

# SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) APPLICATION M-14191  
of 911 Moving, L.L.C., seeking )  
authority as a common carrier in )  
Nebraska intrastate commerce in )  
the transportation of household goods ) GRANTED  
over irregular routes between points )  
in Douglas County and Sarpy County )  
and between points in said counties. ) ENTERED: April 17, 2007

### APPEARANCES

#### For the Applicant:

Mary Ellis-Harden  
Attorney-at-law  
1201 Lincoln Mall  
South 87<sup>th</sup> Street  
Omaha, NE 68xxx

#### For the Commission:

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

#### BY THE COMMISSION:

By application filed March 3, 2006, 911 Moving, L.L.C., (911 or Applicant) of Omaha, Nebraska seeks authority as a common carrier of household goods between points in Douglas County and Sarpy County, and between points in said counties over irregular routes. Notice of this application was published in the Daily Record on August 2, 2006. Protests were timely filed by Two Men and a Truck, Vaughn Moving, Ace Moving and Storage, Chieftain Van Lines, I-Go Van and Storage, and by Jim's Moving and Delivery Company. VonRentzell Van and Storage was granted informal intervention status. A hearing in the matter was held on March 27, 2007, in the Commission Library and the State Office Building in Omaha, Nebraska, with appearances as shown above.

## EVIDENCE

### APPLICANTS EVIDENCE

Mr. Matt Harden was called by the applicant. Mr. Harden is one of the partners in 911. After detailing his work experience and training as a fireman, he described some of his experience in moving household goods on emergency situations. He stated that he was very cognizant of peoples homes and the need to protect their property. This knowledge gives him and 911 a focus on customer service through this recognition of the importance of peoples property.

Mr. Harden stated the he and his partner got the idea to start a moving business from seeing the number of moving trucks in the downtown area. They also are familiar with public service

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groups such as the Omaha fire Department and the Omaha Police Department and believe that they can market themselves to such groups.

Mr. Harden stated that 911 did perform one move that went well with a satisfied customer before they were contacted by a State Patrol officer who informed them that they needed Public Service Commission approval before they could perform legal moves. The Applicants immediately ceased doing any moving activity and began to reevaluate the future of the applicant. Responding to a question from Commissioner Boyle, he also stated that prior to contact by the State Patrol he and his partner were unaware they were required to seek approval nor had they received any notice that approval was needed from any government body. After discussing the matter with friends, legal counsel and Larry Johnson of the Nebraska Trucking Association, they decided to apply for the authority sought in the instant case.

Mr. Harden stated that they had purchased equipment such as dollies, straps for use in the operation. He also testified that they planned on purchasing a 24 foot truck typically used in a local move for their business, and would purchase it through financing.

Mr. Harden provided evidence to the Commission that Omaha had grown from 371,000 people in 1990 to about 400,000 in 2006. They also showed that the number of households increased from 146,000 to 160,000 over that same time period. Information was also provided that showed cities of similar size having more moving companies that are currently operating in Omaha.

Commissioner Schram stated that he had a concern with the name 911 Moving being confusing to the public at large with the very well known emergency 911 call centers. This concern was echoed by Commissioner Vap. Mr. Harden stated that he did not believe that the name would cause a problem, but stated that they would look at renaming the company if the Commission perceived this to be a problem.

On cross-examination by Commissioner Landis, Mr. Harden stated that he knew of at least one person that was not able to find a mover for a move. He did not have that person's name.

Kevin Berens testified next for the applicant. After a review of his work history and experience, he stated that he had talked to several individuals who felt that there is a lack of choice among household goods movers in Omaha. He also felt that it was an interesting industry that he and Mr. Harden could become involved in a positive manner.

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Mr. Berens testified that he had knowledge of issues that people had with short notice movers not being able to be filled by the industry. He also stated that he thought that 911 would principally focus on doing these smaller moves that may not be able to be handled by the industry currently.

On cross-examination by Commission Schram, he reiterated that 911 would consider changing their name would create an issue with the Commission. He also stated that he held a CDL license, and also that he expected that they would charge about \$30 an hour for their services.

Mike McDonnell, president of the Omaha Firefighters Union and a battalion chief in the Omaha Fire Department testified next. He stated that Mr. Harden and Mr. Berens were very professional in the manner in which they conducted their duties for the Department. He believed that they would carry over this professionalism into their proposed operation.

Gary Jacobsen of Movers Not Shakers was called next. He testified that he had began business in 2000 by identifying a niche and filling that niche. He testified that he did not feel threatened by the proposed operation.

On cross examination by Commissioner Landis, Mr. Jacobsen stated that he did have some occasions where he could not perform moves as his company was too busy to take on a last minute move. He stated that business has slowed in the recent past, but that there were still times when he was overbooked. On examination by Commission staff, Mr. Jacobsen testified that he thought that the overbooked days may include as many as 50% of the days in the summertime months.

#### 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 stagnated or even fallen somewhat over the last two years. He cited that housing permits have fallen sharply in the last few months as evidence that moving demand will not increase soon. Mr. Schneider also pointed out that the population gains cited by 911 amount to only a 2.7% increase over the six year period measured.

Mr. Schneider noted that his business is full-time and that they employ a number of people on a full-time basis. He

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questioned the operations proposed by 911 as they already hold down full-time positions in the fire department and their commitment to provided a full-time service. Mr. Schneider also stated that 911 should have a business plan, qualified and ready vehicles, and equipment. They also should show the ability to professionally pack household goods, the experience to estimate costs of moves and have a knowledge of Tariff 22.

On examination by counsel for 911, Mr. Schneider stated that increased gross sales over the period 2000-2006. He detailed that most of the growth came in the interstate and storage areas of the business and not from intracity moves as proposed by the applicant.

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

Kraig Kirchmann testified next. He is a manager for Two Men and a Truck. He stated that the Omaha market is down and that it was a rough year in the moving industry. He also stated that he did not see that filling a niche was of help to the general public.

Mr. Kirchmann did state that there were times that his company has had to turn away business, especially at the end of the month and larger moves. He stated in response to a question by Commissioner Landis that the smaller movers were easier to fit in and get done at the last minute.

Brad Woodle was the next protestant to testify. He questioned the operations of the applicant. His specific areas of concern included experience in quoting estimates; will 911 own the vehicles and who will drive them; if they only have one vehicle and it breaks down, how will that be handled; and what will be the experience of any employees that may be hired at a later date. Mr. Woodle stated that the Commission should have answers to these questions before any approval is given.

## 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).

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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 applicants are fit, willing and able. They personally have varied work and employment experience. They have performed at other employment with professionalism. They have shown an ability to conduct business in a successful manner.

The applicants have also testified that they have purchased some of the equipment needed and plan to purchase a truck of the certificate is granted. They also have researched Tariff 22 and have in mind a charge that is within the parameters of Tariff 22.

While they did operate for a period of time without the proper authority, the evidence is that they did seek legal counsel to determine if anything such as an authority was necessary and were not informed of Public Service Commission requirements by this legal counsel. They further ceased all operations after being informed that such authority was necessary. This exhibits a willingness and desire to conform with Commission rules and regulations.

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

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proposed service. There was evidence put forward by the applicants and also by the protestants that there are periods of time where the industry does not appear to be able to fulfill all requests for moves. There is also the evidence that the City of Omaha has grown while the number of providers has not in the past few years. The existence of these time periods 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 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. The testimony also showed that gross sales of the protestants questioned had grown over the past six years, but in at least one instance the growth came from areas of operations that did not involve that sought here by the applicants.

In addition, the applicant presented evidence provided by the Omaha Chamber of Commerce with population growth and number of carriers in comparable sized cities for the city of Omaha. Protestants testified of all total number of authorized carriers for the state, there are approximately 10-11 restricted to the area requested by the applicants.

While the Commission has no authority to restrict the name of the carrier, it does note that it has concerns regarding the name "911 Moving". It believes that the name could create confusion and may result in some members of the public dialing a public safety number adding an additional burden to the system. The Commission strongly urges that the applicant consider the concerns stated herein in any final determination of its operating name.

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

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application M-14191 be, and is hereby, granted; 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 911 Moving, LLC, authorizing operations as set forth in the foregoing findings.

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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 (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 17<sup>th</sup> day of April, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Gerald L. Vop*  
*Anna G. Boyle*  
*Tim Schram*

ATTEST:

Chairman

*Red Johnson*

Executive Director

*And S. Folb*