

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION M-14192
Of Rodriguez Brothers, Inc., dba)
Rodriguez Brothers, Omaha, seeking)
Authority as a common carrier of) DENIED
Of household goods between points)
In Nebraska, over irregular routes)
) ENTERED: JUNE 5, 2007

APPEARANCES

For the Applicant:

Maria Vera
Attorney-at-Law
4807 Dodge Street
Omaha, Nebraska 68132

For the Commission:

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

BY THE COMMISSION:

By application filed May 16, 2006, Rodriguez Brothers, Inc., dba Rodriguez Brothers (Applicant) of Omaha, Nebraska seeks authority as a common carrier of household goods by truck between points in the state of Nebraska over irregular routes. Notice of this application was published in the Daily Record on September 13, 2006. Protests were timely filed by Two Men and a Truck, Omaha; Jim's Moving & Delivery Company, Papillion; Vaughn Moving, Omaha; Ace Moving and Storage Company, Inc., Omaha; Chieftain Van Lines, Inc., Ralston; and I-Go Van and Storage, Omaha. A hearing in the matter was held on January 31, 2007, in the Commission Hearing Room, Lincoln, Nebraska, and in the State Office Building, Omaha, Nebraska, with appearances as shown above.

E V I D E N C E

Ms. Vera, counsel for the applicant, reviewed three letters that the Applicant had procured in support of the application. Ricardo and Susana wrote that the Applicant assists in the Hispanic community due to their ability to speak in Spanish and there is a need for this type of service. Unico Real Estate stated that the bilingual abilities of the Applicant make the Applicant's proposed service one that would be preferred in the Hispanic community. Plaza Latina stated that the services provided by the Applicant are "top and good quality", that they are familiar with Latin culture, and that their services are needed on the Latin community.

Mr. Ricardo Rodriguez was called on behalf of the Applicant. Mr. Rodriguez testified that the Applicant has purchased many assets to be used in the proposed operation,

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including a truck, protective pads and plastic covers. He also testified that the company had \$8,000 in its checking account to meet expenses such as office rent and gasoline.

Mr. Rodriguez testified that he as received numerous requests for service from Spanish speaking people. He stated that he is fluent in Spanish. Mr. Rodriguez also testified that he had experience as a mover for Two Men and a Truck, and that he had operated for them with no damage done to the customer's property. He stated that the Applicant could perform any kind of move with the equipment it currently owned.

On cross-examination by Commissioner Schram, Mr. Rodriguez testified that he had contacted and made arrangements for insurance coverage.

On examination by Commission staff, he stated that he had not done a study to determine if there was a need for his services. He stated that his belief in the need for the service arises from numerous phone calls he has received. He also stated that he believed, based upon these phone calls, that the Hispanic community was not being served. He also briefly discussed that he had been contacted by investigators for the Commission regarding a move his company was requested to make by the investigators. He did arrive to discuss the proposed move and quoted a price. He was cited by the investigators and was told to apply for authority, which he testified that he did do later on that same day. He further stated that he did not have a business plan for the Applicant.

Yolanda Rodriguez was next called by the Applicant. Ms. Rodriguez testified that she knew the Applicant and that they did have a truck and equipment that would enable the Applicant to begin operations. She also testified that she knew of the numerous calls that the Applicant had received from Spanish speaking individuals inquiring about the availability of the service of the Applicant.

Mr. Ed Schneider from I-GO Van and Storage testified first for the protestants. HE stated that there are currently 30 movers certified in the Omaha area to conduct moves, and 50 on a statewide basis. He testified that that amount was sufficient for the market at this time.

On examination by Commissioner Schram, Mr. Schneider testified that his company currently carries the required cargo insurance as well as \$1 million in additional coverage.

Mr. Dennis Leslie of Chieftain Van Lines testified next. He expressed concerns regarding the equipment held by the

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Applicants. He does not believe that the Applicant can do the moves they stated they were prepared to do with the equipment that they currently own. He also testified that he was able to employ interpreters as needed. He also stated that there is not an existing need for the services of the Applicant.

On cross-examination by Ms. Vera, both Mr. Schneider and Mr. Leslie stated that they were able to resolve communication issues. Mr. Leslie testified that he had only one experience with a Spanish speaking customer to his recollection. Mr. Schneider stated that he was able to take care of any communication issues that might arise.

Mr. Kraig Kirchmann of Two Men and a Truck testified. He stated that his company advertised to the Hispanic market and that his company went after all business.

Mr. Kirchmann also testified that Mr. Rodriguez did work for his company, and that in general he was a good employee who handled himself well and did not create any problems for his employer. He did relate one instance in which a customers property was damaged in a move, contrary to testimony by Mr. Rodriguez.

Mr. Brad Woodle from Jim's Moving and Storage next testified. Mr. Woodle stated some concerns regarding the proposed service by the Applicant. He noted that with only one truck, if it were to break down provided alternate service would be difficult and that this would place the customer in a bad situation. He further stated that the size of his truck would not allow for a 3 bedroom move without requiring the use of the truck multiple times and therefore increasing the cost to the consumer.

Mr. Woodle also stated that his business is down 40 percent at the current time. The diversion of additional business would further impact his current situation.

Mr. Scott Vaughn of Vaughn Moving testified next. He stated that there are currently 30 movers certified in the Omaha area, and that this number was sufficient. At the current time, three quarters of his trucks are not being used, and he has not had to turn away any business for a period of time. He also stated his business was down 40 percent.

Mr. Robert Harrison was called by Commission staff to testify. He informed the Commission that he contacted the Applicant on the basis of a flyer that had come to his attention. He contacted the Applicant, who agreed to meet with him and discuss the details of a possible move. At the date and time of

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the meeting, the Applicant showed up and quoted Mr. Harrison a price, at which time the Applicant was cited for four violations.

Mr. Harrison stated that he did counsel with the Applicant regarding PSC authority requirements. He stated to his knowledge that the Applicant did procure an application and filed it. He also stated that he does not have knowledge regarding any further services provided by the Applicant.

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 provided no evidence of an existing public demand or need. The letters show a preference for the services proposed to be provided by the Applicant, but they do not show an unmet need. The Applicant testified as to calls that they have received, but this also does not show need as there is no evidence that these calls were from individuals who were not able to procure services from existing carriers. There was no study, other than the

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monitoring of the phone calls, that was undertaken by the Applicant that showed a deficiency in the current market. 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, therefore, should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of Rodriguez Brothers, Inc., dba Rodriguez Brothers, be and it is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of June, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

David F. [unclear]
Anne C. Boyle
Tim Schram

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

ATTEST:

Chairman

And J. [unclear]
Executive Director

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