published in the Daily Record, Omaha, Nebraska, on July 9, 2002.

Protests to the application were timely filed by I-GO Van & Storage and Chieftain Van Lines, Inc., on July 25, 2002, by Jim's Moving & Delivery Co., Inc., on July 31, 2002 and by Vaughn Moving Company on August 1, 2002.

A hearing on the application was held via videoconference equipment on September 12, 2002. Appearances at the hearing were entered by the attorneys listed above.

A copy of the Daily Record publication was admitted as Exhibit 1. The Hearing Notice was entered into the record as Exhibit 2. The application filed with the Commission was entered into the record as Exhibit 3.

Applicant presented one witness, Mr. Michael Nichols, president and owner of Aksarben Moving & Delivery, Inc., in support of the application. Mr. Edward Schneider, Mr. Dennis Leslie and Mr. Brad Woodle testified pro se on behalf of the Protestants.

E V I D E N C E

Mr. Nichols testified that Aksarben Moving is a Nebraska business. He decided to form Aksarben Moving in April of 2002. He took out a Yellow Page advertisement for Aksarben Moving to advertise the availability of his services. He also distributed flyers at various apartment complexes. He was not aware that he needed a Certificate of Public Convenience and Necessity from the Commission prior to the time that he was cited by Commission's Investigator, Robert Harrison. After being cited, he immediately ceased operations.

According to Mr. Nichols, he started Aksarben Moving because he felt that there was a lot of unmet demand. To gauge the need, Mr. Nichols offered a copy of his telephone records which listed incoming calls requesting quotes on his services. This list was marked and received as Exhibit 3. The calls identified in Exhibit 3 were strictly calls made to his business telephone line. Since the time the commenced advertising his service, he has received approximately 144 inquiries per month. In his opinion, this demonstrated an unmet need.

With respect to his business plan, he testified that he needed at least four calls per month to show a profit in his business. He intends to use a 24-foot straight truck in his business. He also intends to dedicate one phone to his business. Aksarben Moving would be a full-time operation for Mr. Nichols. He plans to hire some independent contractors to assist him in his business.

Mr. Schneider testified that he first noticed Aksarben Moving had been operating was by their advertisement in the Yellow Pages. The advertisement stated that Aksarben Moving had fifteen years of experience. Being in the moving business for a

number of years, Mr. Schneider questioned the accuracy of Mr. Nichols' advertisement. He felt that consumers were perhaps being misled because they had not heard of him. Mr. Schneider estimated that there were probably 20 to 25 movers certificated to do business in the Omaha market. Mr. Schneider further stated that the number of calls Mr. Nichols received is logical since Aksarben Moving is listed under the A's in the Yellow Pages. Mr. Schneider further testified that the Moving industry has experienced a down market throughout the country. In his estimation, there is no need for an additional household goods mover in the proposed service territory. He is not operating at full capacity for the majority of the moving season. The biggest volume occurs between the months of June through September.

Upon cross-examination, Mr. Schneider stated he did not bring any of his company's financial records with him to the hearing which would support his statement that the movers were experiencing a slowed market.

Mr. Leslie also questioned Applicant's advertisement stating that Aksarben Moving had fifteen years of experience. Mr. Leslie stated that most consumers call various household goods movers asking for price quotes. He believed it is reasonable for him to conclude that most other moving companies received the same calls as Applicant did.

Mr. Woodle, the owner of Jim's Moving & Delivery Company in Papillion, testified with respect to local moves. He testified that there was not a need in the Omaha market for an additional mover.

Mr. Nichols was recalled by the Hearing Officer to explain why his advertisement provided that he had fifteen years of experience. Mr. Nichols testified this claim was based on his experience performing personal household goods moves over the years for himself and for his friends. He also stated that the gentleman who took his Yellow Page advertisement request misprinted the advertisement. Mr. Nichols further testified that he had been told by some customers requesting his services that the wait for a moving service was about two weeks.

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

Prior to the issuance of a Certificate of Public Convenience and Necessity, a household good mover applicant must prove that it is fit, able, and willing to provide the proposed service and that the proposed service "is or will be required by the present or future public convenience and necessity." Neb.

Rev. Stat. § 75-311 (Reissue 1996). The traditional analysis for determining "need and necessity" was set forth by the Supreme Court in its May 8, 1998 ruling,

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 Nebraskaland Leasing & Assocs., 254 Neb. 583, 591 (1998).

The issue of whether an applicant has met its burden of demonstrating that the proposed service is consistent with public convenience and necessity is ordinarily a factual issue. *Id.* Consistent with *Nebraskaland Leasing*, an affirmative response to the second factor negates the need for any consideration of the first factor. *Id.* Implicit in the issue of whether there is a demand for an additional carrier is the question of adequacy of service. *Id.*

From the evidence adduced at the hearing, we find that the applicant has not sufficiently demonstrated an existing need for the proposed service. On the issue of need, the applicant provided that he received, on average, 144 calls per month after his advertisement had been listed in the Yellow Pages. Assuming that Applicant's incoming call record demonstrated a present need pursuant to the first factor, the Protestants then demonstrated that the existing need can be met by existing carriers consistent with *Nebraskaland Leasing*. Once the protestant movers made a showing that they are meeting the existing need and were not turning down requests for service, the applicant then had the burden of demonstrating that the existing services are inadequate or unsatisfactory pursuant to the second prong of the Nebraska Supreme Court's analysis. No evidence was presented to rebut the evidence provided by the Protestants that they were fulfilling the existing needs in a manner that is adequate and responsive to the public demand.

Accordingly, we find that the Applicant has not demonstrated adequate public demand or need of the proposed service. This alone requires the Commission to deny the application, therefore, we will not further consider the fitness of the Applicant.

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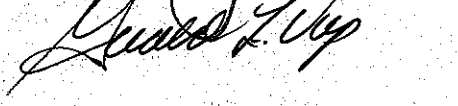
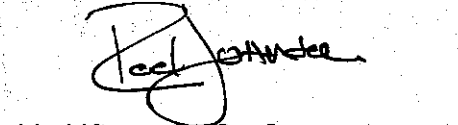
O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of Aksarben Moving & Delivery, Inc., be and it is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of December 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Anne C. Boyle
//s//Frank E. Landis


Chair

ATTEST:


Executive Director

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