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BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2021-219-T

Application of Uniform Movers of Charleston LLC for a Class E (Household Goods) Certificate of Public Convenience and Necessity for Operation of Motor Vehicle Carrier	))))))	MOTION FOR PERMISSION TO PRESENT SHIPPER WITNESS TESTIMONY BY AFFIDAVIT

Uniform Movers of Charleston LLC ("Uniform Movers" or "Applicant") moves for permission to present the testimony of its shipper witness by affidavit. The Commission's regulation concerning the proof required to support an application for a Certificate of Public and Convenience and Necessity for a Class E mover of household goods with statewide authority is found in S.C. Code Regs. 103-333.

Regarding the testimony of shipper witnesses, which are used to demonstrate that an applicant's services will serve public convenience and necessity, the regulation states: PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses if the applicant applies for authority for more than three continuous counties. If the commission determines that the public convenience and necessity is already being served, the commission may deny the application. The following criteria should be used by the commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public: S.C. Code Reg, 103-133.1. In the interest of judicial economy, the Commission should allow the regulation's requirement of "use of a shipper witness" to be satisfied by the submission of an affidavit. The Commission's practice has been to allow applicants to take the testimony of shipper witnesses by deposition to be used at trial. *See e.g. Application of Midland Movers DOCKET NO. 2018-268-T*

There would be no substantive difference if an applicant were to submit the testimony by affidavit. The Office of Regulatory Staff, or an intervenor, would have the right to contest the adequacy of an affidavit if they believed it inadequate. Challenges to adequacy of shipper witness testimony have been virtually nonexistent due to the Supreme Court's holding that mere anecdotal evidence is insufficient to challenge the "necessity" prong of an application. *Welch Moving ck Storage Co v. Pub Serv. Com, 301 S.C. 259, 26'1-62, 391 SE.2d 556, 557 (1990)*. In *Welch*, the Court found: Here, in deciding that grant of a certificate to Welch would not serve the public convenience and necessity, PSC relied exclusively upon the testimony of four licensed carriers

from the midlands and upstate regions. These carriers, potential competitors of Welch, testified that, due to a decrease in business, existing carriers were left with excess capacity to handle a greater number of moves. Additionally, one carrier testified that increased competition would cause cutbacks, resulting in less expensive but inferior quality service. No expert testimony or statistical surveys were presented to indicate that the public convenience is being served. The carriers' testimony related primarily to concerns that increased competition would adversely affect their businesses. Although detriment to the income of existing carriers is relevant, it is not determinative and "should not in itself defeat an application for additional services." Id. (citation omitted).

Because of *Welch*, the presentation of shipper witness testimony has become a perfunctory exercise, and the current practice of presenting shipper witness testimony by live testimony or deposition is unnecessarily expensive and inconvenient for all involved, including the Commission and its staff. Applicant submits that the submission of an affidavit could serve the same purpose without requiring Applicant to bring a witness to its hearing or hire a court reporter and pay counsel to attend a deposition. To illustrate how affidavit testimony could be presented, Applicant submits as Exhibit A an affidavit form which prompts the shipper witness to testify to the same matters typically covered on the stand or in live testimony.

In the present case, no objections or intervenors have appeared, and the matter appears uncontested. Furthermore, the applicant and counsel for applicant have been in touch with regulatory staff and counsel and the application appears to be in order. The applicant is located in Charleston County and having its shipper witness available to testify is an unnecessary burden where the matter should be uncontested as to all issues.

Therefore, Applicant respectfully requests the Commission allow it to present the testimony of its shipper witness by affidavit.

Respectfully submitted.

Epstein Law, LLC

Dated October 11, 2021

Charleston, South Carolina

s/ Clare D. Goodwin

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