

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION M-14190
of Senior Moving, L.L.C., seeking)
authority as a common carrier in)
Nebraska intrastate commerce in) GRANTED AS MODIFIED
the transportation of household goods)
over irregular routes between points)
in Nebraska.) ENTERED: August 28, 2007

APPEARANCES

For the Applicant:

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Attorney-at-law
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Lincoln, NE 68501

For the Commission:

Mark Breiner
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Lincoln, NE 68508

BY THE COMMISSION:

By application filed February 15, 2006, Senior Moving, L.L.C., (Senior or Applicant) of Omaha, Nebraska seeks authority as a common carrier of household goods between points in Nebraska over irregular routes. Notice of this application was published in the Daily Record on March 7, 2006. Protests were timely filed by Chieftain Van and Storage Company; Ford Brothers Van and Storage and by Movers Not Shakers. A hearing in the matter was held on April 19, 2007, in the Commission Library and the State Office Building in Omaha, Nebraska, with appearances as shown above.

EVIDENCE

APPLICANTS EVIDENCE

Ms. Sonja McCollister was called by the applicant. Ms. McCollister is an Omaha resident who provides consulting and referral services to senior citizens and is a Certified Senior Advisor. She stated that she is acquainted with Denise Arndt, the main owner of the Applicant in this matter. She said that Ms. Arndt is a reputable and competent person. She stated that the Applicant does provide a benefit to her clients.

Ms. McCollister uses large moving companies for big moves of her clients, but has used the Applicant for special care items. Ms. McCollister stated that the area of services for senior citizens is a growing one as the population continues to age.

On examination by Commissioner Boyle, MS. McCollister stated that she knows of no other type of service in the Omaha

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area. Ms. McCollister also stated that she sees services proposed by the Applicant as a complimentary service to that provided by the major movers in Omaha.

Julie McCoy was called next by the Applicant. She is a CPA in Fort Calhoun and is an accountant for the Applicant. She stated that she believed that Denise Arndt's character was above reproach. She also stated that there was a need for the proposed service of the Applicant based upon the aging population in the area and the type of service provided.

Patricia Buie was called by the Applicant. She had arranged to have the Applicant do a move for her, and was pleased with the assistance provided and the outcome of the move.

Ethel Abbott was a retired person who also had arranged to have the Applicant help her in a recent move. MS. Abbott was moving from one nursing home to another, and that Ms. Arndt was very helpful with the packing of her possessions as well as providing direction for the moving company that did the bulk of the transportation of her household goods.

Denise Arndt then testified for the Applicant. She is the founder of the Applicant, was begin its existence in November of 2005. She stated that her company did situational and incidental moves. She defined a situational move as a small move such as a favorite chair that a person needs moved on a very short notice. An incidental move is one that usually involves downsizing as the moving person is moving from a house to a smaller home and does not have the ability to take most of their possessions with them to the new location.

An incidental move is one where the Applicant provides additional services such as determining what to downsize, assist in the disposition of the excess goods, and to help in moving smaller items for the moving person. Ms. Arndt stated that she refers her clients to other companies when there is a larger amount to move.

Ms. Arndt also detailed that the applicant provides services in addition to those sought in the application. The applicant assists the customer in the packing of their belongings, and also helps to design a new layout for the customer in their new home as well as assisting the customer is setting up in their new home.

Ms. Arndt informed the Commission that she wanted to amend her application to the use of vehicles that are restricted to a

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application was granted that it would be another "piece of the pie" taken from current certificate holders such as his company.

On examination by Commissioner Boyle, Mr. Leslie stated that his company did around 100 moves of 3,000 pounds or less. He also stated that his company did do some small moves of the single chair/couch variety.

Eric Ford testified next. He stated that his company has served the Omaha area for thirty years, and that they have provided numerous services to senior citizens as well as others in the general public. He said that his company will move furniture as well as pack and unpack and provide other services such as putting away dishes.

Mr. Ford noted that he had several thousands of dollars invested in this company. He also noted that the granting of even a niche authority can eventually create a situation where the loss of business would make it harder on the full service movers such as his company.

Gary Jacobsen was the last protestant to testify. He stated that his company, Movers Not Shakers, specifically targets the smaller moves such as those set forth by the Applicant. He also stated that he echoed the testimony of Mr. Schneider, Mr. Leslie and Mr. Ford.

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 first test that an applicant must pass is whether they are fit, willing and able to perform the proposed service. From the evidence adduced at the hearing, the Commission finds that the applicant is fit, willing and able. They have provided services to clients in the past that are related to moving, and the testimony is that they have performed those services very satisfactorily. They have also shown to the Commission that they have the business acumen to conduct business and it appears that they have the financial assets necessary to conduct its operations. The applicants have also testified that they have purchased a van for use in its operations.

The Commission finds that the applicants are fit, willing and able to perform the services proposed. The applicant must

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Gross Vehicle Weight Rating of 9,000 pounds or less. She further requested that the geographic area be limited to the counties of Cass, Dodge, Douglas, Lancaster, Sarpy, Saunders and Washington counties.

Ms. Arndt presented a profit and loss statement that showed a loss for 2006. She testified that the loss was due primarily to the purchase of a van for use in the proposed business as well as legal fees.

On examination by Commissioner Landis, Ms. Arndt stated she intends to enter the market in Lancaster County. She has not thought about her staffing issues if she were to do that, however.

On examination by Commission staff, Ms. Arndt stated that she did plan on renting a van in the event that the van owned by the Applicant was to breakdown. The insurance requirements of the Commission were also discussed.

Jon Ruby is a bookkeeper for the Applicant. He detailed some of the expenses of the Applicant. Mr. Ruby stated that he expected the expenses of the Applicant to shrink in 2007 as they should incur less legal fees and that they also have purchased a van for use in the proposed operation.

PROTESTANTS' EVIDENCE

The first protestant to testify was Ed Schneider from I-Go Van and Storage. He testified that there are 30 movers currently certified in the Omaha area. He stated that demand for moving services has fallen over the last two years. According to Mr. Schneider, for many movers 2006 was a down year and that the first quarter of 2007 was down from the first quarter of 2006. He stated that he believed that demand for moving services was currently being met by current carriers.

On examination by Commissioner Landis, Mr. Schneider estimated that of the 30 movers authorized in Omaha, approximately 10 to 12 conduct solely intracity operations.

Dennis Leslie testified next. He is the owner of Chieftain Van Lines. He stated that he was confused as to the nature of the application. He stated that it appeared that the Applicant wanted to be movers but also more of a consulting or referral service.

On examination by Commissioner Landis, Mr. Leslie stated that he did not know what effect the applicant would have economically on his company. He did state that if the

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next show that there is a need and necessity for the proposed service.

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.

From the evidence adduced at the hearing, we find that the applicant has sufficiently demonstrated an existing need for the proposed service. There was evidence put forward by the applicants that there are times when the industry does not appear to be able to fulfill all requests for moves. The Commission is further mindful that the authority sought will be supplemental and necessary to the additional services that the applicant offers. These services, which include packing, assistance in downsizing items and in designing a layout in the new location for the customer, will necessitate some moving of household goods by the applicant. The existence of these factors satisfies the requirements of the first two parts of the test.

The third part of the test is whether the need can be served in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. In the instant case there was no significant showing on the part of the protestants that the proposed service would create a situation that would endanger or impair their operations contrary to the public interest. One protestant made reference to the difficulty of the times in the business, but did not offer testimony that would contradict this finding.

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At hearing, the Applicant requested that the Application be amended to limit it to the use of vehicles that have a Gross Vehicle Weight Rating of 9,000 pounds or less, and also that the geographic area be limited to Cass, Dodge, Douglas, Sarpy, Saunders and Washington counties.

The Commission finds that the vehicle restriction is reasonable in light of the evidence presented. The Commission also finds that the geographic restriction to the listed counties is excessive in light of the evidence presented. The Commission finds that the evidence set forth only supports a grant in the counties of Douglas and Sarpy. There was no evidence whatsoever as to the need for this service in Cass, Dodge, Saunders and Washington counties. When questioned about services in Lancaster county, the Applicant specifically stated the she "intends" to enter the market in Lancaster County, but has not provided any services in said county and has not even progressed in her business plan to have even thought about staffing issues in Lancaster County.

The evidence supports a finding granting the Application with the vehicle restriction as well as limiting the geographic area to Douglas and Sarpy counties in Nebraska.

Based upon the evidence adduced, the Commission finds that the application should be approved as modified.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application M-14190 be, and is hereby, granted as amended as follows:

COMMON: Common carrier in Nebraska intrastate authority in the transportation of household goods between points in Douglas County and Sarpy County, and between points in said counties. RESTRICTION: The certificate is restricted to the use of vehicle with a Gross Vehicle Weight Rating of 9,000 pounds or less, and that upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to Senior Moving Services, L.L.C. authorizing operations as set forth in the foregoing findings.

IT IS FURTHER ORDERED that the applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until the applicant has fully complied, within 90 days from the effective date of this Order, with Neb. Rev. Stat., Section 75-305 (fees), 75-307

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(insurance), and 75-308 (rates), and with the rules and regulations of the Commission; and if upon expiration of 90 days, 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 used.

IT IS FURTHER ORDERED that applicant shall render reasonable 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.

MADE AND ENTERED at Lincoln, Nebraska, this 28th day of August, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Herald L. Lipp
Gene C. Boyle
Tim Schram

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

Chairman

Rod Johnson

ATTEST:

John Burdick
Deputy Director