BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 94-140-T - ORDER NO. 94-1212

NOVEMBER 30, 1994

| | | |
|---|---|---|
| IN RE: Application of Ehmke/Carolina Movers, Inc., 11626-F Wilmar Blvd., Charlotte, NC 28273 for a Class E Certificate of Public Convenience and Necessity. | ) ) ) ) | ORDER GRANTING CERTIFICATE |

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Ehmke/Carolina Movers (Ehmke/Carolina or the Applicant) for a Class E Certificate of Public Convenience and Necessity authorizing it to transport property as follows:

> HOUSEHOLD GOODS, AS DEFINED IN R.103-211(4): Between points and places in South Carolina.

This Application was filed pursuant to S.C. Code Ann.§58-23-40 (1976).

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The Notice of Filing was duly published in accordance with the instructions of the Executive Director. Petitions to Intervene

were filed by Carey Moving & Storage, Inc., Arrow Moving & Storage, Inc., Carey Moving & Storage of Greenville, Inc., Smith Dray Line & Storage Co., Inc., Austin Moving & Storage Co., Inc., and Smith Dray & Storage, Inc. (hereafter collectively referred to as the Intervenors).

A public hearing was held at the offices of the Commission on October 6 and 13, 1994. The Honorable Rudolph Mitchell, Chairman, and the Honorable Guy Butler, Vice Chairman, presided. The Applicant was represented by F. Lee Prickett, Jr., Esquire and Randall E. McGee, Esquire; the Intervenors were represented by John F. Beach, Esquire; and the Commission Staff was represented by Florence P. Belser, Staff Counsel.

Witnesses presented were William T. Cirone, Carl Pennington, Charlie Roundtree, and Marvin Davis for the Applicant, and P. A. Carey, James W. Mullen, Scott Dickerson, George Aiken, and Dr. William O. Bearden for the Intervenors.

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. South Carolina Code Ann. §58-23-330 (Supp. 1993) provides as follows:

> [a]n applicant applying for a certificate ... to operate as motor vehicle common carrier may be approved upon showing ... that the applicant is fit, willing, and able to perform appropriately the proposed service. If an intervenor shows or if the [C]ommission determines that the public convenience and necessity is being served already, the [C]ommission may deny the application.

2. 26 S.C. Regs. 103-134(1)(A)(1) (Supp. 1993) provides, in relevant part, that the Commission use the following criteria to determine whether an applicant is fit, willing, and able to provide the requested service:

(a) FIT The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T, SCDHPT, and PSC safety records. Applicant should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.

(b) ABLE The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes indicating that he is aware of the Commission's insurance requirements and the cost associated therewith.

(c) WILLING Having met the requirements as to "fit and

> able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

3. "The doctrine of [public] convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with." State v. Carolina Coach Company, 260 N.C. 43, 53, 132 S.E.2d 249, 255 (1963).

4. "'Necessity' means reasonably necessary and not absolutely imperative." Id. citing State v. Southern Railway Co., 254 N.C. 73, 79, 118 S.E.2d 21, 25 (1961). "... It is necessary if it appears reasonably requisite, is suited to and tends to promote the accommodation of the public." Id.

5. "In the phrase 'public convenience and necessity' the word 'necessity' means that which is needful, essential, requisite or conducive to 'public convenience.' When more convenient and adequate service is offered to the public, it would seem that necessity requires such public convenience should be served." Atlantic Greyhound Corporation v. Commonwealth of Virginia, 196 Va. 183, 193, 83 S.E.2d 379, 384 (1954).

6. The South Carolina Supreme Court has held that while an intervenor's testimony that its business will be adversely affected by the increased competition produced by an increased number of motor carriers is relevant, such testimony "is not determinative

and 'should not in itself defeat an application for additional services'." Welch Moving and Storage Co. v. Public Service Commission, 301 S.C. 259, 391 S.E.2d 556, 557 (1990), citing Greyhound Lines, Inc. v. South Carolina Public Service Commission, 274 S.C. 161, 166, 262 S.E.2d 18, 21 (1980).

7. Ehmke/Carolina's Application indicates that the Applicant is a North Carolina corporation. William T. Cirone, Executive Vice President of Ehmke Movers, Inc. (the parent company of Ehmke/Carolina) testified about the Applicant's operations. Mr. Cirone testified that Ehmke Movers, Inc. (Ehmke Movers) started in 1977 in Cincinnati, Ohio and now operates in seven geographic locations in the United States. According to Mr. Cirone, the 1993 revenues for all the Ehmke Movers companies are in excess of 21 million dollars. Mr. Cirone also testified that Ehmke Movers is the second largest booking agent of interstate moves for Allied Van Lines in the United States and that Ehmke Movers is the second largest provider of relocation services for Allied Van Lines. Mr. Cirone also described the services of Ehmke Movers and its subsidiaries.

8. Mr. Cirone testified that Ehmke/Carolina began operations in 1993 after purchasing an existing moving company. Mr. Cirone's testimony also indicated that Ehmke/Carolina has received a "satisfactory" safety rating, that there are no outstanding judgments against the Applicant, and that the Applicant is aware of, and will meet the Commission's insurance requirements. According to the Application, and corroborated by Mr. Cirone's testimony, the Applicant is familiar with all statutes and

regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina, and if granted authority, the Applicant agrees to operate in compliance with these statutes and regulations. The financial exhibits attached to the Application and admitted into evidence at the hearing, as well as the testimony of Mr. Cirone, indicate that Ehmke/Carolina is financially stable. Attachments to the Application, exhibits admitted into evidence at the hearing, and the testimony of Mr. Cirone also reveal that Ehmke/Carolina has the necessary equipment to provide the service for which it seeks authority.

9. Mr. Cirone testified that Ehmke/Carolina currently provides the movement of household goods on an interstate basis. Several shipper witnesses appeared on behalf of Ehmke/Carolina and offered testimony concerning their satisfaction with the services of Ehmke/Carolina. The shipper witnesses also testified that they would like for Ehmke/Carolina to be able to handle their intrastate needs.

10. Jim Mullen, Vice President of Smith Dray Line & Storage Co., testified on behalf of the Intervenors. Mr. Mullen admitted that he believes that Ehmke/Carolina is fit, willing, and able to provide moving services in South Carolina, but Mr. Mullen further testified that household goods moves over the past few years from the Spartanburg terminal have been "flat." Mr. Mullen also offered his opinion that the public is being served by the existing carriers in this state.

11. George Aiken, President of General Warehouse Co., Inc.,

testified that his company has four (4) terminals in South Carolina. Mr. Aiken also testified that over the last two years his intrastate business is down approximately 20 percent.

12. Scott Dickerson of Smith Dray Line & Storage in Columbia testified that the volume of intrastate household goods business has declined approximately 5% from last year. Mr. Dickerson attributes this decline to the entrance of new moving companies and to the "do-it-yourselfers". Mr. Dickerson also offered his opinion that there are ample movers in South Carolina to handle the needs of the South Carolina public.

13. Pat Carey of Carey Moving & Storage, Inc. in Spartanburg, Carey Moving & Storage of Greenville, Inc., and Arrow Moving & Storage, Inc. of Rock Hill testified that his business has experienced a 5.6% loss in intrastate revenues. Mr. Carey stated that approximately 20% of his business consists of intrastate moves while approximately 80% is interstate moves.

14. Dr. William O. Bearden also testified on behalf of the Intervenors. Dr. Bearden holds a Ph.D. in Business Administration and currently is a professor of marketing at the University of South Carolina. Dr. Bearden testified that he was hired by the Movers Conference to conduct a study on the extent to which the public convenience and necessity is currently being served by the existing motor carriers in South Carolina.

Dr. Bearden testified that he mailed seventy-one (71) questionnaires to members of the Movers Conference. Of the questionnaires mailed, three (3) were returned to Dr. Bearden for

address problems. From the sixty-eight questionnaires effectively mailed, Dr. Bearden received thirty-five (35) responses, thirty (30) of which were usable. The questionnaire asked each participant for an estimate of the number of intrastate household moves in 1993. The questionnaire did not define intrastate move or specify whether the answer included regulated or non-regulated moves. In the responses, some participants reported moves within a thirty (30) mile radius or beyond a thirty (30) mile radius. [The Commission takes administrative notice that many tariffs of household goods carriers break at the thirty (30) mile radius.]

In the course of his study, Dr. Bearden stated that he gathered information on the number of trucks and equipment from Don Walters of the South Carolina Trucking Association. Additionally, Dr. Bearden collected annual reports of the trucking companies that have been filed with the Commission and used the 1994 Movers Statistical Profile which reported on 1992 totals. Dr. Bearden also visited three trucking companies in Columbia and counted the idle power units on the premises.

Dr. Bearden stated that his study showed the average number of intrastate moves per company was 49 and that the average number of days each power unit was utilized was 104.5 days. Dr. Bearden testified that the return on assets for South Carolina trucking companies was lower than national returns reported in two financial publications. Dr. Bearden also testified that the average operating ratios, computed by using annual reports on file with the Commission, improved in 1993 over the average operating ratios in

1992.

Dr. Bearden testified that he believed that the geographic dispersion of the present household goods carriers can service the needs of the public in the entire state. Based on the results of his study, Dr. Bearden testified that it is his opinion that there is excess capacity among the existing household goods carriers in South Carolina.

## CONCLUSIONS OF LAW

1. Ehmke/Carolina has demonstrated that it is fit, willing, and able to provide the Class E services for which it seeks authority. Specifically, Ehmke/Carolina has established that it has no outstanding judgments, that it has the equipment necessary to provide the services for which it seeks authority, and that it has insurance which meets the Commission's requirements. Ehmke/Carolina has demonstrated that its safety rating is satisfactory. The Commission interprets the submission of the Application as Ehmke/Carolina's demonstration of its willingness to provide Class E services in South Carolina.

2. The Commission finds that the Intervenors have not established that the public convenience and necessity would be adversely affected by the entry of Ehmke/Carolina into the market. Therefore, the Commission concludes that the public convenience and necessity is not being served and that the public convenience and necessity would be better served by allowing Ehmke/Carolina into the market. While Dr. Bearden asserts that excess capacity currently exists in South Carolina among the household goods

carriers, the Commission is of the opinion that the testimony of Dr. Bearden does not establish that the public convenience and necessity is being sufficiently served to justify exclusion of Ehmke/Carolina from the South Carolina market. The Commission notes that the shipper witnesses recognize Ehmke/Carolina as a carrier which provides reputable quality service and that the shipper witnesses desire Ehmke/Carolina's services.

3. Further, the testimony of the motor carrier witnesses that increased competition by Ehmke/Carolina could hurt their business does not sway the Commission to find that the public convenience and necessity is being served. The Commission is cognizant that the Intervenors are concerned that Ehmke/Carolina's entry into the market will adversely affect existing business. However, the Commission concludes that this concern in and of itself is insufficient to defeat Ehmke/Carolina's Application as this concern has not been shown to adversely impact public convenience and necessity.

4. The Commission also concludes that Hearing Exhibit No. 7 should be admitted into evidence. Ehmke/Carolina sought to introduce a copy of a newsletter of the American Movers Conference. The Intervenors objected to the introduction of the newsletter asserting that a proper foundation had not been established. Ehmke/Carolina introduced the newsletter to show that more recent data than the data used by Dr. Bearden was available for comparison purposes in his study. The Commission therefore concludes the newsletter should be admitted into evidence and

overrules the objection of the Intervenors.

Ehmke/Carolina objected to and made a Motion to Strike a portion of Dr. Bearden's redirect testimony regarding the ratio of interstate to intrastate revenues of Ehmke Movers. Dr. Bearden testified that the ratio of Ehmke/Carolina interstate/intrastate revenues is roughly equivalent to the 80%/20% ratio which he used in his study. Ehmke/Carolina objected to this testimony as irrelevant and not comparative as Ehmke/Carolina is not operating in South Carolina. The Commission believes that the testimony was proper and therefore overrules Ehmke/Carolina's objection and Motion to Strike.

IT IS THEREFORE ORDERED THAT:

1. Ehmke/Carolina's Application for Class E authority to transport household goods, as defined by Regulation 103-211(14), between points and places in South Carolina is hereby approved.

2. Ehmke/Carolina shall comply with all applicable statutes and regulations regarding for-hire transportation in South Carolina.

3. Ehmke/Carolina shall file the proper license fees and other information required by S.C. Code Ann. §58-23-10 to §58-23-1830 (1976, as amended) and by 26 S.C. Regs. 103-100 to 103-272 (1976, as amended) within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

4. Upon compliance with S.C. Code Ann. §58-23-10 to §58-23-1830 (1976, as amended), and the applicable provisions of 26

S.C. Regs. 103-100 to 103-272 (1976, as amended), a certificate shall be issued herein to Ehmke/Carolina authorizing the motor carrier services granted herein.

5. Prior to compliance with the above-noted requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Rudolph Mitchell
Chairman

ATTEST:

Charles W. Hamilton
Executive Director

(SEAL)