

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) APPLICATION M-14184  
Of R & F Movers, Inc., seeking )  
Authority as a common carrier of )  
Of household goods by truck ) DENIED  
Between points within a 30 mile )  
Radius of the City of Lincoln, )  
Nebraska, over irregular routes. ) ENTERED: April 19, 2005

APPEARANCES

For the Applicant:

Mark Fahleson  
Remboldt Ludtke  
1201 Lincoln Mall  
Suite 102  
Lincoln, NE 68508

For the Commission:

Mark Breiner  
300 The Atrium  
1200 N Street  
Lincoln, NE 68508

BY THE COMMISSION:

By application filed March 24, 2004, R & F Movers, Inc., (R & F or Applicant) of Lincoln, Nebraska seeks authority as a common carrier of household goods by truck between points within a 30 mile radius of the City of Lincoln, Nebraska, over irregular routes. Notice of this application was published in the Daily Record on April 16, 2004. Protests were timely filed by Two Men and a Truck, vonRentzell Van and Storage Company, I-Go Van and Storage, and by Ford Van Lines. A hearing in the matter was held on October 27, 2004, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

The Applicant presented one witness, Mr. Ed Shandera, president of R&F Moving, in support of the application. Mr. Edward Schneider, Mr. Earl vonRentzell and Ms. Eileen Marrison testified pro se on behalf of the protestants.

E V I D E N C E

Mr. Shandera is the president of R & F Movers. Mr. Shandera testified that R & F intended to move only residential items in Lincoln, and did not intend to become a statewide mover. He proposed that the company to be able to move people in the smaller towns around Lincoln also.

Mr. Shandera testified that the applicant had plans to acquire a 26-foot enclosed truck. He also stated that the applicant had arranged for insurance. He plans to hire two additional individuals who each have moving experience. He

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personally will manage the company and handle complaints. Mr. Shandera stated that he had reviewed the Commission's Rules and Regulations and intends to comply with all applicable Commission rules and regulations.

Mr. Schneider testified that he did not know of the applicant, whether or not the Applicant had the experience, expertise equipment and trucks to provide a professional service.

Mr. vonRenzell stated that he did not believe that the Applicant had proven either fitness or necessity.

Ms. Marrison testified that she had availability of its moving trucks except for the middle of summer, and that the Applicant had greatly underestimated the start-up costs for the business.

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. Sec. 75-311 (Reissue 2003). 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.

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*, a negative finding regarding the first factor negates the need for any consideration of the remaining factors.

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

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provided no evidence of an existing public demand or need. The only evidence presented by the Applicant regarded the increase in population in Lincoln. There was no presentation of evidence regarding any persons who could not find moving services or any other public demand or need.

With the lack of evidence regarding public demand or need for the proposed service, the Commission need not further consider the fitness of the Applicant. The application, *ex necessitate legis*, should be denied.

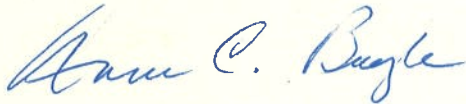
O R D E R

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

MADE AND ENTERED at Lincoln, Nebraska, this 19<sup>th</sup> day of April, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:





//s// Frank E. Landis

//s// Gerald L. Vap

Chairman



ATTEST:

  
Executive Director

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