

ORIGINAL
01/11/85

EDWARD C. FIRST, JR.
ROBERT H. GRISWOLD
MOSES K. ROSENBERG
ARTHUR L. BERGER
FRANCIS B. HAAS, JR.
G. THOMAS MILLER
DONALD R. WAISEL
RICHARD R. LEFEVER
J. THOMAS MENAKER
CLYDE W. MCINTYRE
S. BERNE SMITH
ROD J. PERA
EDWARD W. ROTHMAN
ROBERT A. MILLS
W. JEFFRY JAMOYNEAU
HERBERT R. NURICK
DAVID E. LEHMAN
NORMAN I. WHITE
F. MURRAY BRYAN
RICHARD W. STEVENSON
WILLIAM A. CHESNUTT
HENRY R. MACNICHOLAS
WILLIAM M. YOUNG, JR.
ROBERT M. CHERRY

DAVID B. DISNEY
H. LEE ROUSSEL
MAURICE A. FRATER
C. GRAINGER BOWMAN
JOHN S. OYLER
DELANO M. LANTZ
HARVEY FREEDENBERG
EDWARD J. RIEHL
JASON S. SHAPIRO
ERIC L. BROSSMAN
ROBERT D. STETS
TERRY R. BOSSERT
MARY JANE FORBES
JEFFREY B. CLAY
DAVID M. KLEPPINGER
NEAL S. WEST
JESSIE L. SMITH
BRUCE A. FELDMAN
FRANKLIN A. MILES, JR.
MICHAEL A. DOCTROW
MICHAEL G. JARMAN
STEPHEN A. MOORE
DANA S. SCADUTO
BARBARA S. KAHOE

MCNEES, WALLACE & NURICK
ATTORNEYS AT LAW

100 PINE STREET
P. O. BOX 1166
HARRISBURG, PA. 17108-1166
TELEPHONE (717) 232-8000

July 25, 1985

STERLING G. MCNEES
1923-1959

DAVID M. WALLACE
1942-1967

RETIRED PARTNERS

HARRY H. FRANK
JAMES H. BOOSER
JAMES W. HAGAR
JAMES H. KING

OF COUNSEL

GILBERT NURICK
SAMUEL A. SCHRECKENGAUST, JR.
JEFFERSON C. BARNHART

In re: Application of Bulk, Inc.
A-00106205

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

Dear Mr. Rich:

This firm represents Schwerman Trucking Co., which filed a protest to the permanent and temporary authority applications at the above-captioned docket number. Upon further consideration, our client has decided to withdraw its protest, and we hereby so do.

Please keep S. Berne Smith, of our office, as a party of record for the purpose of receiving copies of all notices, orders, and other documents issued in this case.

Very truly yours,

MCNEES, WALLACE & NURICK

By *Herbert R. Nurick*
Herbert R. Nurick

HRN:wjk

cc: William A. Gray, Esquire
Mr. Richard H. Prevetie

DOCUMENT
FOLDER

DOCKETED
JUL 30 1985

RECEIVED

JUL 29 1985

SECRETARY'S OFFICE
Public Utility Commission



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

File

August 2, 1985

A-00106205

IN REPLY PLEASE
REFER TO OUR FILE
R-16

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

Bulk, Inc.

Dear Mr. Gray:

Under date of July 29, 1985, the Secretary's office transmitted to you the Commission's compliance order of July 25, 1985, evidencing approval of the above carrier's application at A-106205. The letter transmitting the order directs attention to the requirement for the filing of a tariff.

We now have in our files Contract Pa. P.U.C. No. 1, for the above carrier, filed under emergency temporary authority which became effective June 5, 1985. This tariff covers the service approved in the above order, and it will not be necessary that another tariff be filed.

Very truly yours,
Barry L. Ernst, Director
Bureau of Transportation

By: Paul I. Kenney, Chief
Finance Division

RHF:dmm

cc: Bulk, Inc.
P.O. Box 189
Omaha, Nebraska 69101

DOCUMENT
FOLDER

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DOCKET
AUG 2 1985

ORIGINAL

LAW OFFICES
BUTZ, HUDDERS, TALLMAN, STEVENS & JOHNSON

740 HAMILTON MALL
ALLENTOWN, PENNSYLVANIA 18101-2488

AREA CODE 215
439-1451

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JAMES J. HOLZINGER

COUNSEL
WILLIAM S. HUDDERS

OF COUNSEL
HERBERT M. RAFNER*

O. JACOB TALLMAN
(1928-1967)

HAROLD A. BUTZ
(1923-1969)

THEODORE J. ZELLER, JR.
(1966-1976)

*ALSO ADMITTED IN
NEW YORK

August 15, 1985

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Commonwealth of Pennsylvania
P. O. Box 3265
Harrisburg, PA 17120

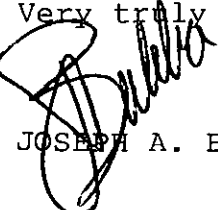
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AUG 16 1985
SECRETARY'S OFFICE
Public Utility Commission

RE: Application of Bulk, Inc.
No. A-00106205
Exceptions of Materials Transport Service, Inc.

Dear Secretary Rich:

Enclosed for filing with your office please find the original and two copies of the Exceptions of Materials Transport Service, Inc. to the Tentative Order and Decision of the Commission entered July 29, 1985. By copy of this letter, counsel for all participants is being served with a true and correct copy of same. If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

JOSEPH A. BUBBA

DOCUMENT
FOLDER

JAB:rds
Enclosures

cc: William A. Gray, Esquire (w/encl.)
S. Berne Smith, Esquire (w/encl.)
Kevin W. Walsh, Esquire (w/encl.)
Mr. Ronald Taylor (w/encl.)
Mr. Ross Wilson (w/encl.)
Mr. Lou Chiesa (w/encl.)

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AUG 16 1985
SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION DOCKET NO. A-00106205

BULK, INC.

DOCKETED

AUG 16 1985

EXCEPTIONS OF MATERIALS TRANSPORT SERVICE, INC.
TO THE TENTATIVE ORDER AND DECISION OF
THE COMMISSION

DOCUMENT

FOLDER

Materials Transport Service, Inc., by and through its attorneys, Butz, Hudders, Tallman, Stevens & Johnson, files the following exceptions to the Tentative Order and Decision of the Commission:

1. On or about May 6, 1985, Bulk, Inc. ("Bulk" or "Applicant") filed applications with the Pennsylvania Public Utility Commission ("Commission") for temporary and permanent authority:

To transport, as a contract carrier, cement, for Lehigh Portland Cement Company, from its facility in West Manchester Township, York County, to points in Pennsylvania and vice versa.

2. Prior to receipt of the written applications for temporary and permanent authority, the Commission, by its Order adopted May 3, 1985, found that the Applicant demonstrated that an emergency situation existed and, accordingly, granted emergency temporary authority to the Applicant.

3. Protests to the applications were filed by C. L. Feather, Inc., Schwerman Trucking Co. and by Materials Transport Service, Inc.

4. On July 29, 1985, the Commission entered an order granting Applicant the temporary authority requested herein.

5. Materials Transport Service, Inc. objects to the granting of said temporary authority and these Exceptions are filed on its behalf.

6. MTS believes that certain facts, upon which the Commission's Tentative Order is based, are inaccurate or misleading.

7. Specifically, the Commission found that Lehigh Portland Cement Company's "house carrier, Cement Express, Inc., had terminated service on one day's notice, effective May 1, 1985". MTS contends that upon discovery it will be shown that Lehigh and Applicant knew well in advance of May 1, 1985 that Cement Express would be terminating service.

8. The Commission also relies on Lehigh's statement that it "attempted to acquire service from a number of currently certificated carriers, but was unsuccessful." Materials Transport Service, Inc. contends that said statement is misleading in that Materials Transport Service, Inc. contacted Lehigh on more than one occasion, and initiated discussions

regarding the possibility of providing service on Lehigh's behalf. Lehigh terminated those communications before any negotiation or even discussion regarding price or other terms took place.

9. Applicant has misled the Commission by indicating that an emergency situation exists. Lehigh could have utilized the services of existing certificated carriers pending any application for permanent authority.

10. Materials Transport Service, Inc. contends that upon a review of all facts, it will be shown that there is absolutely no need for an additional carrier. There are several certificated carriers who are ready, willing and able to provide service to Lehigh.

WHEREFORE, Materials Transport Service, Inc. respectfully requests that the Commission reverse its Tentative Order and direct Applicant to cease and desist from providing service pursuant to said Order.

Respectfully Submitted,

BUTZ, HUDDERS, TALLMAN,
STEVENS & JOHNSON

BY: 

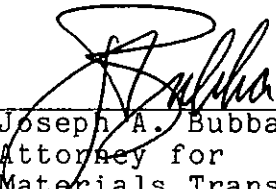
Joseph A. Bubba
Attorney for Materials
Transport Service, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon all parties of record in accordance with the requirements of Section 1.54 (relating to service by a participant).

Dated this *15th* day of *August*, 1985.

BY: _____


Joseph A. Bubba
Attorney for
Materials Transport
Service, Inc.

ORIGINAL

LAW OFFICES

VUONO, LAVELLE & GRAY

2310 GRANT BUILDING

PITTSBURGH, PA. 15219

(412) 471-1800

JOHN A. VUONO
WILLIAM J. LAVELLE
WILLIAM A. GRAY
MARK T. VUONO
RICHARD R. WILSON
DENNIS J. KUSTURISS

August 19, 1985

Re: Bulk, Inc.
Docket No. A-00106205
Temporary Authority Application
Our File 3116-1-1

RECEIVED
AUG 21 1985
SECRETARY'S OFFICE
Public Utility Commission

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Dear Mr. Rich:

We enclose for filing the original and two copies of Reply To Exceptions of Materials Transport Service, Inc. To Tentative Decision Granting Temporary Authority.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the stamped, self-addressed envelope provided.

Very truly yours,

VUONO, LAVELLE & GRAY

William A. Gray

DOCUMENT
FOLDER

cas

Enclosures

cc: Joseph A. Bubba, Esq. (w/enc.)
Bulk, Inc.

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION DOCKET NO. A-00106205
BULK, INC.

RECEIVED
AUG 21 1985
SECRETARY'S OFFICE
Public Utility Commission

REPLY OF BULK, INC. TO EXCEPTIONS
OF MATERIALS TRANSPORT SERVICE, INC.
(TO TENTATIVE DECISION GRANTING TEMPORARY AUTHORITY)

DOCUMENTED

AUG 22 1985

I. STATEMENT OF THE CASE

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FOLDER

By applications published in the Pennsylvania Bulletin on May 18, 1985, Bulk, Inc. (Bulk or applicant) seeks permanent and temporary contract carrier authority so as to permit the transportation of:

Cement, for Lehigh Portland Cement Company, from its facilities located in the township of West Manchester, York County, to points in Pennsylvania, and vice versa.

Protests to these applications were filed by Schwerman Trucking Co., Materials Transport Service, Inc. and C.L. Feather, Inc. The protest of Schwerman Trucking Co. to both the permanent and temporary authority applications was withdrawn by letter to the Commission dated July 25, 1985.

By Order entered May 3, 1985, the Commission granted emergency temporary authority to the applicant to provide the same

service as is sought by the temporary authority and permanent authority applications.

By Tentative Decision entered July 29, 1985, the Commission granted the temporary authority application. Exceptions to the Tentative Decision were filed by Materials Transport Service, Inc.

Applicant now submits its Reply to Exceptions.

II. ARGUMENT

The Exceptions filed by Materials Transport allege that the Commission relied upon inaccurate and misleading facts in granting the temporary authority application. This allegation is completely without merit, as will be discussed in more detail below.

In support of its allegation, Materials Transport states in Paragraph 7 of its Exceptions that it "contends that upon discovery it will be shown that Lehigh and Applicant knew well in advance of May 1, 1985 that Cement Express would be terminating service." Materials Transport does not set forth any basis for this statement, merely contending that "discovery" will show this fact. Materials Transport is obviously grasping at straws in an effort to have the Commission deny temporary authority in this case.

Materials Transport, in Paragraph 8 of its Exceptions, also challenges the Commission's reliance upon the shipper's contention that it attempted to acquire service from a number of currently certificated carriers and that it was unsuccessful in its efforts. Materials Transport argues that "said statement is misleading in that Materials Transport Service, Inc. contacted Lehigh on more than one occasion, and initiated discussions regarding the possibility of providing service on Lehigh's behalf." It is unclear how this fact, even if true, would make the shipper's statement "misleading". The shipper

indicated in its letter of support filed with the emergency temporary authority application and the temporary authority application that it had contacted Schwerman Trucking, Nu-Bulk, Inc. (a division of Chemical Leaman), Fleet Transport, and others. Clearly, there was nothing "misleading" in the information provided by the shipper to the Commission. As was indicated by the shipper, it required immediately 20 special tank trailers upon the termination of service on one day's notice by Cement Express, Inc. The applicant was able to provide that equipment. The fact that the shipper may have had discussions with Materials Transport is irrelevant. Significantly, Materials Transport does not allege when these discussions took place, the content of the discussions, or whether Materials Transport could even have provided the 20 tank trailers that the shipper required. The allegations in Paragraph 8 are very vague and are certainly not a basis for denying temporary authority.

Materials Transport argues in Paragraph 9 of its Exceptions that the applicant "has misled the Commission by indicating that an emergency situation exists. Lehigh could have utilized the services of existing certificated carriers pending any application for permanent authority." These statements are absurd. The applicant did not in any mislead the Commission. In addition, it is clear from the shipper's statement of support that a number of existing certificated carriers were contacted and were unable to provide the service required.

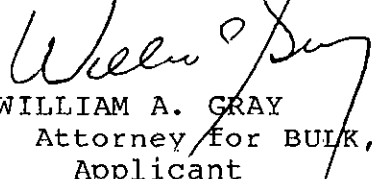
Materials Transport states in Paragraph 10 of its Exceptions that there "are several certificated carriers who are ready, willing and able to provide service to Lehigh." Materials Transport does not identify these carriers, other than itself. Presumably, Materials Transport may also be referring to C. L. Feather, Inc., which is also a protestant in this case. As noted previously, the protest of Schwerman Trucking Co. has been withdrawn. There is no indication by Materials Transport that these "several certificated carriers" are able to provide the large amount of equipment required by the shipper, i.e. 20 tank trailers. The applicant was able to provide this equipment on extremely short notice and should not now be required to stop providing service to the shipper based upon the totally unfounded statements made by Materials Transport.

There is absolutely no evidence that Materials Transport could have met or could now meet the needs of the shipper in this case. By contrast, the applicant did meet those urgent needs and the Commission was correct in granting emergency temporary authority and then temporary authority to the applicant.

III. CONCLUSION

For the reasons set forth herein, Bulk, Inc. respectfully requests that the Commission deny the Exceptions filed by Materials Transport Service, Inc.

Respectfully submitted,


WILLIAM A. GRAY
Attorney for BULK, INC.,
Applicant

VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Dated: August 19, 1985

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120
August 28, 1985

MONITOR: COMMISSIONER SHANE

In re: A-00106205

(See attached list)

Application of Bulk, Inc.

Right to begin to transport, cement, for Lehigh Portland Cement Company, from its facilities located in the township of West Manchester, York County, to points in Pennsylvania, and vice versa.

NOTICE

This is to inform you that an initial hearing on the above-captioned case will be held Thursday, September 26, 1985, at 10:00 a.m., in the 11th Floor Hearing Room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania.

The presiding officer in this proceeding will be Administrative Law Judge John K. Clements. Judge Clements can be contacted at 1103 Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222; telephone (412) 565-3550.

If you intend to file exhibits, please be advised that two copies of all hearing exhibits to be presented into evidence must be submitted to the Reporter and an additional copy should be furnished to the presiding officer and each party of record.

cc: Judge Clements
Bureau of Trans.
Ms. Crouse
Ms. Dickson
Mr. Bramson
File Room



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

Bulk, Inc.
2565 St. Mary's Avenue
P.O. Box 189
Omaha, NE 68101 X

S. Berne Smith, Esquire
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108 W/D 7/29

Joseph A. Bubba, Esquire
740 Hamilton Mall
Allentown, PA 18101-2488 X

Kevin Walsh, Esquire
Suite 700
312 Boulevard of the Allies
Pittsburgh, PA 15222 X

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740 HAMILTON MALL

ALLENTOWN, PENNSYLVANIA 18101-2488

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JOSEPH A. HOLKO
JAMES J. HOLZINGER

COUNSEL
WILLIAM S. HUDDERS

OF COUNSEL
HERBERT M. RAFNER*

O. JACOB TALLMAN
(1928-1967)

HAROLD A. BUTZ
(1923-1969)

THEODORE J. ZELLER, JR.
(1966-1976)

*ALSO ADMITTED IN
NEW YORK

September 5, 1985

TELECOPIER 215.439-1733

Jerry Rich; Secretary
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17120

Re: Application of Bulk, Inc.
Docket No. A-00106205

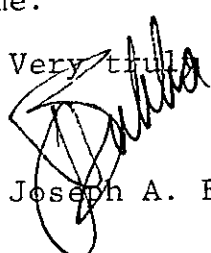
Dear Mr. Rich:

Enclosed for filing with your office please find the original and two copies of the Response of Materials Transport Service, Inc. to the Reply of Bulk, Inc. to Exceptions of Materials Transport Service, Inc. (To Tentative Decision Granting Temporary Authority) with reference to the above captioned matter.

By copy of this letter, applicant's counsel, William A. Gray, is being served with a true and correct copy of the same.

If you should have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,


Joseph A. Bubba

/bas
Enclosures

cc: William A. Gray, Esquire
Materials Transport Service, Inc.



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SEP 8 1985

SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION DOCKET NO. A-00106205

BULK, INC.

RESPONSE OF MATERIALS TRANSPORT SERVICE, INC.
TO THE REPLY OF BULK, INC. TO EXCEPTIONS
OF MATERIALS TRANSPORT SERVICE, INC.
(TO TENTATIVE DECISION GRANTING TEMPORARY AUTHORITY)

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On or about May 6, 1985, Bulk, Inc. ("Bulk" or "Applicant") filed applications with the Pennsylvania Public Utility Commission ("PUC" or "Commission") for temporary and permanent authority:

To transport, as a contract carrier, cement, for Lehigh Portland Cement Co., from its facilities in West Manchester Township, York County, to points in Pennsylvania and vice versa.

Protests to the applications were filed by C. L. Feather, Inc.; Schwerman Trucking Co. and Materials Transport Service, Inc. ("MTS"). On July 29, 1985, the Commission entered an order granting Applicant the temporary authority requested therein. Thereafter MTS filed exceptions to the tentative decision

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EXHIBIT
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alleging, inter alia, that several facts upon which the Commission based its tentative decision were inaccurate or presented in a misleading fashion. MTS indicated in the Exceptions that discovery would disclose the true nature of the facts surrounding the request for temporary authority. In its Reply to Exceptions, Bulk suggested that because of the reference to "discovery", MTS was "grasping at straws in an effort to have the Commission deny temporary authority". (Reply to Exceptions; page 3).

Because Bulk seeks to have this matter determined without the benefit of discovery, MTS believes a more detailed response is necessary. MTS hereby reiterates its claim that the underlying facts upon which the Commission based its tentative decision were misleading. This response (verified by MTS) sets forth additional facts in support of that conclusion.

II. DISCUSSION

A. Paragraph 7 Of Exceptions

As part and parcel of its decision granting temporary authority, the Commission relied upon the representation that Lehigh Portland Cement Co.'s "house carrier, Cement Express, Inc., had terminated service on one day's notice, effective May 1, 1985". MTS indicated in paragraph 7 of its Exceptions that

"upon discovery it will be shown that Lehigh and Applicant knew well in advance of May 1, 1985 that Cement Express would be terminating service." The Applicant in its reply does not even begin to argue that that statement is untrue, it merely contends that MTS does not present any evidence supporting that fact and that, therefore, MTS is "grasping at straws". Nothing could be further from the truth.

In support of this allegation, MTS sets forth as Exhibit "A" a letter dated April 1, 1985 from Cement Express to its union indicating its intention to terminate service to Lehigh Portland effective May 1, 1985. Moreover, MTS believes and avers that several face to face and telephone conversations between Cement Express and Lehigh Portland relating to termination of service took place throughout the month of April. Lastly, MTS alleges that Bulk also knew of the termination during April (and perhaps earlier) and specifically negotiated with Lehigh Portland and Cement Express during that same period of time.

The facts set forth in the next section in reference to paragraph 8 will even more clearly indicate that Lehigh Portland and Bulk knew of the termination of service prior to May 1, 1985.

B. Paragraph 8 Of The Exceptions

In this paragraph MTS directed its comments to the very basis of the grant of any authority by the Commission. MTS argued that MTS was ready, willing and able to provide transportation services to Lehigh Portland. MTS further alleged that as a certificated carrier no grant of additional authority to a new carrier was necessary or appropriate. MTS contends that Lehigh Portland knew of the service MTS was able to provide via various phone calls and that therefore, its "attempts" to obtain transportation services were unsuccessful only in a superficial sense.

Applicant only responds:

"Materials Transport does not allege when these discussions took place, the content of the discussions, or whether Materials Transport could even have provided the twenty (20) tank trailers that the shipper required. The allegations in Paragraph 8 are very vague and are certainly not a basis for denying temporary authority." (Reply to Exceptions; p. 4).

Presumably, if the allegations are clear and not vague even Bulk would have to agree that the temporary authority is not required.

On April 24, 1985, Louis Chiesa, an employee of MTS called Jay Young of Lehigh Portland inquiring about Lehigh

Portland's need for a cement carrier.[1] Young indicated in that telephone conversation that discussions were continuing but that no carrier had yet been chosen to replace Cement Express. Young also confirmed that Lehigh Portland was aware (at least at that time) that Cement Express was terminating service. Young asked if MTS was interested in providing services and Chiesa replied that it was. Young and Chiesa discussed the type of authority in more detail, at which time Young suggested that it might be worthwhile for MTS to speak to Lee Cummings, a vice president of Lehigh Portland.

On April 29, 1985, Ronald B. Taylor, President of MTS, called Lee Cummings to discuss the possible provision of transportation services. Cummings terminated that telephone conversation by indicating to MTS that Lehigh Portland had a handshake agreement with another carrier to take over all the deliveries but at that time Cummings indicated that he was not able to disclose the identity of the carrier.

The Applicant contends that its attempts to use a number of carriers were unsuccessful. No information is given regarding those attempts. Moreover, it is not important to look

1

Chiesa knew at that time that Cement Express was terminating service, lending even less credibility to the contention that Lehigh Portland knew only one day in advance of the termination of service.

to see who Lehigh Portland contacted regarding the provision of services. What is important is that there is at least one certificated carrier who was and is ready, willing and able to provide services. There was no reason for an additional grant of authority.

III. CONCLUSION

In summary, MTS indicates that the Applicant has misled the Commission into believing an emergency situation exists. In order to show that an emergency situation exists, the Applicant is required to show an urgency of time and a lack of certificated carriers. It is MTS's position that the Applicant has failed in both respects.

For all the above reasons, MTS reiterates its request that the Commission reverse its tentative Order and decision and direct Applicant to cease and assist from providing services pursuant to set Order.

Respectfully Submitted

BUTZ, HUDDERS, TALLMAN,
STEVENS, & JOHNSON

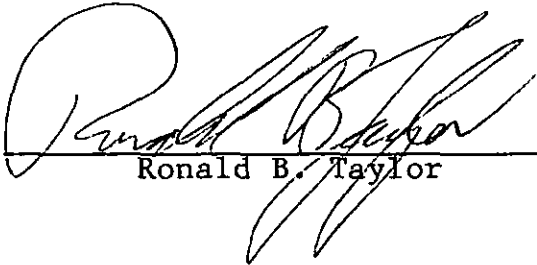
By: 

Joseph A. Bubba
Attorney for Materials
Transport Services, Inc.

VERIFICATION

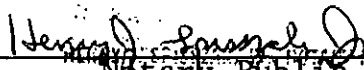
COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF NORTHAMPTON)

RONALD B. TAYLOR being duly sworn according to law,
deposes and says that he is the President of Materials Transport
Service, Inc. and that the facts above set forth are true and
correct; or as true and correct to the best of his knowledge,
information and belief and he expects to prove the same at the
hearing hereof.



Ronald B. Taylor

SWORN TO AND SUBSCRIBED
before me, this 3rd day
of September, 1985



Notary Public
MY COMMISSION EXPIRES MAY 3, 1988
Member, Pennsylvania Association of Rotaries

CEMENT EXPRESS, INC.

Hokes Mill Road and Lemon Street
York, Pennsylvania 17404

Office: P. O. Box 38
Bryn Mawr, Pa. 19010
215-525-5220

Terminal:
York: 717-843-5316
717-843-1308

April 1, 1985

Mr. Dale E. Baldwin
Recording Secretary and
Business Representative
International Brotherhood of
Chauffeurs, Teamsters and Helpers
Teamsters Local Union No. 430
355 S. Wheaton Street
York, Pennsylvania 17403

Dear Dale:

This letter is to advise you of the intention of Cement Express, Inc., to no longer function as a cement carrier out of the Lehigh Portland Cement Company's plant in York, Pennsylvania, effective May 1, 1985.

Respectfully yours,

CEMENT EXPRESS, INC.

H. Richard Stickel
H. Richard Stickel
Chairman

HRS/gms

LOCAL 430

Exh. "A"

LAW OFFICES
VUONO, LAVELLE & GRAY

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JOHN A. VUONO
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2310 GRANT BUILDING
PITTSBURGH, PA. 15219

(412) 471-1800

September 11, 1985

Re: Bulk, Inc.
Docket No. A-00106205
Temporary Authority Application
Our File 3116-1-1

RECEIVED

SEP 11 1985
SECRETARY'S OFFICE
Public Utility Commission

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Room B-18, North Office Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

Dear Mr. Rich:

We are enclosing the original and three (3) copies of a Motion to Strike Response of Materials Transport Service, Inc. To the Reply of Bulk, Inc. To Exceptions of Materials Transport Service, Inc. (To Tentative Decision Granting Temporary Authority).

A copy of the Motion has been served on the attorney for Materials Transport Service, Inc.

Please acknowledge receipt and filing of the enclosed Motion on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided for that purpose.

Very truly yours,

VUONO, LAVELLE & GRAY


William A. Gray

cas

Enclosures

cc: Joseph A. Bubba, Esq. (w/enc.)
Bulk, Inc. (w/enc.)

BEFORE THE
Pennsylvania Public Utility Commission

APPLICATION DOCKET NO. A-00106205

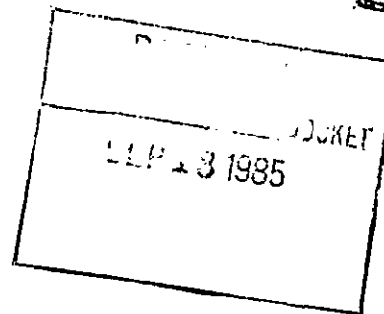
BULK, INC.

RECEIVED
SEP 11 1985
SECRETARY'S OFFICE
Public Utility Commission

MOTION TO STRIKE RESPONSE OF MATERIALS TRANSPORT
SERVICE, INC. TO THE REPLY OF BULK, INC.
TO EXCEPTIONS OF MATERIALS TRANSPORT SERVICE, INC.
(TO TENTATIVE DECISION GRANTING TEMPORARY AUTHORITY)

WILLIAM A. GRAY
Attorney for BULK, INC.,
Applicant

Of Counsel:
VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, Pennsylvania 15219



Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION DOCKET NO. A-00106205

BULK, INC.

MOTION TO STRIKE RESPONSE OF MATERIALS TRANSPORT
SERVICE, INC. TO THE REPLY OF BULK, INC.
TO EXCEPTIONS OF MATERIALS TRANSPORT SERVICE, INC.
(TO TENTATIVE DECISION GRANTING TEMPORARY AUTHORITY)

I. STATEMENT OF THE CASE

By applications published in the Pennsylvania Bulletin on May 18, 1985, Bulk, Inc. (Bulk or applicant) seeks permanent and temporary contract carrier authority so as to permit the transportation of:

Cement, for Lehigh Portland Cement Company, from its facilities located in the township of West Manchester, York County, to points in Pennsylvania, and vice versa.

Protests to these applications were filed by Schwerman Trucking Co., Materials Transport Service, Inc. and C.L. Feather, Inc. The protest of Schwerman Trucking Co. to both the permanent and temporary authority applications was withdrawn by letter to the Commission dated July 25, 1985.

By Order entered May 3, 1985, the Commission granted emergency temporary authority to the applicant to provide the same

service as is sought by the temporary authority and permanent authority applications.

By Tentative Decision entered July 29, 1985, the Commission granted the temporary authority application. Exceptions to the Tentative Decision were filed by Materials Transport Service, Inc. Applicant filed a Reply to the Exceptions filed by Materials Transport Service, Inc.

On or about September 8, 1985, Materials Transport Service, Inc. filed a Response to the Reply of Bulk, Inc. to Exceptions.

Applicant now submits a Motion to Strike the Response to the Reply which has been filed by Materials Transport Service, Inc.

II. ARGUMENT

The Response of Materials Transport Service, Inc. (Materials Transport) to the Reply of Bulk, Inc. to Exceptions is an unauthorized pleading not permitted by the Public Utility Code or the regulations of this Commission and should therefore be stricken. In addition, this pleading is replete with new and irrelevant evidence and therefore should also be stricken on that basis.

52. Pa. Code §5.1 provides for the filing of certain specified pleadings in an action before the Commission. The Response of Materials Transport to Applicant's Reply to Exceptions is in essence a Reply to a Reply, which is not a permissible pleading. If parties were permitted to file Replies to Replies, there would never be an end to the pleading process.

In addition to the Response filed by Materials Transport not being a permissible pleading, i.e. a Reply to a Reply, the pleading should also be stricken since it is an obvious attempt by Materials Transport to set forth new factual evidence. Petitioner readily admits that the pleading contains new evidence but attempts to justify this fact by stating that "discovery" was not available to Materials Transport.

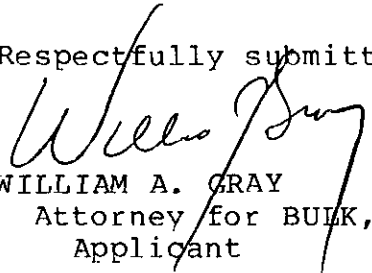
The "new evidence" submitted by Materials Transport is totally inappropriate. For example, Materials Transport attaches as Exhibit "A" to its Response a letter dated April 1,

1985 from Cement Express, Inc. to its Union. This letter has absolutely no relevance to this proceeding. The Commission should not consider this evidence or any of the alleged "new evidence" submitted by Materials Transport in its Response.

III. CONCLUSION

For the reasons set forth herein, Bulk, Inc. respectfully requests that this Motion to Strike be granted and that the Response of Materials Transport Service, Inc. to the Reply of Bulk, Inc. to Exceptions of Materials Transport Service, Inc. be stricken and/or denied.

Respectfully submitted,


WILLIAM A. GRAY
Attorney for BULK, INC.,
Applicant

VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

APPEARANCE SHEET

HEARING REPORT

DOCKET NO. A-00106205

CASE NAME Bulk, Inc.

HEARING LOCATION Pittsburgh, PA.

HEARING DATE September 26, 1985

ALJ Clements

CHECK THOSE BLOCKS WHICH APPLY:

Hearing concluded X

Record closed in 30 DAYS

Briefs to be filed X

Further hearing _____

Estimated add'l days _____

BENCH DECISION _____

REMARKS: _____

RECEIVED

SEP 30 1985

Office of the ALJ
Public Utility Commission

DOCUMENT FOLDER

DOCKETED

OCT 02 1985

Names and addresses of parties or counsel of record
Please Print Clearly
Incomplete Information May Result in Delay of Process

NAME	ADDRESS	APPEARING FOR				
JOSEPH A. BUBBA, ESQ BUTZ, HUDDERS, TALLMAN STEVENS & JOHNSON	140 HAMILTON MALL	PROTESTANT MATERIALS TRANSPORT SERVICE, INC.				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">City</td> <td style="width: 33%;">State</td> <td style="width: 33%;">Zip</td> </tr> <tr> <td>ALLENTOWN</td> <td>PA</td> <td>18101</td> </tr> </table>		City	State	Zip	ALLENTOWN
City	State	Zip				
ALLENTOWN	PA	18101				
Uono Lavelle & Gray By: William A. Gray	2310 Grant Bldg	Bulk, Inc. Applicant				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">City</td> <td style="width: 33%;">State</td> <td style="width: 33%;">Zip</td> </tr> <tr> <td>PA</td> <td>PA</td> <td>15219</td> </tr> </table>		City	State	Zip	PA
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Check this box if additional parties of counsel of record appear on back.

Mary Baldwin
Reporter

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