

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u>	September 17, 1985	2. <u>BUREAU AGENDA NO.</u>	
3. <u>BUREAU:</u>	Law		OCT-85-L-559*
4. <u>SECTION(S):</u>	Non-Rail Transp.	5. <u>PUBLIC MEETING DATE:</u>	
6. <u>APPROVED BY:</u>			
Director:	Hoffman 7-5000		October 3, 1985
Supervisor:	Lowenstein 3-3713		
7. <u>MONITOR:</u>			
8. <u>PERSON IN CHARGE:</u>			
	Kohler 3-3190		
9. <u>DOCKET NO:</u>	A-00106205		

10. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation

(a) Application of Bulk, Inc.; Exception to Tentative Decision.

(b) On July 29, 1985, the Commission entered a Tentative Decision at A-00106205 approving the application of Bulk, Inc. (Bulk) and granting temporary authority to provide transportation for Lehigh Portland Cement Company, (Lehigh) from its facilities in West Manchester, York County, to points in Pennsylvania and vice versa. C.L. Feather, Inc., Schwerman Trucking Company and Materials Transport Service, Inc. (Materials) participated as protestants in the proceeding. On August 16, 1985, Materials filed Exceptions to the July 29, 1985, Tentative Decision in which it alleges that the grant of temporary authority is based on facts which are inaccurate or misleading. The Law Bureau believes the instant Exceptions lack merit.

(c) The Law Bureau recommends that the Commission deny the Exceptions filed by Materials Transport Service, Inc. at A-00106205 for the reasons fully discussed herein.

RECEIVED
OCT 10 1985

DC
OCT 10 1985

11. MOTION BY: Commissioner Chm. Taliaferro Commissioner Fischl - Yes
 Commissioner
SECONDED: Commissioner Shane Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

October 8, 1985

A-00106205

William A. Gray, Esquire
2310 Grant Building
Pittsburgh, PA 15219

Application of Bulk, Inc.; Exceptions to Tentative Decision
filed by Materials Transport Services, Inc.

To Whom It May Concern:

This is to advise you that an Order has been adopted by
the Commission in public meeting held October 3, 1985 in the
above entitled proceeding.

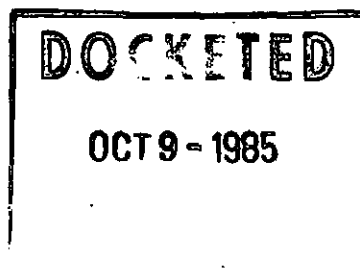
A copy of this Order has been enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

fao
Encls.
Cert. Mail

Copy of order to: Refer to Computer list attached.



0001
BULK, INC.
2365 ST. MARY'S AVENUE
P.O. BOX 189
OMAHA NE 68101
SELF

0002
WILLIAM A. GRAY, ESQ.
2310 GRANT BUILDING
PITTSBURGH PA 15219
APPLICANT

0003
S. BERNE SMITH, ESQUIRE
100 PINE STREET
P.O. BOX 1166
HARRISBURG PA 17108-1166
WISHES TO BE PARTY OF RECORD

0004
S. BERNE SMITH, ESQUIRE
MCNEES, WALLACE & NURICK
100 PINE ST., P.O. BOX 1166
HARRISBURG PA 17108-1166
FOR

0005
JOSEPH A EUBBA ESQ
740 HAMILTON MALL
ALLENTOWN PA 18101
MATERIALS TRANSPORT SERVICE PROTESTANT

0006
S BERNE SMITH ESQ
100 PINE STREET
P O BOX 1166
HARRISBURG PA 17108
SCHWERMAN TRUCKING CO PROTESTANT

0007
KEVIN W WALSH ESQ
312 BOULEVARD OF THE ALLIES
PITTSBURGH PA 15222
C L FEATHER INC PROTESTANT

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held October 3, 1985

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane

Application of Bulk, Inc;
Exceptions to Tentative Decision filed
by Materials Transport Services, Inc.

Docket No.
A-00106205

O R D E R

BY THE COMMISSION:

On May 6, 1985, Bulk, Inc. (Bulk) filed an application with the Commission at A-00106205 for temporary authority to provide transportation for Lehigh Portland Cement Company (Lehigh), from its facilities in the township of West Manchester, York County to points in Pennsylvania and vice versa. In support of its application, Bulk submitted a supporting letter from L. E. Cummings, vice-president of Lehigh which indicated that its house carrier, Cement Express, Inc. (Cement) had recently terminated service on one day notice, that several existing carriers had been contacted and that of those contacted only Bulk could supply the required 20 specially equipped tank trailers on immediate notice. C. L. Feather, Inc., Schwerman Trucking Company and Materials Transport Service, Inc. (Materials) filed Protests with the Commission to Bulk's temporary authority application.

On July 29, 1985, the Commission entered a Tentative Decision, approving the application and granting Bulk the requested temporary authority. On August 16, 1985, Materials filed Exceptions to the July 29, 1985 Tentative Decision in which it alleges that the grant of temporary authority is based on facts which are inaccurate or misleading. More specifically, Materials avers that Lehigh was aware for at least a month that Cement planned to terminate service and submits evidence in support thereof. Furthermore, Materials avers that it contacted Lehigh on several occasions requesting that it was "ready, willing and able" to provide service to Lehigh but was ultimately informed that Lehigh had agreed to use another carrier.

Commission regulations at 52 Pa. Code §3.384(b)(2) provides the following standards for disposition of TA applications:

(2) Immediate need. A grant of TA or ETA will be made where it is established that there is or soon will be an immediate transportation need. A show-

DOCKETED


OCT 9 - 1985

ing of immediate need may involve service to a new or relocated plant, a different method of distribution, new or unusual commodities, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service, or comparable situations which require new carrier service before an application for permanent authority can be filed and processed. An immediate need will not normally be found to exist where there are other carriers capable of rendering the service unless it is determined that there is a substantial benefit to be derived from the initiation of a competitive service.

Here, there was clearly a discontinuance of existing service when Cement terminated its service to Lehigh. Whether the termination of service was on one day notice or 30 days notice is not critical to the instant determination. Although all three of the Protestants have indicated that they are "ready willing and able" to provide service to Lehigh, none of the Protests or subsequent pleadings indicate that any existing carrier could supply the 20 specially equipped tank trailers on immediate notice as required by Lehigh. The evidence before the Commission indicate that there is a substantial benefit to be derived from initiation of a competitive service, THEREFORE,

IT IS ORDERED: That the Exceptions filed by Materials Transport Service, Inc. to the July 29, 1985 Tentative Decision at A-00106205 are hereby denied.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: October 3, 1985

ORDER ENTERED: OCT 8 1985

PS Form 3811, July 1983 447-845

DOMESTIC RETURN RECEIPT

A106205^m Order

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

- 1. Show to whom, date and address of delivery.
- 2. Restricted Delivery.

3. Article Addressed to:

Joseph A. Babbs

4. Type of Service:

- Registered Insured
- Certified COD
- Express Mail

Article Number

44638

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee

X

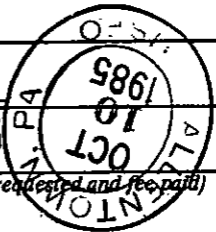
6. Signature - Agent

X

Joseph A. Babbs

7. Date of Delivery

OCT 10 1985



8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



PENALTY FOR PRIVATE
USE. \$300

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

**RETURN
TO**



Pa. Public Utility Commission

P.O. Box 3265 - Rm B-17
(Name of Sender)

Harrisburg, Pa 17120
(No. and Street, Apt, Suite, P.O. Box or R.D. No.)

(City, State, and ZIP Code)

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. Show to whom, date and address of delivery.

Restricted Delivery.

3. Article Addressed to:

William A. Gray

4. Type of Service:

Registered Insured
 Certified COD
 Express Mail

Article Number

44639

Always obtain signature of addressee or agent and
DATE DELIVERED.

5. Signature - Addressee

X

6. Signature - Agent

W. Danaway

7. Date of Delivery

20/10/83

8. Addressee's Address (ONLY if requested and fee paid)

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS



SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

**PENALTY FOR PRIVATE
USE, \$300**

**RETURN
TO**



Pa. Public Utility Commission

(Name of Sender)

P.O. Box 3265 - Rm B-17

(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

Harrisburg, Pa 17120

(City, State, and ZIP Code)

PS Form 3811, July 1983 447-845

DOMESTIC RETURN RECEIPT

A106205 Order

SENDER: Complete items 1, 2, 3 and 4.

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- 1. Show to whom, date and address of delivery.
- 2. Restricted Delivery.

3. Article Addressed to:

S. Berne Smith, Esq.

4. Type of Service:
- Registered
 - Certified
 - Express Mail
 - Insured
 - COD

Article Number

44640

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee

X

6. Signature - Agent

X *[Handwritten Signature]*

7. Date of Delivery **9 1983**
06-1

8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS



SENDER INSTRUCTIONS.

Print your name, address, and ZIP Code in the space below.

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- Endorse article "Return Receipt Requested" adjacent to number.

**RETURN
TO**



Pa. Public Utility Commission

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P.O. Box 3265 - Rm B-17

(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

Harrisburg, Pa 17120

(City, State, and ZIP Code)

STAMP COLLECTING



PENALTY FOR PRIVATE
USE, \$300

PS Form 3811, July 1983 447-845

DOMESTIC RETURN RECEIPT

A106205 Order

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1. Show to whom, date and address of delivery.

Restricted Delivery.

3. Article Addressed to:

Kevin W. Walsh

29

4. Type of Service:

- Registered Insured
 Certified COD
 Express Mail

Article Number

44641

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature -- Addressee

X

6. Signature -- Agent

X *James E. ...*

7. Date of Delivery

OCT 10 1985

8. Addressee's Address (ONLY if requested and fee paid)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



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