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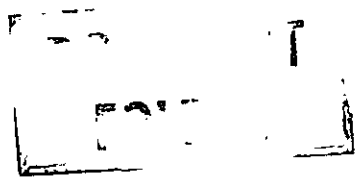
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00106205 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. Initial hearing.

Verbatim record of hearing held in the 11th Floor Hearing Room, State Office Building, Pittsburgh, Pennsylvania, on Thursday,

September 26, 1985  
10:00 a.m.



BEFORE: JOHN CLEMENTS, ESQUIRE, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

WILLIAM GRAY, ESQUIRE  
2310 Grant Building  
Pittsburgh, PA 15219

For - Bulk, Inc.

JOSEPH BUBBA, ESQUIRE  
740 Hamilton Mall  
Allentown, PA 18101

For - Materials Transport Service

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OCT 22 1985

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OCT 21 1985  
SECRETARY'S OFFICE  
Public Utility Commission

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>Applicant Witnesses:</u>				
Jerome Mulroy	4	30	55	--
Lee Cummings	57	89	112 & 170	112 & 171
<u>Protestant Witness:</u>				
John Taylor	117	146	168	--

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1 ADMINISTRATIVE LAW JUDGE JOHN CLEMENTS: This is the  
2 time scheduled for hearing in the matter of the application  
3 of Bulk, Inc. It is designated by the Commission at  
4 A-00106205.

5 My name is John Clements. I am the Administrative  
6 Law Judge assigned to the proceeding.

7 I would like counsel to identify themselves.

8 MR. GRAY: Your Honor, William Gray, 2310 Grant  
9 Building, Pittsburgh, Pennsylvania 15219, representing  
10 Bulk, Inc, the Applicant.

11 JUDGE CLEMENTS: Thank you.

12 MR. BUBBA: Joseph Bubba, B-U-B-B-A, 740 Hamilton  
13 Mall, Allentown, Pennsylvania 18101. I am representing  
14 Materials Transport Service, the Protestant in this matter.

15 JUDGE CLEMENTS: Welcome to Pittsburgh.

16 MR. BUBBA: Thank you.

17 JUDGE CLEMENTS: Very well.

18 Mr. Gray, do you have any preliminary comments?

19 MR. GRAY: Yes, Your Honor. We initially had three  
20 protests to this application. One of them has been withdrawn  
21 of record. That's the protest of Schwerman Trucking Company.  
22 That was withdrawn by letter from their attorney, Herbert  
23 Nurick, on July 25, 1985.

24 A second protestant is C.L. Feather, Inc. And I'm  
25 going to submit a restrictive amendment shortly during the

1 testimony of the witness of the application which will  
 2 result in the withdrawal of the Protestant of that carrier.  
 3 And I am authorized to make a statement for this carrier  
 4 concerning that matter when the restrictive amendment is  
 5 submitted.

6 So, that leaves the one Protestant, Materials Transport  
 7 Service, Inc., obviously here today ready to proceed with  
 8 their objections.

9 JUDGE CLEMENTS: Very well.

10 Do you have any preliminary, before we begin, Mr.  
 11 Bubba?

12 MR. BUBBA: I had previously given a carbon copy to the  
 13 Administrative Law Judge a letter that there was a dispute.  
 14 I discussed that with Mr. Gray and that is no longer relevant  
 15 in this proceeding.

16 JUDGE CLEMENTS: Very well.

17 Mr. Gray, would you like me to swear in your first  
 18 witness?

19 MR. GRAY: I call Mr. Mulroy on behalf of Bulk, Inc.

20 JEROME MULROY, called as a witness, having been duly  
 21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GRAY:

24 Q Mr. Mulroy, by whom are you employed?

25 A Bulk, Inc.

1 Q What is your business address?

2 A 2100 West King Street Extended, York, Pennsylvania.

3 Q Are you authorized to testify for Bulk in this  
4 proceeding?

5 A Yes.

6 Q What is your position with Bulk?

7 A I am the general manager.

8 Q Are you in charge of the terminal in York or near  
9 York, Pennsylvania?

10 A Yes.

11 Q Is that the relevant terminal in this application?

12 A Yes, it is.

13 Q Where are the principal offices of Bulk, Inc.  
14 located?

15 A Omaha, Nebraska.

16 Q Do you know what state Bulk, Inc. is incorporated  
17 in?

18 A In Nebraska.

19 Q Is Bulk, Inc. qualified to do business in Pennsylvania?

20 A Yes, it is.

21 Q Before we get further into your substance of  
22 testimony, I would like to take up a preliminary matter with  
23 you. Has Bulk, Inc. agreed to a restrictive amendment in  
24 this case in order to eliminate the protest of C.L. Feather,  
25 Inc.?

1 A Yes, we have.

2 MR. GRAY: Your Honor, may we have marked as Applicant's  
3 Exhibit No. 1, a restrictive amendment to be submitted by the  
4 Applicant.

5 Unfortunately, because this was only resolved about  
6 15 minutes ago, I don't have copies yet. But I will get them  
7 at a break.

8 JUDGE CLEMENTS: It shall be so identified.

9 MR. GRAY: Let me just show it to counsel before I ask  
10 any questions.

11 BY MR. GRAY:

12 Q Look at what has been marked as Applicant's Exhibit  
13 No. 1.

14 First of all, is that your signature on the restrictive  
15 amendment?

16 A Yes, it is.

17 Q Now, I don't think it's necessary to read it into  
18 the record. Would it be correct to say that basically the  
19 application stands as it was initially filed except that you  
20 have taken a restriction against service involving transpor-  
21 tation of cement in Bulk or by the use of special equipment  
22 to or from the facilities of New Enterprise Stone and Lime  
23 Company with the exception that you are permitted to transport  
24 white cement to the facilities of New Enterprise Cement and  
25 Lime Company in New Holland?

1 A That's correct.

2 Q We are going to get into testimony in a minute about  
3 what operations you're providing now under emergency temporary  
4 authority. But just to clarify this point, are you providing  
5 transportation now to the borough of New Holland?

6 A Yes.

7 Q Is that why there was an exception taken for the  
8 New Enterprise facilities in New Holland?

9 A That's correct.

10 Q Again, we are going to get into a little bit later  
11 the type of cement you transport. But under the emergency  
12 temporary authority, is the only thing that you transport  
13 to New Holland white cement?

14 A That's correct. White cement.

15 Q So, let me ask you this. Do you provide any other  
16 service now from facilities of Lehigh Cement to any of the  
17 other facilities of New Enterprise?

18 A Up to this point, we have not. The only one was  
19 the New Holland location involving white cement and cement  
20 products.

21 Q Do you understand that if this application is granted  
22 as amended, if the Judge and the Commission accept this  
23 restrictive amendment, that while you will be able to transport  
24 cement -- white cement -- to New Holland, to the facilities of  
25 New Enterprise, you will not be able to provide any other

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1 transportation to any other facilities of New Enterprise.

2 Do you understand that?

3 A That's my understanding.

4 Q Do you agree to abide by that?

5 A Yes.

6 Q To the best of your knowledge, though, there is  
7 no other transportation to any other New Enterprise facilities,  
8 correct?

9 A To the best of my knowledge, there is not.

10 MR. GRAY: Your Honor, I move for the admission of  
11 Exhibit No. 1 and request that it be accepted by Your Honor.  
12 I feel that it's the public's interest because it does get  
13 rid of a protestant. And also there is no transportation  
14 required that is excluded. In other words, the testimony of  
15 the shipper will also go to this -- that the only transportation  
16 that they now have that involves New Enterprise Stone and Lime  
17 Company is the transportation of white cement to their New  
18 Holland facilities.

19 So, since it will eliminate a protestant and since there  
20 is no transportation that's required being excluded, at least  
21 at this point, I submit that it's in the public interest.

22 JUDGE CLEMENTS: I take it you have no objection.

23 MR. BUBBA: No objection.

24 JUDGE CLEMENTS: As Mr. Gray's aware, I generally  
25 accept all restrictive amendments from counsel. I make my

1 usual statement that I cannot guarantee what the Commission 9  
2 will do in the matter.

3 MR. GRAY: Your Honor, I had discussed with Kevin  
4 Walsh who is the Protestant with C.L. Feather, Inc. and  
5 had previously discussed also with him, but this morning  
6 he advised me that if this restrictive amendment was submitted  
7 and if it was acceptable to Your Honor, that he was authorizing  
8 me to withdraw the protest of C.L. Feather, Inc., with the  
9 further request that they be retained as a party of record  
10 to receive notices, orders, decisions, and so forth.

11 JUDGE CLEMENTS: Very well.

12 MR. GRAY: May I proceed with the further testimony of  
13 my witness?

14 JUDGE CLEMENTS: Yes.

15 BY MR. GRAY:

16 Q Did Bulk, Inc. recently secure emergency temporary  
17 authority with the PUC?

18 A Yes.

19 Q Have you brought with you for marking as an exhibit  
20 the order granting emergency temporary authority?

21 A Yes, we have.

22 MR. GRAY: Your Honor, may we have marked as Exhibit No.  
23 2, a copy of the Commission's order dated May 3, 1985, granting  
24 emergency temporary authority?

25 JUDGE CLEMENTS: It shall be so identified.

1 BY MR. GRAY:

2 Q Mr. Mulroy, look at what has been marked as  
3 Applicant's Exhibit No. 2.

4 Is that a true copy of the order that you received  
5 from the Commission granting emergency temporary authority to  
6 you on May 3, 1985?

7 A That is correct.

8 Q This authority was granted on May 3. Has Bulk, Inc.  
9 provided service pursuant to this grant of authority or a  
10 subsequent grant of long-term temporary authority -- which we  
11 will get into in a moment -- continually since May 3?

12 A Yes, we have.

13 Q Are you at the present time providing either  
14 emergency service or temporary authority service?

15 A Yes, we are.

16 Q And the authority that is set forth, is it not in  
17 this authority -- in this exhibit -- on Page 2?

18 A Yes. That's correct.

19 Q That is the same authority that you are seeking in  
20 the permanent authority application that we are here for  
21 today?

22 A Yes, it is.

23 Q In other words, it's contract authority limited to  
24 one shipper, Lehigh Portland Cement, and limited to  
25 transportation from its facilities in West Manchester Township

1 York County?

2 A That's correct.

3 Q Did you immediately file for -- make an insurance  
4 filing upon granting of this authority?

5 A Yes.

6 Q Was that insurance filing actually made on the  
7 date the authority was granted or in this general --

8 A Yes, it was.

9 Q Do you know when it was made?

10 A I believe it was the second of May.

11 Q Made the day before it was actually granted?

12 A To the best of my knowledge it was the day before.

13 May 2.

14 Q Do you know what the limit of Bulk, Inc. insurance  
15 coverage is?

16 A In excess of one million dollars. I don't have the  
17 exact numbers with me here.

18 Q Was Bulk, Inc. subsequently granted what is called  
19 long-term temporary authority from the Commission?

20 A Yes, sir.

21 Q Have you brought with you a copy of the long-term  
22 temporary authority?

23 A Yes.

24 MR. GRAY: May we have marked as Applicant's Exhibit  
25 No. 3, a copy of the order of the Commission entered July 29,

1 1985?

12

2 JUDGE CLEMENTS: It may be so identified.

3 BY MR. GRAY:

4 Q Look at what has been marked as Applicant's Exhibit  
5 No. 3. Is that a true and correct copy, to the best of your  
6 knowledge, of the long-term temporary authority entered by the  
7 Public Utility Commission?

8 A Yes, it is.

9 Q And does it provide for the same authority that the  
10 emergency temporary authority order, that's been marked as  
11 Exhibit 2, provided for?

12 A Yes, it is granting the same authority.

13 Q Have you continued to provide the same service  
14 under this authority that you provided under the emergency  
15 grant authority?

16 A Yes, we have.

17 Q There has been no difference, no change or anything  
18 like that?

19 A Same authority. Same operation.

20 Q Have you prepared for this hearing, a traffic  
21 study indicating a sum of the shipments that you have handled  
22 during a two-week period under the grant of emergency temporary  
23 authority?

24 A Yes, we have.

25 MR. GRAY: Your Honor, may we have marked as Exhibit No.

1 4, a one-page traffic study?

2 JUDGE CLEMENTS: It shall be so identified.

3 BY MR. GRAY:

4 Q Mr. Mulroy, I show you what has been marked as  
5 Exhibit 4. It says at the top it's a traffic study from  
6 July 1 to July 15. Is that, in fact, what it is?

7 A Yes, sir.

8 Q And quite simply, did I ask you to take a two-week  
9 period of time during the time when you had emergency  
10 temporary authority and pick out all the intrastate shipments  
11 and put them forth in a traffic study?

12 A Yes, that's correct.

13 Q Is that what you did?

14 A Yes, sir.

15 Q Now, for example, on here I see in the left-hand  
16 margin, it says date. And then in the center column is  
17 TDS No. and then the right column is destination.

18 What is the TDS No.?

19 A TDS is a trip data sheet number assigned by Bulk,  
20 Inc. It would be similar to a pronumber used by carriers.

21 Q It's the number assigned to identify the shipments  
22 by Bulk, Inc.?

23 A Yes.

24 Q Now, I notice, for example, the first three  
25 shipments on here are to New Holland, July 3, July 8, and

1 July 15. Were these to the New Enterprise facilities? 14

2 A Yes, they were.

3 Q I don't want to put on the record the consignees at  
4 these locations because the shipper may not want us to do that.  
5 But you have indicated the destinations of the consignees on  
6 here, right?

7 A Right.

8 Q And if I count these correctly, there is something  
9 like about 16 different locations to which you made shipments  
10 in this two-week period?

11 A That sounds close to it.

12 Q Do you have with you today, in the event that the  
13 Protestant would want to look at it, the TDS forms? Do you  
14 have those here?

15 A Yes. We have a copy of the TDS forms reflecting  
16 the shipments on this study.

17 Q Was there any magic to your picking July 1 through  
18 July 15, this two-week period?

19 A Not really.

20 Q Did you pick it because it was the best -- it had  
21 anything to do with being the most shipments?

22 A We thought it would be representative of the  
23 operations we were involved in in York.

24 Q If you would take July 15 to August 1, would it  
25 be substantially any different?

1 A There shouldn't be much difference, really.

2 Q If we would take the last two weeks under the  
3 temporary authority, would there be any substantial difference?

4 A I don't believe so. You may have some additional  
5 destinations or something, and some that are shown on this  
6 study that wouldn't be there. As far as the volume is  
7 concerned, it is representative of what we are doing.

8 Q Okay. How many vehicles does your company operate  
9 for Lehigh Portland Cement at the facility in West Manchester  
10 Township -- county?

11 A I believe it's 21 tractors and 26 trailers.

12 Q Are those vehicles dedicated to the exclusive use  
13 of that shipper?

14 A Yes, they are.

15 Q Do you understand what a common carrier is?

16 A Yes.

17 Q Do you understand that a common carrier might one  
18 day use a vehicle for X shipper and the next day for Y shipper,  
19 or maybe even that same carrier for Y shipper. Do you  
20 understand that?

21 A Yes, I do.

22 Q Would the situation here be different than that,  
23 though?

24 A Yes. This equipment is dedicated exclusive use to  
25 Lehigh Portland in West Manchester Township because of the

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1 type of material that is shipped from that plant. It's  
2 necessary to have equipment dedicated to that type of material.

3 Q Is that because of contamination?

4 A That's correct. The material shipped is a white  
5 cement. White in color and equipment must be kept on the  
6 service of white cement. In other words, it would be far too  
7 costly and time-consuming to go and try to clean out a tank  
8 from gray cement to white cement. The equipment, therefore,  
9 must be used strictly for white cement service.

10 Q Have you brought with you a list of equipment that  
11 you operate at that facility?

12 A Yes, we did.

13 MR. GRAY: Your Honor, may we have marked as Applicant's  
14 Exhibit 5, a one-page equipment list?

15 JUDGE CLEMENTS: It shall be so identified.

16 BY MR. GRAY:

17 Q Look at what has been marked as Applicant's Exhibit  
18 No. 5.

19 Is that a correct summary or listing of the equipment  
20 that is operated by Bulk at that facility?

21 A Yes, it is.

22 Q Is it accurate that at the bottom it says you have  
23 21 tractors and 26 trailers?

24 A Yes.

25 Q Has it always been that amount? The day you went in

1 on May 3, was it 21 tractors and 26 trailers?

2 A On May 3, in the beginning, we started out with  
3 maybe 12 units.

4 Q When you say 12 units --

5 A Tractors. Sorry. And approximately 15 trailers.  
6 And then we brought in additional equipment as we brought  
7 the company up to full capacity to handle the demands of  
8 Lehigh.

9 Q In other words, Lehigh requested you add to your  
10 fleet of equipment at that facility?

11 A That's correct. The volume of shipments increased  
12 to the point that we had to add additional equipment.

13 Q This exhibit shows on it, what appears to me to be  
14 tank trailers and also flatbed trailers.

15 A That's correct.

16 Q On this application, it does not just seek the  
17 transportation of cement in tank trailers, does it?

18 A No, it does not. Cement which would be both in  
19 Bulk, which would be tank trailers and packages which would  
20 be handled on flatbed trailers or van trailers, or what have  
21 you.

22 Q Among your fleet of equipment that you have at  
23 that facility, you must use flatbed trailers to haul for  
24 Lehigh Portland?

25 A Yes.

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1 Q Maybe you better explain to us a little better what 18  
2 those are used for.

3 A Flatbed trailers are used to carry package cement --  
4 cement in bags -- from the facilities of Lehigh Portland  
5 Cement to the shippers through Pennsylvania.

6 Q Is that white cement?

7 A That is white cement and also colored masonry  
8 cement which is also manufactured at the York mill.

9 Q To your knowledge -- and again, we have a shipper  
10 that will go into much more depth -- but does not that facility  
11 make what is generally called gray cement?

12 A No. In years before Lehigh took over that plant,  
13 gray cement was made there. I believe it was August of '82  
14 that gray cement was discontinued at York. The only cement  
15 manufactured there today is white cement.

16 Q What about this masonry?

17 A Colored masonry cement is a cement used in putting  
18 up brick, laying brick. It is a material that is offered in  
19 approximately 13 different colors. It is the mortar for the  
20 joints of brick. That material is formulated at the York  
21 location of Lehigh Portland Cement Company and shipped from  
22 that point.

23 Q Is that, to your knowledge, again, as the carrier  
24 here, is the colored masonry cement shipped on flatbeds?

25 A Up until this point in time it has always been shipped

1 in flatbeds.

2 Q And the white cement is shipped in tankers and also  
3 on flatbeds?

4 A That's correct.

5 Q Now, the Exhibit No. 5. The equipment lists here  
6 indicate that these are leased to Bulk, Inc. From whom are  
7 they leased?

8 A Leasco, Inc.

9 Q Who is Leasco, Inc.?

10 A Leasco, Inc. is a company based in Nebraska and,  
11 in fact, is a parent company to Bulk, Inc.

12 Q Is a parent? In fact, is the parent company?

13 A Yes.

14 Q The equipment is leased to Bulk, Inc. from its  
15 parent company; is that correct?

16 A That's correct.

17 Q Is that the case with all of it?

18 A Yes. It is with the exception of individual  
19 contractor, power unit tractors, which provide both independent  
20 contractors leased by Leasco and Bulk.

21 Q Are all of the tractors leased from individual  
22 contractors? I guess my question is, does Leasco own any of  
23 the tractors that are leased to Bulk or do they lease the  
24 trailers that are leased to Bulk?

25 A They lease the tractors and trailers to Bulk.

1 Q Do they own all of the tractors and trailers?

2 A Yes, they own all the tractors. They own most of  
3 the power equipment. Some of the power equipment is owned by  
4 what we call owner operators which are leased to Leasco and  
5 then subleased to Bulk.

6 Q And you say that Leasco is the parent company to  
7 Bulk?

8 A That is correct.

9 Q These 21 tractors and 26 trailers, where are they  
10 actually stationed?

11 A They are domiciled in West Manchester Township at  
12 the address 2100 West King Street Extended, which is approx-  
13 imately -- it's a terminal location for Bulk which is  
14 approximately a quarter mile from Lehigh Portland Cement  
15 Company.

16 Q Is it, therefore, very easy to dispatch equipment  
17 to Lehigh whenever they need it?

18 A Yes, sir. The proximity is very helpful.  
19 Communication systems are set up with direct lines to the  
20 mill so that we have almost instant communication.

21 Q Have you ever been able to make vehicles immediately  
22 available upon demand?

23 A Yes, we have.

24 Q The terminal facility, would you describe it  
25 briefly.

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1           A   It's two buildings. A large lot. It covers an  
 2 area of five to six acres. There is a trailer parking area,  
 3 tractor parking area, terminal building used for dispatch  
 4 and that type of thing, a shop building used for the maintenance  
 5 work done on the equipment.

6           Q   Do you own that terminal or is that leased?

7           A   That is leased.

8           Q   Who do you lease that from?

9           A   Leasco, Inc.

10          Q   From your parent company?

11          A   Yes.

12          Q   And I assume you have dispatchers, mechanics, and  
 13 other employees at that facility?

14          A   Yes. Currently, we have one dispatcher and two  
 15 mechanics on at that facility on a full-time basis.

16          Q   This may be somewhat repetitious. I want to get  
 17 into the specialized type of service and specialized type of  
 18 equipment that you provide to Lehigh. Would you amplify on  
 19 that a little bit more about the type of trailer equipment  
 20 that you provide to them for the transportation of this  
 21 white cement? We are talking about, first of all -- about the  
 22 tankers.

23          A   The tank equipment, again, has to be dedicated solely  
 24 to hauling of white cement. It's possible, in the cement  
 25 industry, to take a white tank -- a tank utilized for white

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1 cement -- and if it has been thoroughly unloaded, to utilize 22  
2 it on gray cement operations. However, it is not acceptable  
3 to take a gray tank and even though it's been blown out  
4 completely, put it over on white cement service because the  
5 demands or the peculiarity of the white cement is such that  
6 any contamination would be reflected in the finished product.  
7 A white cement tank has to be kept on white cement. If you  
8 were to load it with another bulk material regardless of  
9 what the other material was, you could not really completely  
10 eliminate remnants of that material which would show up in  
11 the end result of the customer using the white cement. When  
12 a trailer is put on to white cement service, the entire area  
13 is extensively cleaned. All of the valves are removed and  
14 cleaned. The unloading airpads, as we call them, have to be  
15 removed, cleaned and more often than not, replaced, because  
16 the fabric will still hold remnants of other materials hauled.  
17 Piping must be thoroughly cleaned. Therefore, the time,  
18 expense, and what have you of taking a unit from -- whether  
19 it be gray cement service or fertilizer service or any other  
20 bulk material or grain or what have you -- and putting it  
21 over on bulk cement, it's just not feasible to do so.  
22 Therefore, the tanks are dedicated to the use of white cement  
23 only.

24 Q Has the shipper in this case, in fact, specifically  
25 told you and did they tell you back at the time that you were

1 asked to provide emergency service for the first time -- were  
 2 you told then and have you been told throughout and are you  
 3 told now that you cannot, under any circumstances, use these  
 4 trailers for any other purpose whatsoever?

5 A That's correct. It's the understanding that if a  
 6 unit for some reason would be used for anything else -- which  
 7 has not happened and is not anticipated -- but with the  
 8 understanding that that unit would then be put back in the  
 9 condition to handle white cement.

10 Q Have they told you that you cannot use -- you cannot  
 11 use these units for other purposes?

12 A No. They must remain on white cement.

13 Q Does Bulk, Inc. have a maintenance program at this  
 14 terminal?

15 A Yes.

16 Q Would you briefly describe the maintenance terminal?

17 A Maintenance is very similar to, I guess, any motor  
 18 carrier. Regular P.H. service is performed -- preventive  
 19 maintenance programs -- on the tractors as well as the  
 20 trailers. We must, of course, meet state DOT requirements.  
 21 We must be sure we have the units' road ready and available  
 22 for service. Programs are carried on continuously to keep the  
 23 equipment in best running condition.

24 Q Do you also have a safety program insuring safety?

25 A Absolutely. We have programs for the drivers as well

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1 as the two mechanics that are there. Regular safety meetings 24  
2 are held. What we call the driver meetings -- at least  
3 quarterly, if not more often than that.

4 Q What kind of communications do you have there? Do  
5 you have central?

6 A The dispatching program would be referred to as a  
7 central dispatcher. That is the one location. We have the  
8 central communication system between Lehigh Portland Cement's  
9 office over a Tarryphone (phonetic) which gives us direct  
10 hookup to the shipping office of Bulk's loading facility,  
11 the white pack house. The laboratory in the back, we have a  
12 hookup there. So that by picking up the line and pressing  
13 one button and identifying the people you are seeking, you  
14 can broadcast to the mill the individual, whether it is  
15 shipping bulk loads or what have you. And in reverse, if  
16 the shipping office is contacting or needs to contact them,  
17 the line is utilized.

18 Q But it's a communication system that is centralized  
19 at that facility?

20 A Absolutely.

21 Q In other words, these vehicles only dispatched from  
22 Omaha or some other points?

23 A No. This is performed in the terminal in York.  
24 That's correct.

25 Q How many hours a day and days a week is your service

1 available to the shippers at Lehigh?

2 A Twenty-four hours a day, seven days a week. Normally  
3 the shipping route week would begin for us late Sunday night  
4 and continue through Saturday. However, it's always possible  
5 that deliveries would be required on Sunday. And we certainly  
6 are available to perform that service. Seven days a week,  
7 twenty-four hours a day is the program.

8 Q Did Bulk, Inc. provide the Commission a balance  
9 sheet at the time they filed this application?

10 A Yes, we did.

11 MR. GRAY: Your Honor, may we have marked as Applicant's  
12 Exhibit No. 6, the balance sheet that was attached to the  
13 application in this case?

14 JUDGE CLEMENTS: It shall be so identified.

15 MR. GRAY: Looking at what has been marked as Applicant's  
16 Exhibit No. 6, is that the balance sheet submitted with the  
17 application in this case?

18 A That's correct.

19 Q In looking at this, it looks to me like Bulk, Inc.  
20 must have been either a new corporation or at least an active  
21 corporation at the time this application was filed. Is that  
22 a correct statement?

23 A That is correct, yes, sir.

24 Q And was Bulk, Inc. started up, so to speak, just  
25 to provide service to Lehigh Portland Cement?

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1           A Bulk, Inc. was a corporation that was set up many  
 2 years ago. However, it was inactive at the time services were  
 3 going to be provided for Lehigh Portland Cement. It was  
 4 then activated from the inactive status and utilized as a  
 5 company to service Lehigh Portland Cement.

6           Q Would that explain why the balance sheet basically  
 7 just showed a fusion of cash for operating capital on it?

8           A That's correct.

9           Q Now, it shows on it, Exhibit 6, a cash of \$100,000  
 10 was put into the company and that was in the form of common  
 11 stock and an advance from -- it says affiliates. Who was the  
 12 advance actually from?

13          A That would be from Leasco, Inc., the parent company.

14          Q In other words, the parent company put in \$90,000  
 15 in a loan for start-up expenses. Correct?

16          A That's correct.

17          Q At this point, has Bulk, Inc. had prepared any  
 18 new balance sheets or any income statements, operating  
 19 statements?

20          A Not at this point in time. To the best of my  
 21 knowledge, there has been no further balance sheets prepared.

22          Q Has Bulk, Inc. had any financial problems in getting  
 23 this operation off the ground?

24          A No, sir, we have not.

25          Q And do you believe that you're going to have any in

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1 the future? Do you see any bad warning signs that may  
2 indicate that you are?

3 A We absolutely do not. And I do not anticipate any.

4 Q Do you believe that you are financially stable?

5 A Yes, we do.

6 Q Is Bulk, Inc. in any way related to any licensed  
7 motor carriers in Pennsylvania?

8 A Okay. We, of course, -- our parent company is  
9 Leasco. In Omaha, Nebraska, is a sister carrier, brother  
10 carrier, what have you, Herman Brothers, Inc. That is the  
11 only other carrier in the state of Pennsylvania operating in  
12 the state of Pennsylvania that is associated in some way,  
13 shape, or form with Bulk, Inc.

14 Q Let's see if I can get this straight. Herman  
15 Brothers is not a subsidiary of Leasco --

16 MR. BUBBA: Objection. He's leading.

17 MR. GRAY: I think I am just repeating what he said.

18 BY MR. GRAY:

19 A No.

20 Q Do you know what the relationship -- if you know --  
21 the corporation -- understanding the York terminal -- you're  
22 not a corporate expert perhaps -- do you know what the  
23 relationship is between Bulk and Herman Brothers, for whatever  
24 it's worth?

25 A The parent company of Bulk, Inc. is Leasco, Inc.,

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1 which is a subsidiary or division of Varwood, Inc. Herman  
2 Brothers is a subsidiary of Varwood. We are not particularly  
3 associated with Herman Brothers other than being in the  
4 corporate structure.

5 Q We better get clear what Herman Brothers' authority  
6 is in Pennsylvania?

7 A Contract authority in Pennsylvania.

8 Q Do you understand that that specifically limits it  
9 to service of named shippers?

10 A Yes.

11 Q One of those shippers is not Lehigh Portland Company?

12 A No, it is not.

13 Q Herman Brothers doesn't provide any service in  
14 Pennsylvania to Lehigh Portland Cement Company; is that  
15 correct?

16 A That's correct. They do not.

17 Q And is not authorized to do so?

18 A No, they are not authorized.

19 Q To the best of your knowledge, Mr. Mulroy, is  
20 Bulk, Inc. presently in compliance with all PUC regulations?

21 A To the best of my knowledge, we are.

22 Q Are there any pending PUC complaints against you?

23 A Not that I am aware of, no, sir.

24 Q Are you, to the best of your knowledge, in  
25 compliance with the Pennsylvania POD regulations?

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1 A Yes, sir.

2 Q Is there any sort of safety complaints against you?

3 A Not to my knowledge, that I am aware of.

4 Q Are you providing any intrastate service in  
5 Pennsylvania to any other shippers besides Lehigh Portland  
6 Cement Company?

7 A No, we have not.

8 Q You have provided service to Lehigh Portland under  
9 the grant of authority as set forth in Exhibits 2 and 3.  
10 Do you believe you are familiar with the transportation needs  
11 of Lehigh Portland?

12 A Yes, I believe we are.

13 Q Do you believe that you are able to meet those  
14 needs?

15 A I am certain we are.

16 Q Do you believe that if this grant of authority is  
17 made permanent or if this application is granted that you will  
18 have any trouble in meeting the transportation needs of Lehigh  
19 portland?

20 A No. We believe we can more than satisfy the demands  
21 of Lehigh Portland Cement Company.

22 Q Does your company stand ready, willing, and able to  
23 provide this service sought by this application on a permanent  
24 basis?

25 A Yes, we do.

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1 MR. GRAY: That's all I have.

2 I tender the witness for cross-examination. And I move  
3 for the admission of Exhibits 1 through 6 subject to cross-  
4 examination.

5 JUDGE CLEMENTS: I will defer ruling on them prior to  
6 examination.

7 One quick question for my own, just to make the record  
8 clear. On Applicant's Exhibit 5, there are numbers assigned  
9 to the different vehicles. Are these the company's own numbers  
10 other than registration numbers?

11 MR. MULROY: These are company numbers.

12 JUDGE CLEMENTS: Very well.

13 Would you like a few minutes prior to cross-examination,  
14 Mr. Bubba?

15 MR. BUBBA: I'm fine.

16 CROSS-EXAMINATION

17 BY MR. BUBBA:

18 Q Mr. Mulroy, I'm looking at Applicant's Exhibit 5,  
19 the equipment list. I believe you indicated that everything  
20 on that sheet is leased; is that correct?

21 A That's correct, sir.

22 Q And I now specifically am talking about the power  
23 units. You indicated, I believe, that they are from two  
24 different sources; is that correct? They are leased from  
25 two different sources?

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1 A No. One source.

2 Q What source?

3 A Leasco.

4 Q They are the owner of some of these vehicles?

5 A That's correct.

6 Q And they are also the lessor?

7 A That's correct.

8 Q And they are also the lessee of some of those  
9 vehicles?

10 A That's correct.

11 Q And that's the source of the power units?

12 A That's correct, sir.

13 MR. BUBBA: Do you want this marked differently?

14 JUDGE CLEMENTS: Why don't we call them Protestant's  
15 Exhibits 1 and so on?

16 MR. BUBBA: How about MTS Exhibit No. 1?

17 JUDGE CLEMENTS: Fine.

18 It shall be so identified.

19 BY MR. BUBBA:

20 Q Mr. Mulroy, what I have marked -- do you know what  
21 those documents are? I believe there are eight sheets of paper  
22 which I am attaching all as MTS Exhibit 1, which state at the  
23 top Equipment Interchange and/or Short Term Lease Agreement?

24 A Yes, sir.

25 Q Could you tell us what they are, please?

1           A Because of the emergency of getting operations  
2 started with the previous carrier, Cement Express, Inc.,  
3 vacating their operating authority -- contract carrier operating  
4 authority -- arrangements were quickly attempted to be made to  
5 meet the demands and commitment of shipper, Lehigh Portland  
6 Cement Company. So, on this day, May 2, 1985, leases were made  
7 up for equipment that Leasco was purchasing from Cement Express  
8 in order to handle the business that had to be handled on  
9 that particular day.

10           Q These leases are for equipment which is now owned  
11 by Leasco?

12           A Well, I'd have to look at each one.

13           Q I believe you have Applicant's Exhibit No. 5. And  
14 this list, would you match it up and tell me --

15           A I have to read each number on here to make sure  
16 each one is correct.

17           Q Okay.

18           A The bottom two at the left margin in the right-hand  
19 corner, Lease No. 1 and Lease No. 2 -- no, that is not --  
20 the other ones starting down from the top, okay?

21           Q Yes.

22           A Those first six.

23           Q How many pages?

24           A The first six you could identify as those units,  
25 yes.

1 Q They are currently under lease from Cement Express  
2 to Bulk, Inc.?

3 MR. GRAY: Is the question that they are currently  
4 under lease?

5 MR. BUBBA: At some time were they under lease from  
6 Cement Express to Bulk, Inc.?

7 BY MR. BUBBA:

8 A On the day reflected by the lease, to the best of  
9 my knowledge, yes.

10 Q And these leases are no longer in effect?

11 A No.

12 Q However, were there, at least with respect to the  
13 first six, tractors which were eventually purchased by  
14 Leasco?

15 A These tractors were eventually leased by Leasco.

16 Q When did that take place?

17 A The actual settlement, I believe, was May 2. I'm  
18 not sure if it was May 2. I'm not sure.

19 Q That's the date that the purchase took place?

20 A To the best of my knowledge. That goes back awhile.

21 Q Do you know if these individual leases were used for  
22 one trip or more than one trip?

23 A To the best of my knowledge, as reflected on these,  
24 I think it's just one trip. But it appears to me that they  
25 are dated May 2. I think they are all dated May 2.

1 Q That's correct, yes.

2 Does Bulk, Inc. have interstate commerce commission  
3 rates?

4 A No. We have rights that are in process. We don't  
5 have the actual rights at this point in time.

6 Q And the only PUC rights that Bulk, Inc. has are the  
7 subject of this application; is that correct?

8 A That's correct.

9 Q The temporary authority at this time?

10 A That's correct.

11 Q Are you aware that exceptions have been filed to  
12 the temporary authority which has been granted by the PUC?

13 A Yes. As protests.

14 Q Do you know that MTS is protesting the temporary  
15 authority that was granted by the PUC?

16 A I'm aware of that, yes.

17 Q You are aware of that? Is that what you said?

18 A Yes.

19 Q You indicated, I believe, that Bulk had a York, PA  
20 facility; is that correct?

21 A Yes.

22 Q Did you say Bulk, Inc. has other facilities?

23 A Bulk, Inc. have any other facilities? No.

24 MR. GRAY: Excuse me. I don't want the record to be  
25 unclear.

1           You said a York facility, which he said no. I think  
2 his testimony was that they have a West Manchester Township,  
3 York County facility.

4 BY MR. BUBBA:

5           A It's in West Manchester Township.

6           Q Is it the only facility that you have?

7           A In the state of Pennsylvania, that's correct.

8           Q Do you have other facilities?

9           A We have a home office in Omaha, Nebraska, as I  
10 have testified to.

11          Q Is that home office a Bulk terminal?

12          A No, it is not.

13          Q So, the only place that transportation is done from  
14 is the York facility?

15          A That's correct.

16          Q Is the only source of revenue currently from Bulk,  
17 Inc. the trips out of the York facility for Lehigh Portland?

18          A That's correct. To the best of my knowledge. As  
19 of today, yes.

20          Q Mr. Mulroy, your position is general manager; is  
21 that correct?

22          A That's correct.

23          Q And when were you made general manager of Bulk?

24          A I would say -- I can't remember the exact date.  
25 It would have been late April, early May.

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1 Q Of '85?

2 A Of this year, that's correct.

3 Q What position did you hold previous to that?

4 A Regional sales manager, Herman Brothers, Inc.

5 Q You were being paid by Herman Brothers?

6 A That's correct.

7 Q How long have you held that position?

8 A From, I think it was about October 22 of '84 up  
9 until late April, early May of 1985.

10 Q And in that six, seven-month period, what were your  
11 duties for Herman Brothers?

12 A Region sales manager. Trying to build up sales for  
13 Herman Brothers in the region which covered a vast area from  
14 almost east of the Mississippi, let's put it that way.

15 Q Where were you employed previous to October 22, 1984?

16 A Cement Express, Inc.

17 Q Is that the same Cement Express which is listed on  
18 the leases which I have shown you?

19 A Yes.

20 Q Is it the same Cement Express which was serving  
21 Lehigh Portland?

22 A Yes.

23 Q You left there in October of '84?

24 A No, sir. I left there August 31, 1984.

25 Q Is Cement Express still in business?

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1 A I'm not familiar with what is going on with Cement  
2 Express, to be honest with you.

3 Q What was your position with Cement Express?

4 A When I left Cement Express, I was president of  
5 Cement Express.

6 Q Were you responsible for transportation services?

7 A Yes. That would be part of my responsibility, yes.

8 Q Were you familiar with the Lehigh Portland account?

9 A Yes.

10 Q And was that a substantial amount of Cement Express's  
11 business?

12 A At that point in time -- at what point? When I  
13 left?

14 Q Immediately prior to when you left.

15 A It was a substantial portion. However, it wasn't  
16 the most substantial portion.

17 Q And what type of authority did Cement Express have  
18 to provide that service for Lehigh?

19 A For Lehigh, contract carrier authority for the  
20 state of Pennsylvania and of course out of --

21 Q Out of that Lehigh Portland authority?

22 A Yes, sir.

23 Q The same authority which is the subject of this  
24 application, do you know?

25 A I guess it's similar authority. I would imagine.

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1 Q Were you permanently involved with communications  
2 with the Lehigh Portland at that time?

3 A Prior to leaving Cement Express, yes, sir.

4 Q And did Lehigh Portland know you were leaving  
5 Cement Express?"

6 A It's my recollection that the owner of the company --  
7 I guess her title was secretary/treasurer at the time -- it's  
8 my understanding that she sent a letter to customers of  
9 Cement Express announcing that I, in fact, was leaving the  
10 company. I have never seen that letter, but I was told it  
11 was sent out. I have never called customers and said that  
12 I was leaving Cement Express. It's my understanding that Mrs.  
13 Stickel sent letters to the customers.

14 Q At some point, did she contact Herman Brothers --

15 MR. GRAY: I object. This is an irrelevant line of  
16 questioning. This is a regulatory hearing to determine certain  
17 issues.

18 MR. BUBBA: Let me --

19 JUDGE CLEMENTS: Let him finish his objection.

20 MR. GRAY: I don't see what relevance it has, whether  
21 she sent a letter. And it should have been objected to before.  
22 Whether she sent the letters to shippers or whether he contacted  
23 a shipper previously with Herman Brothers -- I don't see what  
24 those questions have to do with the issues involved in this  
25 proceeding.

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1 JUDGE CLEMENTS: I think I will overrule the  
 2 objection. I'm not sure where we're going. At the very  
 3 least, it has to do with. I think we can go ahead with the  
 4 question.

5 You can maybe renew your objection if you feel it is  
 6 necessary.

7 MR. BUBBA: You can read it back, if you can find it  
 8 quickly. I think I asked if in your capacity in your position  
 9 at Herman Brothers, did you ever contact anyone from Lehigh  
 10 Portland.

11 BY MR. BUBBA:

12 A After I joined Herman Brothers, I did call for  
 13 Lehigh Portland Supply Company.

14 Q And who did you talk to at that time?

15 A I talked to several people. I talked to Lee  
 16 Cummings at Lehigh Portland.

17 Q And you knew Mr. Cummings while in your position with  
 18 Cement Express?

19 A Absolutely, yes, sir.

20 Q What did you tell Mr. Cummings or the other people  
 21 from Lehigh Portland?

22 A Of course that I was representing Herman Brothers  
 23 and I was to get reacquainted with the shipper, Lehigh, Inc.  
 24 That we were interested in business throughout the country --  
 25 Herman Brothers -- as we are a national carrier. I told them

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1 that we have operating authority throughout the United States. 40  
2 That Lehigh Portland Cement Company has plants throughout and  
3 that we were interested in perhaps some or any of these  
4 plants.

5 Q Did you mention the York facility specifically?

6 A No.

7 Q When were those conversations?

8 A What conversations?

9 Q That you had when you were with Herman Brothers  
10 with individuals at Lehigh Portland.

11 A This is to the best of my recollection because I  
12 can't tell you exactly. I would say sometime maybe during the  
13 month of December of '84 is when I perhaps made a visit to  
14 Lehigh. I made other visits as any sales representative would  
15 do, going back and keeping contact with shippers.

16 Q Did you ever contact anyone from Lehigh Portland in  
17 your capacity in your position with Bulk?

18 MR. GRAY: Including to the present time?

19 BY MR. BUBBA:

20 Q Did you ever contact anyone from Lehigh Portland  
21 once you took over your position at Bulk?

22 A Absolutely.

23 Q When was that first conversation?

24 A I'm not sure I understand your question.

25 Q When was the first time you talked to someone from

1 Lehigh Portland once you moved to Bulk?

2 A I would imagine -- going back -- I guess probably  
3 on the 3rd of May. It was a very difficult time for the  
4 shipper and a very difficult time for a carrier such as Bulk  
5 trying to meet the demands of the company on short notice.  
6 And to specifically say the date -- I'm sure I talked to the  
7 shipping department -- I'm sure I talked to people in Allentown.  
8 It's just doing business.

9 Q Who were you working for when Cement Express was  
10 not going to offer to provide service to Lehigh Portland?

11 A When I first found out that they were not going to  
12 provide service. I would say at the time Herman Brothers did.

13 Q Do you know what point in time that was?

14 A I would imagine it was sometime in early April  
15 perhaps that I learned that Cement Express was considering  
16 discontinuance of their business in some way, shape or form.  
17 I don't know.

18 Q Do you know how you found that out?

19 A Exactly? No. To actually say who?

20 Q Did you contact Lehigh Portland after you found  
21 that out?

22 A That Cement Express was discontinuing or thinking  
23 about discontinuing service?

24 Q Yes.

25 A My contact with Lehigh Portland started with Herman

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1 Brothers, as I say, in approximately late December and made  
 2 continual contact with Lehigh Portland on a regular basis as  
 3 what I feel to be a good sales rep should do. So, to pinpoint  
 4 in the history there's a lot of scuttlebutt as to who's doing  
 5 what and who's on first. When I heard that Cement Express  
 6 was thinking about discontinuing, I couldn't honestly put a  
 7 tag on it. My best recollection, it would be early April.  
 8 I do know that they were thinking about possibly selling the  
 9 company prior to that, but again, I was not a party to any  
 10 of that transaction or negotiations or what have you.

11 Q I believe you indicated -- and you can clarify or  
 12 correct me if I'm wrong -- that quote, unquote, there really  
 13 isn't a relationship between Herman Brothers and Bulk?

14 A What kind of relationship are you referring to?  
 15 There's a relationship of sorts, but what are you referring  
 16 to? We are under the same corporate structure.

17 Q Do you know if a consolidated financial statement  
 18 is prepared for all the organizations as one financial  
 19 statement?

20 A I'm not sure. I don't know.

21 Q Who pays the everyday expenses of Bulk, Inc.?

22 A The everyday expenses of Bulk? Bulk, Inc. pays  
 23 their own expenses.

24 Q Do you know who paid for the PUC application?

25 A I believe it was possibly Leasco. I would imagine.

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1 I'm not sure. Honestly, I don't know. It could have been  
2 Bulk.

3 Q Could it have been Herman Brothers?

4 A I don't know.

5 MR. GRAY: Show him the check. Did Bulk, Inc. pay for  
6 the PUC application? For all of the PUC applications.

7 BY MR. BUBBA:

8 A I'm looking at the one that's the subject of this  
9 proceeding. The check is from Bulk, Inc., \$125.

10 Q You don't know whether or not Bulk, Inc. is paying  
11 for these applications?

12 A PUC applications?

13 Q Yes.

14 A To the best of my knowledge, they are. But I do  
15 not issue the checks, so, I can't say.

16 Q Would you be surprised if Herman Brothers was paying  
17 for any of the PUC applications?

18 A I don't know if I would be surprised or not.

19 Q Why wouldn't you be?

20 A I have no reason to show surprise. I don't know.

21 Q If Bulk, Inc. is paying for everyday expenses of  
22 running its own company, why would Herman Brothers pay for  
23 PUC applications?

24 A As I mentioned before, Herman Brothers is -- they  
25 share computer time and many other facilities which are totally

1 acceptable as far as I'm concerned. Now, if in some  
2 instance a Herman Brothers check was issued -- and I don't  
3 know if it was or not -- it would seem an internal adjustment  
4 would be made with Bulk, Inc. and Herman Brothers.

5 Q Did Lehigh Portland ask you what type of services  
6 Bulk, Inc. had in providing in the past, before you started  
7 providing service to them? Did anyone ask you what Bulk,  
8 Inc. had been doing in the transportation field?

9 A Actually, Bulk, Inc. started with the hauling -- it  
10 was a corporation. It was already on the books, but not  
11 active.

12 Q I understand that.

13 A Do you want to hear my answer?

14 The answer is Leasco, Inc. -- all right? Being the  
15 parent company of Bulk, Inc., is thoroughly knowledgeable  
16 in the transportation history and has provided service for  
17 many, many years. And Bulk, Inc. would be the vehicle, so  
18 to speak, to handle the shipments and the business for  
19 Lehigh Portland Cement Company.

20 Q I don't think you did answer my question.

21 Did anyone from Lehigh Portland ask you who Bulk, Inc.  
22 was?

23 A I don't recollect if that question was answered or  
24 not.

25 Q Do you know if Lehigh Portland thought that you

1 were dealing with Herman Brothers?

2 MR. GRAY: At what point in time?

3 MR. BUBBA: Let's say throughout April of 1985.

4 BY MR. BUBBA:

5 A I think they understood that they were dealing with  
6 Herman Brothers or one of the subsidiary divisions of Leasco?

7 Q What prompted your becoming -- your being transferred  
8 from Herman Brothers to Bulk, Inc.?

9 A Well, Leasco offered an opportunity to get involved  
10 with Bulk, Inc. I was knowledgeable, certainly, with the  
11 white cement operations at York, and it seemed like, you know,  
12 a good way to go. That's all.

13 Q Couldn't you have provided those services as  
14 Herman Brothers?

15 JUDGE CLEMENTS: Do you mean under their existing  
16 rights or with the --

17 MR. BUBBA: Existing rights.

18 MR. GRAY: Are you asking whether or not there were  
19 PUC rights to serve Bulk, Inc.?

20 MR. BUBBA: Did they have PUC rights to serve Bulk, Inc.  
21 or to serve --

22 BY MR. BUBBA:

23 A No.

24 Q And Bulk did not have rights prior to --

25 A No, they didn't.

1 Q Why was a decision made if Bulk, Inc. provided for 46  
2 contract carrier authority as opposed to --

3 A There is a very good decision or very valid reason  
4 as far as I'm concerned. Herman Brothers, whom I have mentioned  
5 is familiar with the handling of gray cement up in the Lehigh  
6 Valley, for example. They are not familiar with handling --  
7 the peculiarities of handling white cement. And it was felt  
8 that it was more important because of extreme possibilities  
9 of damage that could be done to customers, that separate  
10 groups would be familiar with the handling of white cement  
11 was put in place at that location.

12 Q Who was familiar with handling of white cement?  
13 You?

14 A I was, that's correct.

15 Q But weren't you an officer of Herman Brothers?

16 A No. I am not an officer of Herman Brothers.

17 Q At the time you were employed by Herman Brothers?

18 A Right. But I was not an officer.

19 Q Did Bulk have any knowledge of how to handle  
20 white cement?

21 A I would imagine that perhaps some of the principles  
22 in the Leasco Corporation or Varwood Corporation would be  
23 familiar with it, yes. I don't know.

24 Q If you were not an employee of Bulk, Inc., would  
25 they have any expertise in the white cement field? Or was it

1 inactive prior to these rights?

2 A Bulk, Inc.?

3 Q Yes.

4 A It was inactive, that's correct.

5 Q So, it did not have any particular expertise in  
6 the white cement field?

7 A As far as it was an inactive company, it couldn't  
8 have any expertise in anything for that matter.

9 Q The facility that you are currently using, was that  
10 at one point owned by Cement Express?

11 A To the best of my knowledge, yes.

12 Q Why is it to the best of your knowledge? Do you  
13 know?

14 A Unless there was some transaction, I left Cement  
15 Express in August of '84. They owned that facility then.  
16 What has transpired since then, I don't know.

17 Q So, the tractors and the trailers being utilized --  
18 used by Bulk, Inc. -- they were at one point owned or leased  
19 by Cement Express?

20 A A portion of them. We purchased some of them from  
21 Leasco.

22 Q The facility of Bulk, Inc. at one point was owned  
23 or leased by Cement Express?

24 A The facility that we are using today was at one  
25 point in time owned by Cement Express.

1 Q And at one point in time you were the president  
2 of Cement Express?

3 A That's correct, sir.

4 Q And now you are the general manager of Bulk, Inc.?

5 A That's correct, sir.

6 Q Has anybody else provided services to Lehigh  
7 Portland other than Cement Express and Bulk, Inc. --

8 MR. GRAY: I object.

9 BY MR. BUBBA:

10 Q -- out of the York facility?

11 MR. GRAY: I object to that question. How would he  
12 know that?

13 BY MR. BUBBA:

14 Q Do you know?

15 JUDGE CLEMENTS: If he knows, I don't see anything  
16 wrong with the question.

17 MR. GRAY: The reason the question is wrong, it's  
18 something that can't be within his knowledge. He doesn't  
19 know if, for example, on May 5, 1985, if Chemical Leaman  
20 came in and picked up one load at all. How would this man  
21 know this. The question really is, do you know if they have  
22 ever used anybody else. But he's not a representative of  
23 that and --

24 MR. BUBBA: If that's your objection, I'll limit the  
25 question.

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1 BY MR. BUBBA:

2 Q You had contract carrier rights for Lehigh Portland?

3 A When I left the company, they did.

4 Q And they were hauling cement for Lehigh Portland?

5 A That's correct.

6 Q Out of the York facility at that time?

7 A I think there were some others coming in, yes.

8 Q Who were they?

9 A Carriers that would come in for cement? There was  
10 a carrier by the name of P.Y. Transport that was coming in.  
11 Gray Leasing Company. And a lot of customer pick-up. I  
12 don't know. There could have been others.

13 Q Was Cement Express doing the majority of the  
14 work?

15 A I don't know what the majority would be there, to  
16 be honest with you.

17 Q You were president of Cement Express, at least up  
18 until August of '84?

19 A Correct, sir.

20 Q The work which was being done for Lehigh Portland  
21 out of the York facility, you indicated previously was being  
22 done, at least, by Cement Express?

23 A Yes. Okay.

24 Q You don't know what part?

25 A It's difficult to say because of customer pick-up. I

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1 don't really know what part that would be.

2 Q Other than customer pick-up?

3 A I still don't know what part that would be.

4 MR. GRAY: And I assume that your question takes into  
5 account both flatbed, bag shipments --

6 BY MR. BUBBA:

7 A Total shipments.

8 BY MR. BUBBA:

9 Q You indicated that you dedicated your equipment  
10 which is shown on the equipment list to Lehigh Portland. And  
11 I believe you testified that there is a specific demand from  
12 Lehigh Portland that the tanks are only used for white cement?

13 A That's correct.

14 Q And that is why you dedicated the equipment?

15 A Yes.

16 Q One of the reasons why?

17 A Yes.

18 Q Are the flatbeds that are hauling for Lehigh Portland  
19 specialized in any way?

20 A No. Well, to some degree. They are specialized  
21 flatbeds to haul commodities similar to cement, if not totally  
22 just cement. In other words, the lightweight design, that  
23 type of thing.

24 Q And certainly not just white cement?

25 A Right.

1 Q Gray cement?

2 A Yes. Absolutely.

3 Q And other commodities that fit that particular type  
4 of vehicle?

5 A Yes.

6 Q So, there's nothing special about the flatbeds?

7 A Other than the lightweight design.

8 Q And there's nothing special about the tractors,  
9 I presume?

10 A There certainly is. As far as unloading systems.  
11 To unload the systems from the tank.

12 Q Is it unique for white cement?

13 A Not particularly.

14 Q So, the only piece of equipment that is dedicated  
15 specifically for the white cement would be the 17 tractors  
16 which are shown on that equipment list?

17 A The tanks, right.

18 Q You don't know when Bulk was incorporated?

19 A No.

20 Q Do you?

21 A No. Several years ago, to the best of my knowledge.

22 Q Do you know when it was registered in Pennsylvania?

23 A No, sir. I have no idea.

24 Q Do you know if it was in 1985?

25 A I have no idea.

1 Q You said that there was no magic to the Bulk, Inc. 52  
2 traffic study of July 1 to July 15.

3 A There was no what?

4 Q No magic to picking that particular time.

5 A I don't know that I used the word magic.

6 MR. GRAY: I think I did.

7 BY MR. BUBBA:

8 Q In any event, you said July 1 to July 15 would be  
9 the same as August 1 --

10 A It was just randomly selected.

11 Q How about May 1 to May 15? Would this be  
12 representative of the loads you made during that time?

13 A No. May 1 to May 15 was startup time. At that  
14 point in time we were getting equipment in and trying to  
15 handle the demands. It was just -- I don't know -- I would  
16 say there would be less loads at the very beginning.

17 Q Do you know when the first load was carried for  
18 Lehigh Portland?

19 A Offhand, no.

20 Q Would it be after May 3rd?

21 A I don't know. May 3rd? I don't know when it was,  
22 really.

23 Q Was it prior to your getting emergency temporary  
24 authority?

25 A There were loads hauled on the 2nd, which are

1 demonstrated in your own exhibit. But for me to say, it was  
2 a very hectic time to get things organized and start operating  
3 for it.

4 Q How many tractors -- how many flatbeds and how many  
5 tanks were necessary for the period of time May 3 to May 10,  
6 the first week of operation?

7 A What do you mean by necessary? Did we -- was it  
8 actually utilized or would it have been utilized?

9 Q What was actually utilized?

10 A I would guess it would depend from day to day, five  
11 to ten to thirteen to two. It's --

12 Q But there was certainly a demand for more than what  
13 you had at that point?

14 A There may have been, but I really don't remember.

15 Q Did Lehigh ever tell you there was a need for more?

16 A Lehigh Portland is -- customarily, it gives the  
17 carrier the shipments. And the carrier decides how best to  
18 accommodate those deliveries, whether he needs five trucks,  
19 ten trucks, or one truck.

20 Q Well, has Lehigh Portland's production, if you know,  
21 decreased from May -- the period of time -- May 1 to May 15 --  
22 increased to July 1 to July 15?

23 MR. GRAY: I'm sorry. I couldn't follow that.

24 BY MR. BUBBA:

25 Q Did Lehigh's production out of the York facility

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1 increase?

2 A I have no idea what their production was.

3 Q But your shipments considerably increased?

4 A They vary from day to day. Every day since May 3rd  
5 has varied from day to day.

6 JUDGE CLEMENTS: I think he is just asking for your  
7 general recollection of hauling.

8 BY MR. BUBBA:

9 A Yes. I would guess in the first week, as an example,  
10 that we were in business, we did not carry as much or transport  
11 as many shipments as we did last week.

12 Q Why was that?

13 A Number one, P.Y. Transport was hauling a great deal  
14 of package cement. And, in fact, I would guess -- I don't  
15 know if this would be a fact -- customer pick-up, P.Y. Transport  
16 handled perhaps 100 percent of the package. The main concern,  
17 I would believe -- this is my opinion of the shipper -- would  
18 be to make sure that the Bulk shipments were covered. You,  
19 yourself, pointed out that a flatbed is a flatbed is a  
20 flatbed. The main concern would be to meet the demand of  
21 Bulk's customers that could not be accommodated by just any  
22 tank coming down the highway. In relationship to the first  
23 week to the last week, quite possibly -- or pretty certain --  
24 the amount of shipments varied, yes.

25 Q Increased?

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1 A Yes. The last week over the first week.

2 Q Right.

3 A Okay.

4 Q If you had equipment on hand at that time, would  
5 you have been making more trips for Lehigh Portland?

6 A At what time?

7 Q The first week in May?

8 A Would we have made more trips?

9 Q Yes.

10 A I believe we could have shared in some of the  
11 package work that was handled, yes. Our concentration was  
12 on bulk because that was the specialized equipment that was  
13 needed to accommodate those customers.

14 MR. BUBBA: I have nothing further.

15 JUDGE CLEMENTS: Do you have any redirect examination?

16 MR. GRAY: Yes.

17 REDIRECT EXAMINATION

18 BY MR. GRAY:

19 Q Do you know anything about this Gray Leasing?

20 Were they hauling in flatbed or tank or --

21 A To the best of my knowledge, in tanks.

22 Q During what period of time?

23 A Gray Leasing has been coming into the York plant --  
24 let me just say for a period of years.

25 Q Do you know if they are still coming in?

1 A To the best of my knowledge, they are.

2 Q Is that for customer pick-up or is that for providing  
3 service for Lehigh Portland?

4 A It's specified by the customers.

5 Q Do you understand that this application involves  
6 contract carrier service for just Lehigh?

7 A Yes.

8 Q And do you understand that if a customer of Lehigh is  
9 the one that pays the freight, he chooses the carrier that you --  
10 that's not involved in this application. Do you understand  
11 that?

12 A Yes, sir.

13 Q We are only talking here about the shipments that  
14 are controlled by Lehigh Portland since its contract carrier  
15 rights?

16 A Yes, sir.

17 MR. GRAY: That's all.

18 I move for the admission of Exhibit 1 through 6.

19 MR. BUBBA: No objections.

20 JUDGE CLEMENTS: Very well. They are admitted.

21 Let's go off the record for a second.

22 (Whereupon there was a discussion held off the record.)

23 MR. GRAY: I would like to call Lee Cummings as my next  
24 witness.

25 LEE CUMMINGS, called as a witness, having been duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. GRAY:

4 Q Mr. Cummings, by whom are you employed?

5 A Lehigh Portland Cement Company.

6 Q Is that the company -- the shipper that's supporting  
7 the application of Bulk, Inc.?

8 A That's correct.

9 Q What is your business address?

10 A 718 Hamilton Mall, Allentown, PA 18105.

11 Q Are these the principal corporate offices of  
12 Lehigh Cement?

13 A Yes.

14 Q What is your position with that company?

15 A I am the corporate officer, vice-president, in  
16 charge of corporate planning and distribution.

17 Q As such, are you familiar with the transportation  
18 needs of the company?

19 A Yes.

20 Q How long have you been with the company?

21 A Thirty-five years.

22 Q Are you authorized by the company to testify today  
23 in support of the application of Bulk, Inc.?

24 A I am.

25 Q Did you, in fact, support applications for emergency

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1 temporary authority and temporary authority previously for  
2 Bulk, Inc.?

3 A I did.

4 Q Does Lehigh Portland Cement Company have cement  
5 shipments originating at facilities in York County, specifically  
6 in West Manchester Township and destined to other points in  
7 Pennsylvania?

8 A We do.

9 Q The Applicant in this case submitted an exhibit which  
10 set forth the Applicant's equipment dedicated to the exclusive  
11 use of Lehigh Portland Cement. That is Exhibit 5, which I  
12 am going to show you. It shows a total of 21 tractors and  
13 26 trailers, which include flatbeds and tank trailers. Does  
14 your company, as testified by the witness for the application,  
15 utilize that equipment on an exclusive basis?

16 A That's correct.

17 Q Are your traffic needs such that you need a carrier  
18 that can provide you with approximately 21 tractors and 26  
19 trailers on an exclusive basis?

20 A Yes.

21 Q We had a discussion before we got here concerning  
22 volume figures. If you could advise the Commission of the  
23 volume in tons that your company ships from this facility. And  
24 I believe you told me that you would prefer not doing that for  
25 competitive reasons. Could you explain that to the Judge?

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1           A White cement is a highly specialized product little 59  
2 understood by many of our competitors, unfortunately, and  
3 less so by the truckers that haul for us. We have just two  
4 manufacturers in the United States operating three plants at  
5 which Lehigh owns two. This is a particularly confidential  
6 type of information that we have just not divulged to anyone  
7 and avoid. It's a premium price product having special uses  
8 and we just don't divulge that kind of information.

9           MR. GRAY: May we go off the record.

10           (Whereupon there was a discussion held off the record.)

11 BY MR. GRAY:

12           Q Mr. Cummings, without being absolutely specific on  
13 this matter, could you tell us whether the volume of your  
14 shipments originating at your facilities in York County and  
15 destined to other points in Pennsylvania exceed 10,000 tons  
16 annually?

17           A I don't mind saying, yes, they do.

18           Q So, that figure would be in excess of 10,000 tons  
19 to the points in Pennsylvania annually?

20           A Yes.

21           Q On those shipments, does your company select the  
22 carrier that's to be used?

23           A Yes, we do.

24           Q And do you pay the freight charges?

25           A Yes.

1 Q There was some testimony elicited from Mr. Mulroy  
 2 concerning some customer pick-ups at this facility. As far  
 3 as what you're talking about here, where you select the  
 4 carrier and pay the freight charges and you have a certain  
 5 volume of shipments, are you relating to those shipments where  
 6 you select the carrier?

7 A Yes.

8 Q Are there, in fact, some customers who pick up  
 9 their own merchandise? Their own cement?

10 A They certainly do.

11 Q Do they usually pick it up in their own vehicles or  
 12 common and contract vehicles?

13 A Either.

14 Q What is the principal way?

15 A Many customers have their own vehicles, and many  
 16 of them hire other carriers. I'm not sure of their relationship  
 17 really. We're not particularly interested in that, from our  
 18 point of view.

19 Q You are interested in those shipments that you  
 20 control the choice of carrier on. Correct?

21 A That's right.

22 Q And on your use of Bulk, Inc., with their equipment,  
 23 as set forth in Exhibit 5? That is the 21 tractors and 26  
 24 trailers. Is that strictly where you control the choice of  
 25 Bulk, Inc.?

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1 A That's right.

2 Q Was there a time when Bulk, Inc., on May 3 or at  
3 some time thereafter provided less than 21 tractors and 26  
4 trailers?

5 A There was, yes.

6 Q Do you know what the initial amount of equipment  
7 that Bulk, Inc. provided was?

8 A I don't really recall. It was something like 12  
9 or 14. But our interest is not how many units. Our interest  
10 is getting the product to the customers. So, we don't become  
11 overly involved with how many units they have.

12 Q Have they reached the level with the 21 tractors  
13 and 26 trailers that your company feels comfortable?

14 A We are pleased with the service, yes.

15 Q And basically, is, at least at this point in time,  
16 approximately the amount of equipment that you need dedicated  
17 to your exclusive service?

18 A Yes. The service level is where we want them. If  
19 they could do that with one unit, I would be satisfied.

20 Q Does your company have shipments to points throughout  
21 Pennsylvania?

22 A Yes.

23 Q Including western Pennsylvania?

24 A Yes. Throughout the state.

25 Q Have you prepared for the hearing today a list of

1 representative destination points to which you have shipments? 62

2 A. I have.

3 Q Those are the only points?

4 A Right.

5 Q They do not show who the customer is at this point?

6 A No. Cities and towns.

7 MR. GRAY: May we have marked as Applicant's Exhibit 7,  
8 a one-page document headed at the top Representative Destination  
9 Points.

10 JUDGE CLEMENTS: It shall be so notified.

11 BY MR. GRAY:

12 Q Looking at what has been marked as Applicant's  
13 Exhibit 7, is that a representative list of points to which  
14 you require service?

15 A Representative, but not all inclusive.

16 Q Have you, in fact, had service to all of these  
17 points sometime in the reasonable past?

18 A Yes. These are from our computer and represent  
19 actual shipments. The actual points in Pennsylvania will be  
20 more than what is listed here, hopefully, before the year  
21 is out.

22 Q Is Bulk, Inc. providing service to you, your company,  
23 today under a grant of temporary authority?

24 A That's my understanding, yes.

25 Q And did they, to your understanding, previously

1 provide service to you under a grant of emergency temporary  
2 authority?

3 A They did.

4 Q This may be repetitious. Does Bulk, Inc. dedicate  
5 to your exclusive use the equipment set forth on Applicant's  
6 Exhibit 5?

7 A By our requirement, yes.

8 Q Why is that by your requirement?

9 A As I mentioned earlier, this is a very specialized  
10 product in which we have a very large market share. Highly  
11 specialized products for very special architectural uses. It's  
12 used for -- to provide the white stucco on buildings, on  
13 swimming pools. It's also used for safety products in  
14 construction of highway barriers. The state of New Jersey  
15 uses white cement to provide the reflectiveness that's needed.  
16 So, any contamination of that product with gray cement or  
17 other colored products is absolutely the death nail with our  
18 customers. The cost of special equipment that came up earlier,  
19 beyond the truckers' of both time and expense to clean out a  
20 trailer from our point of view would be totally unacceptable,  
21 would be not to have a trucker willing to continually clean  
22 out his truck so we could switch back and forth from white  
23 and gray. It would be totally unacceptable to us.

24 Q In other words, you require the services and insist  
25 upon the services of a carrier that will dedicate equipment to

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1 your exclusive use and to the use of no one else?

2 A That's correct.

3 Q And has that been your policy in the past?

4 A It has.

5 Q There has been testimony this morning from Mr.  
6 Mulroy that he previously had been with Cement Express, and  
7 that company had provided service to Lehigh. Did Cement  
8 Express dedicate equipment to your exclusive use?

9 A They did.

10 Q Were they in effect in the shoes that Bulk, Inc.  
11 is standing in? They were providing service to you? That is  
12 your house carrier or contract carrier, your house carrier?

13 A That's correct.

14 Q Now, there was some testimony that you had used P.Y.  
15 Transport also. Are they a tank hauler?

16 A They are not. They are not for Lehigh. I am not  
17 familiar if they are for someone else though.

18 Q They did not dedicate nor do they dedicate tankers  
19 to your exclusive use?

20 A They do not.

21 Q Are they providers of flatbed equipment?

22 A They are.

23 Q And have you used them in the past to provide  
24 flatbed equipment for you?

25 A We have.

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1 Q Do you also use Bulk, Inc. to provide equipment  
2 to you?

3 A We do.

4 Q We show on Exhibit 5, their equipment list, I  
5 believe, 9 flatbeds dedicated to your exclusive use. Are  
6 you using those 9 flatbeds of Bulk, Inc., now?

7 A I am not -- getting back to the equipment, I'm not  
8 sure. When we get flatbed orders, they respond, so, I assume  
9 they have the equipment necessary.

10 Q Are you continuing to use P.Y. Transport?

11 A Yes, we are.

12 Q Has their use somewhat declined? Your use of them  
13 somewhat declined?

14 A I'm not sure. Not substantially.

15 Q And you don't intend to discontinue using them even  
16 if this application is granted?

17 A No. We will continue to use them.

18 JUDGE CLEMENTS: I think it's been established, but  
19 I forget. Is P.Y. a contract or common carrier?

20 MR. GRAY: I don't think it's been established.

21 BY MR. GRAY:

22 Q Do you know?

23 A I don't know.

24 MR. GRAY: And I'm not sure.

25 BY MR. GRAY:

1 Q There was also a company mentioned in Mr. Mulroy's  
2 testimony called Gray Leasing. Have you used that company  
3 before where you have chosen them as a carrier?

4 A Not to my knowledge, no. And I say that rather  
5 definitively. They are a customer pick-up type hauler. And  
6 in my experience, we have not hired them and paid them to  
7 haul any products.

8 Q In the last five years, just to use that time for  
9 a point of reference, have you used anyone else where you have  
10 chosen the carrier for tank movement from this facility to  
11 points in Pennsylvania besides Cement Express and Bulk, Inc.?

12 A No. We have not used anyone else.

13 Q You don't go out and use common carriers for a  
14 shipment here and a shipment there, correct?

15 A We do not.

16 Q Is that feasible to do that?

17 A No. It's very important to be repetitious. This  
18 is a special purpose product. It is not gray cement. It has  
19 to be guarded carefully against contamination. We cannot  
20 use anybody that says they're ready to provide service when they  
21 have not been in the business before.

22 Q I want to go into the situation with Cement Express  
23 and what happened in connection with that situation and what  
24 you did as a result of it. Obviously, you were using Cement  
25 Express exclusively; they were providing dedicated equipment to

1 you, and something happened. Would you start out with, to  
2 your knowledge, the first thing that happened that led to the  
3 eventual termination of Cement Express's service?

4 A We had a call from the owners of Cement Express  
5 requesting a meeting in my office which was set up for March 28.

6 Q 1985?

7 A 1985, yes, sir.

8 And at that meeting I was informed that they were  
9 considering selling their company; that they were going to  
10 begin looking around for a buyer that might take over the  
11 operation. They explained to me that they had built a  
12 tremendously good reputation over a long period of years,  
13 serving that York plant, and that they would be certain to  
14 provide us with adequate service on an ongoing basis after  
15 they discontinued business.

16 Q Did they have a contract with you?

17 A Yes, they did.

18 Q In other words, a contract between you, Lehigh and  
19 them, Cement Express?

20 A Yes.

21 Q So, at this point in time they're saying that they  
22 are thinking of selling their company?

23 A Yes.

24 Q What was your reaction to that? I mean, did that  
25 concern you or not?

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1 A Yes, it certainly concerned us a great deal.  
2 Because of the very special kind of equipment that would be  
3 needed there, and the fact that they had been a very satisfactory  
4 trucker out of that operation. So, it did concern us very  
5 much. Everytime you have a change, it's basically that it's  
6 your concern.

7 However, their assurances were also reassuring so,  
8 I was hopeful we could get through this with a minimal of  
9 transitional difficulty.

10 Q So, at this point in time, on March 28, though, they  
11 haven't told you that they're terminating your service? They're  
12 just saying they're looking around?

13 MR. BUBBA: Objection.

14 MR. GRAY: I think I'm just repeating --

15 MR. CUMMINGS: I think I made that very point.

16 BY MR. GRAY:

17 A They were simply on sort of a goodwill mission,  
18 saying, look, you're a customer. We want to tell you that  
19 Mrs. Stickel -- she and her husband -- maybe they were going  
20 to get out of this and were going to start looking around for  
21 a buyer. But it was on a very general-type basis.

22 Q That was on March 28, 1985?

23 A That's correct.

24 Q Did you subsequently receive a letter from Cement  
25 Express in April indicating that they had gone further on it

1 than you thought, or you were led to believe, from the  
2 March 28 meeting?

3 A I received a letter on April 22. I was quite  
4 shocked to have them indicate that they intended to terminate  
5 service on May 1, 1985.

6 MR. GRAY: Your Honor, may we have marked as Applicant's  
7 Exhibit 8, a letter dated April 1 with a stamp receipt of  
8 April 22. And I'm going to ask the witness some questions  
9 on that but for purposes of identification, it's dated  
10 April 1 and stamped received April 22..

11 JUDGE CLEMENTS: It shall be so identified.

12 MR. GRAY: There's an attachment to it. So, it's  
13 a two-page exhibit.

14 BY MR. GRAY:

15 Q Mr. Cummings, is Exhibit 8 a letter you received from  
16 Cement Express?

17 A It is.

18 Q This letter is dated April 1. You said you received  
19 it April 22. How do you know that?

20 A. The second attachment -- I saved the envelope  
21 because it was obviously not sent April 1. The envelope  
22 shows April 21, p.m. received by me and stamped by someone  
23 in my department -- as we do all mail -- April 22, 1985.

24 Q So, on April 22, you got this letter from Mr.  
25 Stickel of Cement Express, indicating that affective May 1,

1 -- about a week later -- they were going to quit serving  
2 you at your facility, correct?

3 A That is right. The context of the letter is  
4 somewhat misleading. Do you care for me to elaborate?

5 Q Go ahead.

6 A The first paragraph indicates their office visit of  
7 March 28 and the certain discussion.

8 The second paragraph indicates that they will stop  
9 serving us on May 1.

10 The conversation which took place on March 28 had  
11 absolutely no indication whatsoever of when they might  
12 discontinue service. Indeed, no indication that -- just no  
13 indication at all when it might stop.

14 Q So, you get this letter on April 22. What was your  
15 reaction?

16 A Shocked, dismayed, since the context of the March 28  
17 meeting was so general. My immediate reaction was to call  
18 Mrs. Stickel -- who was actually running the company -- and  
19 inform her that we have a contract -- we had a contract --  
20 which stipulated that they had to give us a 90-day termination  
21 notice, and that with her relative inexperience in the  
22 business, that I simply wanted to inform her that Lehigh  
23 could suffer substantial financial damages if they went  
24 through with the May 1 termination.

25 Q Did you call Mrs. Stickel?

1 A I did.

2 Q Do you know if that was on April 22 or at some  
3 other date?

4 A It was April 23, as I recall. It could have been  
5 the 22nd, p.m., but I don't recall.

6 Q Did you subsequently send a letter to Mrs. Stickel  
7 via Purolator Courier on April 23?

8 A I did.

9 MR. GRAY: Your Honor, may we have marked as Applicant's  
10 Exhibit 9, a one-page letter dated April 23, 1985.

11 JUDGE CLEMENTS: It may be so identified.

12 Q Mr. Cummings, is Exhibit 9 a true and correct  
13 copy of the letter you sent on April 23 to Mrs. Stickel?

14 A It is.

15 Q Now, in this letter -- of course, it speaks for  
16 itself -- but you indicate that you have a 90-day written  
17 notice contract. Between March 28 and April 22, when you got  
18 this letter from Mrs. Stickel saying that they were going to  
19 terminate service on May 1, during that period of time, was  
20 there ever any thought in your mind but that you would have  
21 at least 90 days pursuant to the contract for transition from  
22 one carrier to another?

23 A A great deal of thought. Quite obviously they  
24 notified me that they were going to terminate on May 1 --

25 Q I'm talking about before you got that letter. In

1 other words, during the period from March 28 when you first  
 2 met with the Stickels and the thing was raised with you for  
 3 the first time until April 22 when you got this letter that's  
 4 marked as Exhibit 8. During that period of time, did you  
 5 ever have any thought but that you would get at least 90  
 6 days in which to find another carrier?

7 A I had no thought. They were quite responsible  
 8 people, I thought. We had a contract.

9 Q So, you get Exhibit 8, and it says, we are terminating  
 10 May 1. And you write Exhibit 9, saying you have an obligation  
 11 to give us 90-days notice. Did you get a response from the  
 12 Stickels?

13 A On April 29, I got a letter from the Stickels  
 14 withdrawing their 5-1-85 termination letter, indicating that  
 15 they would comply with the 90-day termination notice, and  
 16 specifically that their service would terminate on July 25,  
 17 1985.

18 Q Have you had discussions with them between April 23,  
 19 the day of your Exhibit 9, and April 29, when you got the  
 20 letter from them concerning this matter? Did you have any  
 21 discussions in the interim with them concerning this 90-day  
 22 notice requirement?

23 A Only the one phone call immediately after receiving  
 24 their notice to terminate May 1, when I informed them of the  
 25 90-day requirement, followed by a letter of confirmation.

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1 Q Is the letter that you referred to that they sent  
2 you, is the letter dated April 25, which you received on  
3 April 29?

4 A It is.

5 MR. GRAY: May we have marked as Applicant's Exhibit  
6 10, a letter dated April 25, 1985, to Mr. Cummings from  
7 Cement Express.

8 JUDGE CLEMENTS: It shall be so identified.

9 BY MR. GRAY:

10 Q Is Exhibit 10 a true and correct copy of the letter  
11 you received from Cement Express that you just alluded to?

12 A It is.

13 Q Basically, as I understand it, the letter, what  
14 they are now saying is, we are taking back our prior statement  
15 we are not going to cancel you on May 1?

16 MR. BUBBA: Objection. The letter speaks for itself.

17 JUDGE CLEMENTS: I will sustain that. The letter does  
18 speak for itself.

19 BY MR. GRAY:

20 Q What did you understand the letter to mean?

21 A The bottom line says that they withdrew the May 1  
22 termination date, and July 25 would be the new date, which  
23 will provide ample opportunity for arranging trucking.

24 Q You received this letter on April 29?

25 A That's correct.

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1 Q Did that situation change subsequent to April 29?

2 A Yes, it did.

3 Q Were you advised by Cement Express that there was  
4 going to be something different than what was in Exhibit 10?

5 A Not directly by Cement Express. I had emergency  
6 phone calls from our shipping people saying that Cement Express  
7 was refusing business on May 1. And that happened on April 30,  
8 or the day before. One day before they terminated service.

9 Q So, you got a letter on April 29 saying they are  
10 going to keep providing service until July 25. And again,  
11 on April 30, you get a call saying they are not accepting  
12 pick-ups?

13 A Rather shockingly true.

14 Q What did you do?

15 A We had a first-class emergency because of the fact  
16 that we had to provide continuing service to our customers.  
17 We had to move as quickly as we could to find a hauler.

18 Q And what did you do?

19 A We were able to make successful arrangements with  
20 Bulk, Inc. to provide some service. We appealed to the PUC  
21 for emergency temporary authority. We didn't. The trucker  
22 did, but through our support.

23 Q In that regard, did you send to the PUC a letter  
24 indicating the emergency situation?

25 A We did.

1 Q Was that letter dated May 2, 1985?

2 A I believe that's correct.

3 MR. GRAY: Your Honor, may we have marked as Applicant's  
4 Exhibit 11, a one-page letter dated May 2, 1985.

5 JUDGE CLEMENTS: It shall be so identified.

6 MR. GRAY: It's from Mr. Cummings to Barry Ernst.

7 BY MR. GRAY:

8 Q Mr. Cummings, is Exhibit 11 a true and correct  
9 copy of the letter that you sent to Mr. Ernst?

10 A It is.

11 Q Now, it says on it that it was hand delivered?

12 A It was. Yes, it was.

13 Q How far is it from your facilities in Allentown  
14 to Harrisburg?

15 A About 75 miles.

16 Q Who hand-delivered it?

17 A One of my departmental employees.

18 Q Why did you go to this trouble to have a letter  
19 hand-carried 75 miles or delivered 75 miles to the PUC in  
20 Harrisburg?

21 A It's a direct reflection of the emergency we faced  
22 time wise.

23 Q Did you talk also with the PUC in this situation?

24 A Yes, we did.

25 Q Was that by telephone?

1 A That's correct.

2 Q Do you remember who you talked to?

3 A No.

4 Q Do you know if it was Mr. Ernst?

5 A I think it was one of Ernst's people.

6 Q This letter has come under attack by Materials  
7 Transport Service in these pleadings filed in the temporary  
8 authority case. They don't seem to think there was this  
9 one-day notice situation that you state in Paragraph 1. Would  
10 you go over that again as to the statements in Paragraph 1,  
11 that you had one day's notice effective May 1?

12 A The shocking contrast is having been through the  
13 problem with Cement Express, and having them write us as  
14 they did. The letter I received on the 29th of April saying  
15 that they would extend service until July 25 -- and I was  
16 breathing quite a bit easier at that point. But to have, the  
17 following day, our shipping people at York call and say Cement  
18 Express is absolutely refusing any orders for May 1 was the  
19 absolute facts supported, I believe, largely by the written  
20 records that are submitted here and by the statements I am  
21 making at this point.

22 Q Exhibit 11, the letter of May 2, says that you  
23 contacted Schwerman; Nubulk, a division of Chemical Leaman;  
24 Fleet Transport; and others, to try to get the service. Can  
25 you shed some light on your efforts to try to secure service

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1 from existing carriers?

2 A Well, perhaps there are several that I -- in fact,  
3 the letter had to be prepared hurriedly and submitted so  
4 quickly. I may not have mentioned all the people that we  
5 have been involved with in one way or another. I have since  
6 searched and found that I have records of 9 truckers that I  
7 talked to during this period to try to find someone that would  
8 respond. This is during the period of time that we knew we  
9 had to find a trucker on reasonably short notice.

10 Q Are you saying from the March 28th meeting, or are  
11 you saying from the first letter that you got indicating that  
12 it was going to be terminated as of May 1?

13 A As I mentioned earlier, the March 28th meeting was  
14 an informational-type meeting where the Stickels informed me  
15 that they planned to start looking for somebody to buy.  
16 Several weeks thereafter I began to get the first calls from  
17 potential buyers for the company. The purpose of those calls  
18 being to ask if Lehigh would accept them as truckers. They  
19 were interested in purchasing part of Cement Express's business.  
20 So, that was the beginning. My recollection, by my notes,  
21 indicates that one of the first calls was around April 9 or  
22 April 10 from a trucker interested in it.

23 Q In other words, during April, would it be correct  
24 to say that during April you had conversations with about 9  
25 carriers concerning the possibility of them providing service

1 to you?

2 A Nine carriers that I have a record of. I suspect  
3 there might have been more.

4 Q You indicated in Exhibit 11, Schwerman; Nubulk,  
5 a division of Chemical Leaman; and Fleet Transport. Can you  
6 tell us who your conversations were with as to the other six?

7 A Yes. P.Y., as we mentioned before; Chemical Leaman,  
8 directly --

9 Q As opposed to Nubulk?

10 A As opposed to Nubulk, which I think is a separate  
11 corporation.

12 Q Okay.

13 A T.H. Compton and Eckert. Of course, the Bulk, Inc.  
14 people and MTS called. If that adds up to six or not, I don't  
15 know.

16 Q Did you get written letters from some of those  
17 people indicating that they could not provide service to you?

18 A I did.

19 Q Did you, for example, get a written letter from  
20 Nubulk, the division of Chemical Leaman?

21 MR. BUBBA: Objection. They are hearsay.

22 MR. GRAY: They are letters received.

23 MR. BUBBA: I don't care if he received a phone  
24 conversation or words he received. The fact of the matter is  
25 the person initiating the phone call or the person initiating

1 the letter -- it's a statement made out of court by a third  
2 party.

3 JUDGE CLEMENTS: It's clearly hearsay. What's the  
4 exception that you have, Mr. Gray?

5 MR. GRAY: First of all, the rules of this Commission  
6 are not that all hearsay declarations are inadmissible. I  
7 feel that there are more relaxed rules of evidence in these  
8 proceedings. I think that it certainly goes to show the  
9 veracity of the witness's testimony that he had those  
10 discussions and received -- he made efforts. It's certainly  
11 something that the Commission should look at. We don't have  
12 an ironclad rule before this Commission, as I understand it,  
13 that each and every hearsay statement is inadmissible.

14 MR. BUBBA: And we do not have rules that indicate  
15 something otherwise, the worst type of hearsay are allowable  
16 because they help to prove the veracity of the witness or  
17 try to indicate that the statements he's making are true.

18 He can testify about what he received as long as it's  
19 not hearsay. I cannot cross-examine the person sending those  
20 letters. I can't have Nubulk in here saying what was the  
21 real deal.

22 JUDGE CLEMENTS: What I think I will do is let the  
23 exhibits come in as evidence received by an officer of the  
24 corporation in a regular course of business. If counsel feels  
25 it necessary to have further cross-examination, I will give him

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1 10 days after the hearing to request the same in writing,  
2 that it be done.

3 BY MR. GRAY:

4 Q Did you receive a letter from Nubulk dated April 29,  
5 1985?

6 A Yes.

7 MR. GRAY: May we have marked as Applicant's Exhibit 12,  
8 a letter dated April 29, 1985 to Mr. Cummings from Francis X.  
9 McDermott, president of Nubulk.

10 JUDGE CLEMENTS: It shall be so identified.

11 BY MR. GRAY:

12 Q Mr. Cummings, is Exhibit 12 the letter that you  
13 received from Nubulk?

14 A It is.

15 Q Without going into the facts stated in the letter,  
16 was this letter received subsequent to discussions that you  
17 had with representatives of Nubulk?

18 A With Mr. McDermott, yes.

19 Q What was the substance of those discussions?

20 A We were discussing the potential employment of  
21 Nubulk for our house carrier out of the York plant.

22 Q Was the net result that Nubulk declined?

23 A That's correct.

24 Q Were these same discussions held with various  
25 other carriers?

1 A They were.

2 Q You mentioned in your letter of May 2, to the PUC  
3 Schwerman and Fleet, for example. Were discussions had with  
4 each of those carriers about being your house carrier?

5 A We did have those discussions with them.

6 Q And what were the results?

7 A They were negative: They were not able to provide  
8 the service or did not choose to provide it. One or the other.

9 Q You ended up -- it ended up, obviously, on May 3,  
10 that the PUC granted emergency authority to Bulk, Inc. Could  
11 you shed some light on how Bulk, Inc. got into the picture  
12 here? How did it come about that Bulk, Inc. was the carrier  
13 that ended up providing service to you?

14 A Once Cement Express went into the marketplace to  
15 seek buyers of their company, that kind of word tends to be  
16 spread very quickly. And presumably as a result of that, we  
17 had contact from Herman Brothers to discuss potential hauling  
18 for us, among others.

19 Q And you recognized that Herman Brothers is a  
20 related company to Bulk, Inc.?

21 A Correct. Somehow related. But I wasn't concerned  
22 with that part of it too much.

23 Q What were you concerned about?

24 A We needed specialized equipment on an emergency  
25 basis to preserve the continuity of service to our customers.

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1 from a reliable-type trucker.

2 Q Was the real problem the very short notice? The  
3 one-day notice? Was that the real problem?

4 A That was the immediate problem.

5 Q Was Schwerman, for example, giving you any kind of  
6 indication of whether or not they could help you if they had  
7 90 days notice?

8 A Yes. We had extensive negotiations with Schwerman.  
9 And because of the short notice, they backed off from the  
10 deal. But then learned subsequently that they would have 90  
11 days to make up -- a meeting was set up on April 30 with the  
12 president of Schwerman, who came to my office en route from  
13 Milwaukee. We began to learn the awful truth that there would  
14 be no service on May 1 from Cement Express. And that then  
15 put Schwerman back to the position of not being able to  
16 respond immediately with specialized equipment to serve our  
17 needs.

18 Q In other words, you received a letter from Schwerman  
19 dated April 24th indicating that they couldn't help you with  
20 the short notice; they could meet your needs with the 90 days,  
21 I guess, is basically it?

22 A Yes.

23 MR. GRAY: Your Honor, may we have admitted as  
24 Applicant's Exhibit 13 --

25 MR. BUBBA: Same objection.

1 JUDGE CLEMENTS: I will make a ruling on them  
2 subsequent to the testimony of this witness.

3 BY MR. GRAY:

4 Q Is this a true and correct copy of the letter from  
5 Schwerman indicating that they would like to bid on the PUC  
6 if they had 90 days' notice?

7 A Yes. It reflects the change of the position of  
8 Cement Express Company as I testified earlier.

9 Q In other words, at this point in time, you thought  
10 you had 90 days, correct?

11 A Yes.

12 Q As of April 24 -- and Schwerman learned of that  
13 externally. Not from me.

14 Q You say, though, on April 30, you made Schwerman  
15 aware that it now wasn't 90 days, but it was tomorrow that  
16 you needed service?

17 A Yes, sir.

18 Q And their reaction, again?

19 A That they were not able to supply the equipment.  
20 And, therefore, I had to gracefully withdraw.

21 Q So, you ended up with Bulk, Inc.'s application in  
22 this proceeding. Correct?

23 A Yes.

24 Q The authority here which is marked emergency  
25 temporary authority order, as Exhibit 2, was granted on May 3.

1 Did you, again, use Bulk, Inc. under the emergency grant at  
2 about that time?

3 A Yes, we did.

4 Q Have you intended to use Bulk, Inc. up to the  
5 present time?

6 A Yes. That's correct.

7 Q Has Bulk, Inc. been able to provide the type of  
8 service that you require?

9 A They have.

10 Q Have they been able to provide the type of  
11 equipment that you required?

12 A They have.

13 Q Have they been able to provide that equipment that  
14 you require to your exclusive use?

15 A They have.

16 Q Now, the Protestant in this case, MTS, as I said,  
17 seems to be taking the position that there is not this  
18 emergency situation. And they have in their pleadings  
19 referred to telephone conversations which occurred between  
20 representatives of your company and representatives of  
21 MTS.

22 The first one, I think, was on April the 24th, but  
23 does not involve you. Correct?

24 A Yes. That's what I'm told.

25 Q There was one that they referred to on April 29th.

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1 which did involve you?

2 A Yes.

3 Q What is your recollection of that telephone  
4 conversation?

5 A The April 24th call was from someone unknown to me.  
6 I knew no one from MTS. They are one of the largest cement  
7 hauling companies in the United States. Being actively  
8 solicited by most of the large trucking companies, MTS never  
9 ever called to solicit business, in my experience.

10 Q Never?

11 A I was not familiar with any name nor did I ever  
12 see anyone from MTS.

13 The party -- whoever he was -- called a rate clerk from  
14 my department by the name of Jay Young. And I was out of  
15 town. And Mr. Young put a note on my desk.

16 And on the 29th, which is, as I recall, a Monday, I  
17 received a call from a Mr. Taylor, who was, at that point,  
18 apparently just learning that there were some problems at  
19 York with respect to shippers. Rather surprised, since that  
20 was a moving industry.

21 But by this time, we had pretty much of a problem on  
22 our hands and -- we were down the line with several truckers  
23 as potential haulers; some more than others.

24 Q What did Mr. Taylor say to you?

25 A He indicated that he would have an interest in

1 participating in our York business and wondered if we would  
2 consider them.

3 Q What did you tell him?

4 A I think I told him it was the eleventh hour, and  
5 we had to move as quickly as we could. And it was much too  
6 late for the specialized equipment that we needed provided for  
7 our use.

8 Again, I'm not sure if he understood that part of  
9 the business.

10 Q How far is MTS -- their offices -- from yours?

11 A I must tell you, I don't know anything about MTS  
12 except that I have seen some of their trucks on the highway.

13 Q According to their protest, if I might find it, they  
14 are located in Northampton, PA?

15 A Yes.

16 Q Are you familiar with Northampton?

17 A Yes.

18 Q How far are they from you?

19 A I don't know. Maybe four or five miles.

20 Q You mean to tell me that you have a company located  
21 four or five miles from your facility and you have never  
22 heard from this company? And you're the major cement company  
23 in the area?

24 A Yes.

25 Q And they are four or five miles from your company,

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1 and you have never heard from them?

2 A That's absolutely the truth.

3 Q And a company from Omaha, Nebraska, you do hear from?

4 A Just old-fashioned enough to think that the people  
5 that solicit your business are the ones that should get it.  
6 And they did something at the very last minute.

7 JUDGE CLEMENTS: Let me interrupt for just a second.  
8 I'm a little confused as to just one point.

9 It appears to me that in order for Bulk to have the  
10 equipment ready to start transporting for your plant on May 2  
11 or May 3, they would have to have some arrangement. And yet,  
12 unless I misunderstood your testimony, you didn't really  
13 decide on them until April 29th. Am I correct that you  
14 had prior negotiations or an agreement with them? Did they  
15 move within these few days?

16 MR. CUMMINGS: If I may separate negotiations and  
17 agreement. We were working and doing as much as we could  
18 to solve this problem. They were actively negotiating with  
19 Cement Express -- the purchase hauler part. I'm not privy  
20 to exactly what was going on there. Except that if I had to  
21 bet on a horse in a race to solve our problems, it looked to  
22 me as though it was going to probably be Bulk, Inc. group.

23 If I'm being clear, that's kind of the way it was  
24 going.

25 We had another aspect of this which we talked about --

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1 Schwerman -- who was willing to provide service if they  
2 had 90 days to do it. And we were on again off again with  
3 them, depending on the fickleness of Cement Express's point  
4 of view on any given day. But to begin negotiations with a  
5 company that never paid any attention to us and who came in  
6 at the end of the line and started to profess an interest in  
7 our business, I really didn't have the time to fool around  
8 and deal with them at that juncture.

9 MR. GRAY: And that was MTS?

10 MR. CUMMINGS: Yes.

11 JUDGE CLEMENTS: But had you been talking to Bulk  
12 before the 29th?

13 MR. CUMMINGS: Yes. To Bulk, Inc. and Schwerman and  
14 other people. Some negotiations having gone further than  
15 others.

16 JUDGE CLEMENTS: I'm sorry. That was my misunderstanding.

17 MR. GRAY: That's all right.

18 BY MR. GRAY:

19 Q Mr. Mulroy of Bulk, Inc. indicated that, in fact,  
20 his recollection was that as regional sales manager for  
21 Herman Brothers that he had been in your facility since  
22 December of 1984. Is that correct?

23 A The date is not clear, but he was in my office  
24 over the years. Several years before.

25 Q Would your company consider using a carrier, Mr.

1 Cummings, that does not dedicate trailers to your exclusive 89  
2 use? At least tank trailers?

3 A Absolutely not.

4 Q Would it be correct to say that you need at least  
5 or approximately the number of tank trailers that Bulk, Inc.  
6 is presently providing to you? That's 17.

7 A Yes.

8 Q To your exclusive use?

9 A That's correct.

10 MR. GRAY: That's all.

11 JUDGE CLEMENTS: Just one quick question before  
12 cross-examination.

13 I think this may be clear to counsel, but it's not  
14 clear in my mind. Is there any other entity or carrier  
15 paid by you providing service for the white cement in tank  
16 trailers from this facility?

17 MR. CUMMINGS: No, there is not.

18 JUDGE CLEMENTS: Very well.

19 Would you like a few minutes.

20 MR. BUBBA: Will we be going straight through?

21 JUDGE CLEMENTS: Yes.

22 MR. BUBBA: I'm ready to go on.

23 CROSS-EXAMINATION

24 BY MR. BUBBA:

25 Q I would like to talk about this chronology of events

1 from March 28 a little more. Let's go back to the conversation 90  
2 on March 28 that you have categorized as nothing definite.  
3 They are saying they are going to get out of the business at  
4 some point in time, but it is certainly not noticed?

5 A I think the record indicates that I said that.

6 Q And then I believe you said that the next thing that  
7 happened was you received a letter on April 22?

8 A That's correct.

9 Q How long have you been in business with the Stickels  
10 previous to this?

11 A Well, we bought the plant -- I'm trying to recollect  
12 We bought -- my company bought the plant in 1983. And Mr.  
13 Mulroy can confirm that. That's when we commenced operation.  
14 They shipped only out of that facility. It was the only  
15 trucking operation at that time.

16 Q And you knew the Stickels?

17 A Not prior to purchase. But we met them subsequent  
18 to that.

19 Q Did you know the Stickels in 1985? April of 1985?

20 A Yes.

21 Q Very well?

22 A That's a qualitative statement. I knew them better  
23 than Mr. Taylor.

24 Q You didn't know Mr. Taylor at all.

25 A That's correct.

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Q You categorized them as responsible people, didn't you?

A That was my unfortunate perception.

Q That perception changed when?

A That perception changed when they started telling me they were going to terminate May 1, and tell me on April 22.

Q Had they, in the past, pulled any quick deals or fast deals with Lehigh Portland?

A Define fast move.

Q Before that time, did you have any reason to doubt their credibility?

A I think my testimony indicates that I did not.

Q This letter, which is dated April 1, 1985, in which you say you received on April 22, do you have any reason -- do you know of any reason why they would date that April 21, 1985?

A You would have to ask them.

Q The notice under the contract was 90 days.

A I have testified to that affect.

Q So, it wouldn't do them any good to back date it 30 days, would it?

A Why not? Sixty days would shorten the 90 days' notice very quickly.

Q Are you telling me that if they gave you 30 days' notice, that would be in compliance with the contract?

1 A The contract required 90 days.

2 Q So, the April 1st letter indicating they would  
3 terminate May 1st would not give them the required 90 days?

4 A It would not, no. It would give me the time that  
5 I needed. I would like to have 120 days.

6 Q So, you cannot speculate as to any reason why?

7 A I don't think speculation is appropriate in this  
8 matter.

9 Q Did you think that this was sent on April 1st?

10 A I received it on April the 22nd. It could have  
11 been sent on January 1st. I have no idea.

12 Q Well, you next indicate that on April 23rd, you  
13 sent via Purolator Courier, a letter to them, Applicant's  
14 Exhibit 9, a letter dated April 1st was Philadelphia postmarked  
15 April 21, 1985, and was received by me April 22, 1985. Did  
16 the Stickels ever tell you that the letter was not sent until  
17 the 20th or the 19th?

18 A No, they did not.

19 Q If I'm correct, on April 29th, you indicated that  
20 you received Applicant's Exhibit No. 10. And that was a letter  
21 dated April 25.

22 A Yes.

23 Q Am I also correct that you categorized that previously  
24 as saying that in light of threatened lawsuit that they no  
25 longer -- they were withdrawing their termination letter dated

1 April 21st? Is that what that April 25th letter does?

2 A The letter speaks for itself.

3 JUDGE CLEMENTS: I think he's just asking for your  
4 perception.

5 BY MR. BUBBA:

6 A It clearly said they were going to serve until  
7 July 25th.

8 Q And that was received on April 29?

9 A Yes.

10 Q Up until that time, you did not know that they  
11 withdrew their termination letter?

12 A Only from what people told me, that they were  
13 planning on serving us 90 more days.

14 Q When did you know? On April 29th or --

15 A When did I hear the gossip or when did I hear --

16 Q When did you hear the gossip?

17 A The gossip I heard was on April the 24th.

18 Q Who did you hear that from?

19 A Mr. Jack Schwerman.

20 Q Of Schwerman Trucking?

21 A President of Schwerman Trucking, that's correct.

22 Q Do you know how Mr. Schwerman found that out?

23 A He said that Gloria Stickel called and said they  
24 had been forced to abide by their terms of the contract. And  
25 they planned to serve 90 more days. Mr. Schwerman called me

1 immediately, because the 90 days would be good for him. We 94  
2 could get the equipment together.

3 Q So, you heard the rumor that the time had been  
4 extended?

5 A Yes.

6 Q Were you undergoing negotiations with anyone?

7 A With whom?

8 Q With anyone?

9 A Yes. I set a date of April 24th for Jack Schwerman  
10 to come to Allentown on April 30th for the purpose of his  
11 possibly providing service to us with his company. On  
12 April 24th I talked to Chemical Leaman. On April 26th, I  
13 talked to Fleet Transport.

14 JUDGE CLEMENTS: And during those conversations it  
15 was your belief that you no longer had a May 1st need?

16 MR. CUMMINGS: That's correct. Until April 29.

17 BY MR. BUBBA:

18 Q Why until April 29? I thought that you said that  
19 on April 29 you received the letter saying they would extend  
20 it, and not until April 30, one day before. Did you find out  
21 something contrary? And that was by something called a  
22 quote, unquote, emergency phone call from the York facilities?

23 A Yes.

24 Q When did you find out?

25 A Find out what?

1 Q That they had changed their minds once again? Was 9,5  
2 it through the emergency phone calls?

3 A I found out they were going to extend on April 29th  
4 by a letter.

5 They informed me on April 25 that they were going to  
6 extend the service until July 25th.

7 Q And that letter confirmed rumors you heard of the  
8 24th?

9 A That's correct.

10 Q When did you find out they had changed their minds  
11 from extending the service so that they were still going to  
12 terminate it? Did you tell us that was from an emergency  
13 phone call on April 30th and they would not pick up?

14 A On April 30th I had calls from people saying that  
15 they were not going to provide service.

16 Q The day before is April 29th?

17 A Yes.

18 Q April 29th is the day you talked to John Taylor?

19 A Yes.

20 Q And you said that the reason you weren't interested  
21 in MTS is you couldn't believe that they would contact you  
22 at the eleventh hour?

23 A MTS.

24 Q Was it the eleventh hour on April 29th? You  
25 testified that you thought you had 90 days.

1 A Yes, that's right.

2 I had some negotiations going on with a number of  
3 people who had been soliciting our business at the time. To  
4 receive a call at this time was -- I just wasn't very interested.  
5 As a businessman, I was just not very interested.

6 Q It was because it was the eleventh hour, which was  
7 what you testified?

8 A That was my phraseology.

9 Q Did you testify that the reason you didn't talk to  
10 John Taylor on the 24th and 29th --

11 MR. GRAY: He did talk to John Taylor.

12 BY MR. BUBBA:

13 Q Or you did not get into negotiations with John  
14 Taylor on the 29th was because the service was needed and  
15 you couldn't believe he was only talking to you at that late  
16 date. Is that what you attempted to testify to on direct  
17 examination?

18 A Yes, I think it was.

19 Q Would it surprise you if I told you that MTS is  
20 the largest cement carrier in the Lehigh Valley?

21 A Not particularly.

22 Q Would it surprise you that you did not know that  
23 they were the largest carrier?

24 A That, I would not know.

25 Q Yet you did not know of them?

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1           A   As I have testified, I have seen their trucks on  
2 the road. I have seen their trucks on the road with MTS on  
3 the side.

4           Q   Do you know why they had not solicited you in the  
5 past?

6           A   I haven't the faintest idea.

7           Q   Is it your belief that it's -- strike that.

8           Did John Taylor tell you that he had rights out of  
9 the York facility?

10          A   I don't recall him saying that specifically. If  
11 he called, I assume he had rights, but I don't recall.

12          Q   Do you recall stating on cross-examination that you  
13 couldn't believe with all the scuttlebutt in the industry that  
14 he had just found out about this?

15          A   I said that. And I would be surprised.

16          Q   Didn't you also testify that you had a note from  
17 one of your employees that he had talked to someone from  
18 MTS earlier in the month?

19          A   That's correct. I got that note the day he called  
20 on the 29th.

21          Q   It was your testimony that you received the first  
22 phone calls between MTS and Jay Young, of your office, was  
23 on April 24th.

24          A   I believe that was the date.

25          Q   Well, that wasn't -- then MTS did know before

1 April 29th what was happening?

2 A Apparently.

3 Q So, the fact that you received a phone call on  
4 April 29th doesn't indicate that MTS didn't know?

5 A Unless -- I must tell you, as a businessman, and  
6 I guess I shouldn't do this. But I do not really have a  
7 very warm spot in my heart for MTS knowing they never solicited  
8 business from us. We were in the heat of trying to find a  
9 trucker from anywhere in that state. Here's a trucking  
10 company four or five miles away that never called. One of  
11 the largest in the United States..

12 Q But you don't know why?

13 A I have no idea why. No.

14 Q So, the reason you didn't negotiate with them was  
15 because you did not have a warm place in your heart for MTS?

16 A Of course not.

17 Q Why was it, then?

18 A I was negotiating with people that I thought were  
19 going to solve our problem. I didn't feel I had the time to  
20 negotiate with anybody else. I didn't choose to negotiate  
21 with them.

22 Q Did you tell him that you had an informal agreement  
23 with Schwerman already?

24 A I don't recall saying that, no.

25 Q Would that have been improper?

1 A I don't know if it would have been improper. We  
2 had some in various stages of development. One of these  
3 was rather far down the road.

4 Q Which ones were far down the road? Schwerman and  
5 Bulk?

6 A Yes.

7 Q When did Bulk first contact you about the York  
8 facility?

9 A I don't recall. Sometime in early April. It was  
10 after the March 28th visit of the Stickels.

11 Q Did you initiate that or did Bulk?

12 A They did, as I recall.

13 Q Was it Bulk or Herman Brothers at that time?

14 A I don't recall. I really wasn't too interested in  
15 the names. I was looking for a good, solid trucker.

16 Q Was Bulk a good, solid trucker?

17 A I don't recall the Bulk contact in that terminology.

18 Q Well, what attracted you to Bulk?

19 A I knew the people.

20 Q You knew Jerry Mulroy?

21 A Yes..

22 Q Who else did you know?

23 A Bob Williamson.

24 Q Could you please refer to the letter which was  
25 hand-delivered to the Pennsylvania Public Utility Commission -

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1 that is Applicant's Exhibit 11, I believe, if they are still 100  
2 in front of you.

3 The second paragraph, the second sentence of that, would  
4 you please read that into the record?

5 A We contacted Schwerman Trucking; Nubulk, Inc., a  
6 Division of Chemical Leaman; Fleet Transport, and others.

7 Q This letter was sent to the PUC in an effort to  
8 get emergency temporary authority?

9 A That's correct.

10 Q And that emergency arose on April 30th; is that  
11 correct?

12 A That's correct.

13 Q When did you contact Schwerman, Nubulk, Fleet and  
14 others?

15 A We talked to them at various times during April.

16 Q But not after the emergency came up on April 30th?

17 A Well, I talked to Schwerman, of course, in my  
18 office.

19 Q If you know -- hold it.

20 (Whereupon there was a pause in the proceedings.)

21 BY MR. BUBBA:

22 A Yes, that's true.

23 Q Did you talk to any of them after April 30th about  
24 the provision of service immediately?

25 A No, I did not.

1 Q Did you talk to MTS about the provision of service 10  
2 immediately after April 30th?

3 A No, I did not. At that juncture, -- I had obtained  
4 service during the day. So, there was no need to go any  
5 further.

6 Q How did it come about? How did you know you had  
7 obtained service during the day?

8 A By discussing it with Jerry -- Mr. Mulroy.

9 Q Did he assure you that they would have the equipment  
10 that was necessary?

11 A Yes.

12 Q You called him sometime during May 2nd and said,  
13 Jerry, do you have the equipment? Can you do it?

14 A We were in constant contact. And as I was mentioning,  
15 we thought this thing was going to pull together. And there  
16 was no question. There was equipment and that made everything  
17 fall into place.

18 Q Where did they get the equipment from?

19 A You have to ask Mr. Mulroy.

20 Q You don't know?

21 A I'm not certain. I am under the impression of  
22 where it came from.

23 Q Where?

24 A I think Cement Express. Because of its very  
25 specialized tank equipment that was ready to roll with white

1 cement.

2 Q Do you know that for a fact?

3 A That's my impression. I don't have the trailer  
4 numbers. I don't know.

5 Q Did Lehigh Portland or you have anything to do  
6 with the acquisition of those vehicles by Bulk for the  
7 transportation on May 2nd?

8 A No. Absolutely nothing to do with it.

9 Q Did Lehigh Portland enter into leases for equipment  
10 from Cement Express?

11 A Yes.

12 Q Why was that?

13 A There was no emergency temporary authority on May 1.  
14 And we had this one-day notice. I think, once again, supporting  
15 our contention that we had no equipment, and we leased, as  
16 I recall, a couple of trucks from Cement Express and a couple  
17 of drivers and Lehigh leased them and paid for them.

18 Q Is one of the factors in why you evidently decided  
19 to go with Bulk the fact that Jerry Mulroy is there?

20 A Not that Jerry Mulroy is there, but that Jerry  
21 Mulroy was working for the company that was able to provide  
22 the service for me. That's a subtle difference. But I  
23 don't hire companies based on personalities. Mr. Mulroy  
24 represents a company, and we hired the company; not the man.

25 Q Would you have approached Bulk, Inc., an inactive

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1 corporation, without Mr. Mulroy's involvement?

2 A Who knows?

3 Q How did you contact this group of Schwerman,  
4 Chemical Leaman, Fleet Transport and others that you mentioned?  
5 How did you go about getting those names?

6 A On some days they called me, and on some days I  
7 called them.

8 Q And they had done transportation for you before?

9 A Some of them had. Some of them had not.

10 Q Some had not. Why would you contact the ones who  
11 had not?

12 A Well, let me see how this works here for a minute.  
13 (Whereupon there was a pause in the proceedings.)

14 BY MR. BUBBA:

15 A The people I have here, I didn't call any of them  
16 directly. They contacted me.

17 Q Did your negotiations with John Taylor get to the  
18 point where he told you he had all the equipment you would  
19 need?

20 A I recall telling him that this was very special  
21 equipment we needed. I thought we would need very quick  
22 service on the equipment. I don't recall what he said, no.

23 Q What did you know about MTS at the time he called?

24 A That they have trucks rolling down the highway with  
25 MTS on the side.

1 Q And you presumed from that they did not have  
2 equipment to meet your needs? What other facts did you have?

3 A I didn't -- I was negotiating with other truckers  
4 and was far enough down the line that I was reasonably satisfied  
5 that I had the situation in hand. As a businessman, you don't  
6 have time to take each person who wants to do business with  
7 you and have extensive discussions. The time of these  
8 extensive discussions during this thing had passed. And MTS  
9 had come in quite late. If they had come in earlier in April,  
10 perhaps the business decision would have been to engage in  
11 negotiations as we did with Schwerman and Bulk and some others.

12 Q You said that the number of vehicles that they  
13 designated to the Lehigh Portland facility has increased?

14 JUDGE CLEMENTS: By them, do you mean Bulk?

15 BY MR. BUBBA:

16 Q Bulk, Inc.

17 A I don't recall saying it. I think Mr. Mulroy  
18 testified that it had. And we would have expected that to  
19 build up as the business built up.

20 Q Why would you expect that to build up?

21 A It's a seasonal business. And we expect to ship  
22 more in August than in May.

23 Q The decreased -- other people were providing service,  
24 it was because of seasonal changes?

25 A Nobody else was providing the bulk service that we

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1 needed. We have an exclusive carrier that was providing  
2 the service on bulk cement.

3 Q But there is more than just bulk equipment dedicated;  
4 is that correct? There's flatbeds also?

5 A Yes. The flatbeds are not quite --

6 Q Bulk is a special problem?

7 A Bulk equipment is not quite as dedicated. I'm not  
8 an expert in the equipment. I really don't know.

9 I know the situation in tanks because it bears so  
10 heavy on our business.

11 Q Do you have a need for more than the 12 units on  
12 May 2nd which were dedicated to Lehigh Portland?

13 A I don't remember.

14 Q I think it's a rather important element in this  
15 hearing, whether or not there was a need for more than 12  
16 vehicles on May 2.

17 A Let me respond this way. We did not lose a single  
18 order as a result of the transition of service. I must  
19 conclude, therefore, that we had equipment to service the  
20 business that was offered to us on that date.

21 Q Do you believe that Bulk, Inc.--

22 Let me go back.

23 In April of 1985, you had discussions with Herman  
24 Brothers and/or Bulk, Inc. or Leasco, or whatever the name of  
25 the company was. Did you know that Bulk, Inc. did not have

1 any rights at that time?

2 A When? During April?

3 Q Yes.

4 A Yes.

5 Q Did that concern you at all?

6 A Depending on the stage. Depending which time of  
7 the month we are talking about. It was in varying degrees of  
8 concern. Earlier on, we felt we would have time to obtain  
9 those rights, if necessary.

10 Q Did you have interstate transportation out of the  
11 York facility?

12 A Yes.

13 Q Does it concern you now that they are not an  
14 intrastate carrier?

15 A They provide intrastate service.

16 Q How do they do that?

17 A From my point of view -- I'm dealing with the house  
18 carrier and that doesn't really concern me. I don't mean  
19 to be disrespectful. They do our trucking, other house  
20 carriers. And they take the cement where we want it to be  
21 taken. That's interstate or intrastate.

22 Q That's Bulk?

23 A That's the outfit -- when we get into Herman  
24 Brothers, Leasco, and 14 other corporations, I don't think --  
25 the financial end of it -- that's rather common, you know?

1 Q Let me ask you again. Do you think Bulk, Inc. does 1077  
2 not have ICC rights?

3 A Yes.

4 Q And does that concern you or does that not concern  
5 you? As long as one of those fourteen corporations somehow  
6 goes and gets it done for you, you don't care?

7 MR. GRAY: I think he's referring to fourteen corpora-  
8 tions under the same corporate umbrella, such as Bulk,  
9 Herman Brothers, and so on.

10 MR. BUBBA: I'm using his phraseology.

11 BY MR. BUBBA:

12 A No. We are not looking for service.

13 Q I think you said you were looking for a solid-type  
14 of carrier. Would you feel more comfortable if the carrier  
15 had the PUC and ICC rights that you needed?

16 A It would be one factor among others.

17 Q What would the other factors be?

18 A Reliability of service, financial stability,  
19 safety, any business considerations you would give the right  
20 kind of people to run.

21 Q And Bulk, Inc. assured you of all of those other  
22 things?

23 A I was satisfied that they would perform.

24 Q If I were to tell you that MTS had PUC and ICC  
25 rights and ICC contract carrier rights, and had equipment which

1 was ready, willing and able to transport white cement on  
2 May 1st, would that have any impact?

3 A That's a multiple question. If they said they  
4 were ready, willing and able, I would look with great doubt  
5 on that statement.

6 Q Why is that?

7 A Simply because the equipment has to be sterile and  
8 perfectly clean. And if MTS had trailers sitting on their  
9 lot that were cleaned out and ready to go and serve us, I  
10 would be most surprised. Not saying not true; I would have  
11 been most surprised.

12 Q If you would have been told that, would you have  
13 pursued that?

14 A That if he had that when?

15 Q April 24th or 29th. Either dates.

16 A Possibly. Except probably I wouldn't have. I keep  
17 telling you we had negotiations going on with several people,  
18 or I was seeing the light of day coming into this thing. And  
19 I did not have the time. I have other duties besides this  
20 particular thing, although sometimes I'm not sure that's the  
21 way it is. I had narrowed it down to the people I thought  
22 were going to perform for us.

23 Q When, in your discussion, was a final agreement  
24 struck with Bulk, Inc.?

25 A Final agreement?

1 Q Yes.

2 A Can you define what you mean when you say final  
3 agreement?

4 Q When was this arrangement made that is presently  
5 existing -- when did it become a contractual arrangement?

6 A Contractual arrangement?

7 Q Yes. When were you bound legally to use them?

8 A The contract signed was -- I have to search my  
9 memory -- it seems to me it was April 25th or some such  
10 date.

11 Q When did Bulk get the equipment? Do you know?

12 A I don't think -- the equipment became available,  
13 as far as I know, along about May 1 or was not much before  
14 that. Maybe April 30th to May 3rd.

15 Q Were you involved in any way in making sure that  
16 the equipment was there for Bulk, Inc.? Did you have  
17 discussions with Bulk, Inc. concerning that equipment?

18 A The question of equipment was one between Bulk, Inc.  
19 and Cement Express rather than between Lehigh and Cement  
20 Express.

21 Q Answer my question. Did you have any discussions  
22 or negotiations with them?

23 A No negotiations.

24 Q No negotiations at all?

25 A No.

1 Q Did you ever give an indication to Cement Express 110  
2 that that equipment was very important to your operation?

3 A Yes.

4 Q And did you make overtures to them that somehow  
5 that equipment get in the hands of Bulk, Inc.?

6 A We discussed the fact that this equipment was  
7 needed. And we were dealing with Bulk, Inc. That was the  
8 extent of it.

9 Q You did not suggest to them that somehow Cement  
10 Express better make sure that the equipment end up being  
11 leased to Bulk?

12 A Make sure is a gross overstatement. We indicated  
13 that we had an arrangement about made and the key to this  
14 whole situation, as I said repeatedly was equipment. With  
15 Cement Express going out of business, it would have solved  
16 our problems quite nicely had that equipment been purchased  
17 by Bulk, Inc. and that was the gist of my statement to  
18 Cement Express. But no pressure, if you will, for them to  
19 sell.

20 Q Did you keep records of who has -- which carrier  
21 have which type of authority?

22 A Yes. It's in our department.

23 Q Do you personally keep them?

24 A No. It's my people in my department.

25 Q By checking records, you would have been able to

1 find out that Materials Transport Service had common and  
2 contract and PUC rights from York County?

3 A At least some or all of it. It depends on the  
4 adequacy of our records.

5 Q When you contacted these people --

6 A They contacted me.

7 Q Others contacted you and you contacted some...

8 The ones that you contacted, did you look in your  
9 files first to see what type of authority they had?

10 A No, not really. What I would do is call and say,  
11 do you have the rights.

12 Q And that would be important to you?

13 A Yes, it would be important to me.

14 MR. BUBBA: We have nothing further.

15 JUDGE CLEMENTS: Let me just ask one question before  
16 redirect.

17 I believe you testified that your first agreement  
18 or contract with Bulk was on April 24th. And yet you also  
19 testified that you were negotiating with others in April 28th  
20 and 29th. I don't understand what seems to be an inconsistency.

21 MR. CUMMINGS: We signed a contract with Bulk contingent  
22 upon getting their authority to haul for us. There was a  
23 30-day cancellation clause in it. So, it was not the kind of  
24 contract that I felt we were signing in life's blood to deal  
25 with, you know, that kind of thing. So, it was a contract, from

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1 my standpoint, that could be cancelled without a whole  
2 lot of difficulty if it developed later that we did not  
3 choose to use this service.

4 I don't know if that explains it very well. That's  
5 the practical aspect of what we were doing.

6 JUDGE CLEMENTS: Very well.

7 Mr. Gray, any redirect?

8 MR. GRAY: Only one question.

9 REDIRECT EXAMINATION

10 BY MR. GRAY:

11 Q I just want to make sure the record is clear. Bulk,  
12 Inc. is both interstate and intrastate. Correct?

13 A Yes.

14 Q As far as you know, you're paying them?

15 A Yes.

16 Q Would it be correct to say that you don't know  
17 under what legal arrangements they're handling interstate  
18 shipments?

19 A Yes.

20 Q But you do know the same trucks that's providing  
21 the service?

22 A That's correct.

23 MR. GRAY: That's all.

24 REXCROSS EXAMINATION

25 BY MR. BUBBA:

1 Q You're saying that all trucks are providing the  
2 interstate service?

3 A Yes.

4 MR. BUBBA: I don't have anything further..

5 MR. GRAY: I move for the admission of whatever my  
6 exhibits are here. I guess they are now Exhibits 7 through  
7 13.

8 JUDGE CLEMENTS: I know we have an objection to a  
9 couple of these.

10 MR. BUBBA: We don't have to go through them one by  
11 one. I believe I know them.

12 My objections to hearsay are numbers 12 and, I believe  
13 13. Exhibit No. 12 should be a letter from Nubulk. And  
14 Exhibit No. 13, a letter from Schwerman.

15 JUDGE CLEMENTS: That's correct.

16 Very well. The exhibits are admitted.

17 I note an objection to the admission of Exhibits No:  
18 12 and No. 13. As I said earlier, should counsel feel that  
19 his rights of cross-examination have been unduly limited,  
20 he may request in writing for further proceeding to further  
21 investigate this aspect of the case. If I do not hear from  
22 counsel within 10 days of the hearing, I will assume that he  
23 has chosen to reconsider that aspect of the case, and the  
24 exhibits will stay admitted.

25 Let's go off the record a second.

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1 (Whereupon there was a discussion held off the record.) 114

2 JUDGE CLEMENTS: Why don't we give ourselves until  
3 2:15.

4 (Whereupon there was a lunch recess taken at 1:15 p.m.  
5 and the hearing was resumed at 2:20 p.m.)

6 JUDGE CLEMENTS: Is the Applicant ready to proceed?

7 MR. GRAY: Yes.

8 MR. BUBBA: Before we proceed, I would like to make  
9 a motion to dismiss.

10 In my view -- and I think that there's some uncertainty  
11 as to whether or not the section of the Pennsylvania Code 14.41  
12 and the Kinard case have no application to the contract  
13 carriers. I believe that's currently up in the air. Even  
14 if it has no applications, my feelings are that first that  
15 the application has not even shown that it is ready, willing,  
16 and able. After two or three hours, I'm not sure who Bulk,  
17 Inc. is, who owns its stock, what assets it owns, what rights  
18 it has, whether or not it is financially stable. All we have  
19 is Mr. Mulroy's testimony that he feels it is financially  
20 stable. I don't know if the \$100,000 is going to run out.  
21 And what happens if it does?

22 Secondly, I don't believe the Applicant has shown  
23 a need for service. Although we have been talking a lot of  
24 emergency temporary authority and temporary authority, since  
25 this is a permanent authority application, I would like to

1 address it to that. Although I think it might have some  
 2 application to the others. In Wiley versus PUC, which is  
 3 a contract case, and the standard for contract applications  
 4 says unquestionably the standard by which the Commission must  
 5 act in determining whether a contract carrier should be  
 6 granted a permit is the need. That is greater under the law  
 7 than the mere determination of the desire. All we have heard  
 8 all morning long is the desire of Lehigh Portland to use  
 9 those services of Bulk, Inc. A desire; not a need. And where  
 10 need arises, showing that whoever is out there can't do it --  
 11 pre-Kinard -- that is an inadequacy of service and even in  
 12 Kinard and 14.41 standards they enumerate alternatives to  
 13 inadequacies in Kinard. I don't think they have even attempted  
 14 to show any of them. They are not indicating that Bulk is  
 15 providing a different service location, if you need backup  
 16 service shipper compensation, ICC authority -- in fact, that  
 17 is another question. I don't know who has the authority.  
 18 Certification of authority and benefit of application. I  
 19 think, as you would go through each of these divisions as  
 20 outlined in Kinard in the Commission case, that you would have  
 21 to come to the conclusion that -- this is before we put on  
 22 our case -- that there hasn't been a need for existing service,  
 23 but rather desire.

24 And the last thing I would like to mention is the  
 25 relevancy of the service that is being provided under the

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1 eta and ta -- I think by nothing more than judicial notice,  
2 we can indicate that that eta and ta are still subject to  
3 exceptions, which have been filed by MTS. And that is still  
4 pending at this date.

5 So, it's our position that the provision of service  
6 under that may be suspect, and, therefore, the relevancy of  
7 the provision of services under these rights should be given  
8 less weight.

9 JUDGE CLEMENTS: Very well. Do you want to respond?

10 MR. GRAY: Very briefly.

11 The argument is absurd, to say the least. I doubt if  
12 I have ever been in a case where I have seen a clearer proof  
13 being provided by an applicant of the need for service. And  
14 to say that it doesn't even -- it doesn't even rise to the  
15 level of being able to -- to dismiss is peakedly absurd.

16 The Commission granted authority in this case for a  
17 reason. They had the facts before them. The facts have come  
18 out here.

19 Suffice it to say that it's just an absurd argument.  
20 I'm prepared to argue on briefs. There's just no merit  
21 whatsoever to the argument that a motion to dismiss should be  
22 granted here at all.

23 JUDGE CLEMENTS: I'm going to deny without prejudice  
24 the motion to dismiss. I will make my decision after I  
25 receive your briefs or whatever memoranda you choose to submit

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1 to the matter.

2 Very well. Let's proceed.

3 MR. BUBBA: I call John Taylor.

4 JOHN TAYLOR, called as a witness, having been duly  
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BUBBA:

8 Q Mr. Taylor, by whom are you employed?

9 A Materials Transport Service, Inc.

10 Q And what is the address of -- let's call it MTS.  
11 What is the address?

12 A Post Office Box 33, Northampton, Pennsylvania, 18067

13 Q Before we go any further, let's get something  
14 straight.

15 There were statements during Mr. Cummings' testimony  
16 that you had never solicited business from Lehigh Portland,  
17 a large manufacturer of cement for a great number of years.  
18 Is that correct?

19 A That's correct.

20 Q Why don't you tell the Court why?

21 A When MTS purchased H.C. Gabler's PUC authority, we  
22 had a hearing. And at that time my father made a gentleman's  
23 agreement with Dick Stickel not to raid his work. And at  
24 that time the plant was a Medusa plant; not a Lehigh plant.

25 Q Your father was a predecessor in this corporation?

1 A He was deceased as of August, 1977. Yes.

2 Q When was that gentleman's agreement struck? Do  
3 you know?

4 A 1967.

5 Q And for 10 years while your dad ran the business,  
6 you did not -- MTS did not raid the business?

7 A That's correct.

8 Q Subsequent to your father's death, have you attempted  
9 to raid the business?

10 A No, I have not.

11 Q Why is that?

12 A Honoring the same agreement.

13 Q You were honoring your father's and Mr. Stickel's  
14 agreement?

15 A Correct.

16 Q Have the people at MTS, on different occasions,  
17 made any statements to you regarding your honoring of that  
18 agreement?

19 A Yes. My market department wanted to pursue contacts  
20 with that mill for at least backhauler continuous movement  
21 stuff on package work.

22 Q And they made those comments to you?

23 A Yes, they did.

24 Q And you refused?

25 A Yes, I did.

1 Q Based on that agreement?

2 A Based on the agreement between Dick Stickel and  
3 my father.

4 Q How many facilities does MTS have?

5 A At the present time, four terminals.

6 Q Where are they located?

7 A One in Northampton, one in West Manchester, one  
8 in Stockertown, and one in Jersey City.

9 Q The first three being in Pennsylvania?

10 A Correct.

11 Q What is your position in MTS?

12 A President and chief operating officer.

13 Q Are you authorized by MTS to appear here today and  
14 provide this testimony?

15 A Yes.

16 Q What is your duty as president and chief operating  
17 officer?

18 A Well, I provide corporate direction to plan new  
19 opportunities of work, finish existing things we have going,  
20 and basically, to supervise all the departments.

21 Q Let me ask you this. Are you a shareholder of  
22 MTS?

23 A Yes.

24 Q Do you know how many shares you own?

25 A Approximately 20 percent.

1 Q Twenty percent of the outstanding shares?

2 A Right.

3 Q Who owns the other stock?

4 A My sister owns 20 percent, and the remainder is  
5 owned by my mother, Virginia Taylor.

6 Q What is your sister's name?

7 A B. Gayle Taylor.

8 Q Are you on the Board of Directors of MTS?

9 A Yes, I am.

10 Q Are you the Chairman?

11 A No, I'm not.

12 Q Who is?

13 A Virginia Taylor.

14 Q How long have you been employed in any capacity by  
15 MTS?

16 A When we started the business in 1965.

17 Q When you say we, who do you mean?

18 A My father, Edward E. Taylor and myself.

19 Q What positions have you held -- have you been  
20 employed continually from that point in time forward?

21 A Four years of time I was out going to college.  
22 Other than that, it was continuous.

23 Q What have been your positions from 1965 forward,  
24 if you can remember?

25 A Dispatcher, mechanic, driver, loader, maintenance

1 operations.

2 Q About everything?

3 A Correct.

4 Q When did you become president?

5 A July of '79.

6 Q And how about chief operating officer?

7 A Same time.

8 Q How long have you been on the Board?

9 A At least that long.

10 Q Are you intimately familiar with the corporate  
11 direction MTS is taking and has taken?

12 A Yes, I am.

13 Q In fact, are you better able to give testimony  
14 regarding that than anyone in the corporation?

15 A Yes.

16 Q If you know, how many truck drivers does MTS  
17 currently employ?

18 A Something in excess of 175.

19 Q How about mechanics?

20 A Again, I would say in excess of about 25.

21 Q And on the clerical staff?

22 A Approximately 25.

23 Q Is there any group of employees I have missed?

24 A No.

25 Q So, in excess of 200?

1 A Okay.

2 Q MTS is the largest cement carrier in the Lehigh  
3 Valley?

4 A In the Lehigh Valley, yes.

5 Q The terminals that you talked about before, are  
6 there actually structures at each of those locations?

7 A Yes.

8 Q And are mechanics employed at each of them?

9 A All but our Jersey City one. We use other people's  
10 mechanics there.

11 Q So, your mechanics are split between the three  
12 Pennsylvania locations?

13 A Right.

14 Q How close are those three Pennsylvania locations  
15 to one another?

16 A Ten to fifteen miles.

17 Q If you could tell me -- I'll ask you generally  
18 first. How large a fleet of vehicles does MTS have at its  
19 disposal? If you can break that down into rough numbers of  
20 tractors, trailers, or tank equipment.

21 A We have over 200 tanks. We have over 75 platform  
22 trailers -- flatbed trailers -- and over 175 power units.

23 Q And is that fleet kept and maintained at each of  
24 these locations?

25 A Each of the four locations? Yes, they are.

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1 Q Does MTS currently hold Interstate Commerce  
2 Commission rights?

3 A Yes, we do.

4 Q Do you have common or contract carrier rights?

5 A We have common and contract authority, ICC.

6 MR. BUBBA: I believe this is MTS Exhibit 2, if we  
7 marked the first one as on cross-examination.

8 JUDGE CLEMENTS: It shall be so identified.

9 BY MR. BUBBA:

10 Q I'm showing you actually a two-page document. There's  
11 a copy of each side, which is marked at the top Interstate  
12 Commerce Commission Certificate of Public Convenience and  
13 Necessity.

14 Do you know what that document is?

15 A That's our ICC common carrier authority.

16 Q Do you know what I'm referring to when I say what  
17 the docket number is? Do you know what the docket number is?

18 A The MC --

19 Q Yes.

20 A MC 118816 SUB 10.

21 Q And do you know what SUB 10 refers to?

22 A I believe it's for 10 applications.

23 Q There have been applications before this one?

24 A Yes.

25 Q I would ask you to read from the second page of

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1 that exhibit. Would you read that into the record?

2 A To operate as a common carrier, by motor vehicle,  
3 in interstate or foreign commerce over irregular routes,  
4 transporting general commodities (except Classes A and B  
5 explosives and household goods), between points in the  
6 United States (except Alaska and Hawaii).

7 Q And as you categorized it, this is your common  
8 carrier authority with the ICC?

9 A Correct.

10 Q Could you tell me the service date on the front  
11 of that page?

12 A October 27, 1983.

13 Q I would like to next show you what I am marking  
14 as MTS Exhibit No. 3, which is, again, a two-page document  
15 copied on both sides.

16 Do you know what MTS Exhibit No. 3 is, Mr. Taylor?

17 A Yes. It's our Interstate Commerce Commission  
18 permit for authority nationwide.

19 Q And what is that docket number?

20 A MC 118816 SUB 11.

21 Q And, again, I would ask you to read into the record  
22 the second page, the top of the second page.

23 A To operate as a contract carrier, by motor vehicle,  
24 in interstate or foreign commerce, over irregular routes,  
25 transporting general commodities (except Classes A and B

1 explosives and household goods); between points in the United 125  
2 States under continuing contract with commercial shippers or  
3 receivers of such commodities.

4 Q And what is the service date of that document?

5 A February 21, 1985.

6 Q You got the contract authority after the common  
7 carrier authority in the PUC?

8 MR. GRAY: I object. That's from the ICC.

9 MR. BUBBA: What did I say?

10 MR. GRAY: PUC.

11 MR. BUBBA: You don't have to object. You can just  
12 clarify for the record.

13 BY MR. BUBBA:

14 Q Does MTS also hold PUC rights?

15 A Yes, we do.

16 MR. BUBBA: I apologize for the shape these documents  
17 are in. I would like this identified as MTS Exhibit No. 4.

18 BY MR. BUBBA:

19 Q Mr. Taylor, do you know what document MTS Exhibit  
20 No. 4 is?

21 A It's our Public Utility Commission authority.

22 Q When you say your authority, is that all the  
23 authority that you have? Can you tell by looking at it?  
24 If I could show you the date on the bottom of the second page,  
25 November 13, 1967, would that refresh your memory?

1 A That was when we purchased the H.C. Gabler.

2 Q Is this the first rights that you received from  
3 the Public Utility Commission?

4 A That's right.

5 Q And I would like to ask you to read the first  
6 paragraph on the second page.

7 A To transport, as a Class D carrier, cement in bags  
8 and cement in bulk in tank-type vehicles or hopper-type  
9 vehicles, from points in the counties of Berks, Lehigh,  
10 Northampton, and York, to points in Pennsylvania, and the  
11 return of empty containers and refused or rejected shipments.

12 Q Is MTS currently utilizing its ICC common carrier  
13 authority?

14 A Yes.

15 Q Are they using their ICC carrier authority?

16 A Yes.

17 Q Since 1976, has MTS made application for additional  
18 PUC authority?

19 A Yes, we have.

20 Q And is that the subject -- strike that.

21 And have you received additional PUC authority?

22 A Yes.

23 Q Do you have contract authority from the PUC?

24 A We have an application in for contract authority  
25 with the PUC.

1 Q And is that for cement, if you know?

2 A That's where I believe our commodity is.

3 Q In 1967 how would you categorize the commodities  
4 that MTS used?

5 A Cement.

6 Q Completely cement?

7 A Completely cement.

8 Q How long did MTS transport cement completely as  
9 opposed to other commodities?

10 A Up till we got new authorities, that is all we  
11 transported.

12 Q The documents which I have shown you before, the  
13 ICC authorities, they are for general commodities. Is  
14 there a reason why they sought general commodity authority  
15 in 1983?

16 A Yes, there is. We lost a lot of cement work. When  
17 we started business in 1965, there were 14 cement mills  
18 manufacturing cement in the Lehigh Valley and the surrounding  
19 areas. And at that time they were down to 7 cement mills.  
20 And now we have less than 7.

21 Q Do you know if that trend is common in areas outside  
22 of the Lehigh Valley?

23 A Yes, it is.

24 Q And is that trend that there has been a decrease of  
25 shippers of cement?

1 A Yes, there has. An increase of carrier --

2 MR. GRAY: I object. There's no basis, I don't think,  
3 for his knowing whether or not there has been an increase  
4 or decrease for carrier or shipper.

5 JUDGE CLEMENTS: The witness has shown he has been  
6 in the business for a long time. I think he can answer the  
7 question. You can cross-examine as to what he based his  
8 answer upon.

9 BY MR. BUBBA:

10 A Would you restate the question?

11 BY MR. BUBBA:

12 Q Has there been an increase in carriers in the  
13 cement industry?

14 A Oh, yes. Quite a bit.

15 Q In 1970, what percentage of your business was cement?

16 A I would say in 1970, 100 percent.

17 Q And through the '70's -- or the early part of  
18 the '70's -- what were the number of drivers that MTS had?

19 A Between about 240 drivers -- 200 to 240.

20 Q And now you have 160 or a little bit more?

21 A A little bit over that, 170. It changes seasonally.

22 Q Typically, taking seasons into account, do you have  
23 less drivers now than in 1970?

24 A Much less.

25 Q In 1970, what percentage of your fleet was idle, if

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1 any?

2 A Nothing.

3 Q You needed the equipment that you had?

4 A Yes, we did.

5 Q Today, is any percentage of your fleet idle?

6 MR. GRAY: I object unless he has some sort of study  
7 to show that percentage. I think it's speculative.

8 MR. BUBBA: He's the president of the company. You  
9 don't need to have a study to show how many trucks you have  
10 sitting outside your window.

11 JUDGE CLEMENTS: He can testify as to what percentage  
12 of his fleet is not being used.

13 MR. GRAY: What day is he saying? Today, the day  
14 before, or the day before?

15 MR. BUBBA: You can cross-examine.

16 JUDGE CLEMENTS: I think the question is clear enough  
17 that he means it generally speaking today.

18 BY MR. BUBBA:

19 A Could you just restate the question.

20 Q I think it was, do you have any idea what percentage  
21 of your fleet today is idle? I don't mean today as compared  
22 to tomorrow. Generally, what part of your fleet is idle? Not  
23 in service.

24 A Since the spring, 25 trailers are parked and out  
25 of service because of lack of work. From day to day we have

1 trailers that are used or not used, but we have 25 trailers 130  
2 parked all this year.

3 Q By trailers, what do you mean?

4 A I mean tanks and flats.

5 Q Do you know how many are tanks and how many are  
6 flats?

7 A The majority are tanks. Only a handful -- less  
8 than half a dozen -- are flats. The rest are tanks.

9 Q Has the number of mechanics at MTS employed decreased  
10 over the years?

11 A Yes, it has. In the early '70's, we had 45  
12 mechanics. Today, we have approximately 25 mechanics.

13 Q Why is that?

14 A We have less work, less trucks, less drivers.

15 Q You have told us before that MTS has applied for  
16 additional authority for other commodities.

17 A That's correct.

18 Q Are you actively pursuing these other commodities?

19 A Yes, we are.

20 Q Let me go back one step. Today, 1985, have you  
21 any increase, decrease or the same amount of loads of cement  
22 per year?

23 A From, say January 1st of this year, in 1985, until  
24 July 1st, we were 20,000 cement loads down from the previous  
25 year. Strictly speaking cement.

1 Q You have 20,000 cement loads less this year than 131  
2 last year?

3 A That's correct.

4 Q I think I asked you why, before, the mechanics were  
5 off or the drivers were off, but why less cement loads?

6 A Several of the cement mills that we have hauled  
7 for have either closed down, gone out of business, or been  
8 bought out by other people. And we are hauling for less  
9 cement mills than we have been in the past.

10 MR. GRAY: I want to impose an objection at this  
11 point. This is a contract carrier application; not a common  
12 carrier application. And I don't see the relevance of asking  
13 all these questions concerning a general decrease in their  
14 business. The issue in this case is whether they are going --  
15 the common carrier service -- is going to be substantially  
16 jeopardized or whatever it may be by the grant of this  
17 application. We are dealing with one shipper, that shipper  
18 being Lehigh Portland Cement. It seems to me that the only  
19 relevant questions in this proceeding along this line would  
20 have to do with Lehigh Portland Cement. If they're losing  
21 business for them, that seems to be a relevant question.  
22 That they have a general decline in the cement business, that's  
23 irrelevant to the issues in this proceeding.

24 MR. BUBBA: If I can present my case in the manner that  
25 I wish -- I really think that coming in here and asking Mr.

1 Taylor to state his name and ask him if they don't get the  
 2 business, will it hurt, is not the proper way of doing it.  
 3 I don't think I'm asking anything out of the ordinary. I'm  
 4 attempting to show what is happening in the industry. And  
 5 I will try to tie that into the specific shipper involved.

6 JUDGE CLEMENTS: I think that it's not improper to  
 7 question the witness to develop present conditions of the  
 8 cement hauling business by using his data to develop his  
 9 case. I don't see anything wrong with that way. As to  
 10 whether or not it's relevant, I can decide that while writing  
 11 the decision.

12 MR. BUBBA: I have no idea where I am at.

13 Will you read the last question and answer?

14 Q "I think I asked you why, before, the mechanics  
 15 were off or the drivers were off, but why less cement loads?"

16 A "Several of the cement mills that we have hauled  
 17 for have either closed down, gone out of business, or been  
 18 bought out by other people. And we are hauling for less  
 19 cement mills than we have been in the past."

20 BY MR. BUBBA:

21 Q As I said, you're down 20,000 loads from last year  
 22 for the first six months. What were some of the reasons  
 23 why you went for other commodities other than cement in the  
 24 last few years?

25 A We saw the cement work was decreasing, so, we wanted

1 to try to keep in at least a stable condition with revenues  
2 being as the year before, hopefully in a situation where we  
3 could grow substantially to keep up with the loss of cement.

4 Q Have you ever been able to keep up with the loss of  
5 cement?

6 A No, we haven't.

7 Q And you have actively sought other commodities?

8 A Yes. We are actively hauling other commodities now  
9 such as flour, lumber, and building materials, plastic pellets  
10 and resins.

11 Q It's your opinion that the other commodities have  
12 not made up for the decrease of the cement customers?

13 A That is correct.

14 Q Do you currently have drivers that are laid off?

15 A Yes, I do.

16 Q Approximately how many?

17 A We have lost over 20 drivers since the first of this  
18 year that we had hired and trained.

19 Q And that's because there's not work for them?

20 A We haven't been able to keep them busy all week.

21 Q Is that because of the loss of cement customers?

22 A That, and market conditions and generally too much  
23 cement transportation services for what is demanded.

24 Q Do you have the capability right now to supply  
25 cement service -- transportation services -- to additional

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1 shippers?

2 A We do.

3 Q And would some of that be taken care of by the  
4 fleet which is idled -- by a portion of the fleet which is  
5 idle?

6 A Of course.

7 Q I'd like to talk about the conversations that Mr.  
8 Cummings referred to of April 29th, if I could. Do you  
9 recall talking to Mr. Cummings at that time?

10 A Yes, I do.

11 Q Do you know if there had been conversations between  
12 anyone at your company, MTS, and Lehigh Portland prior to  
13 the 29th?

14 A Yes, there was.

15 Q I would like to refer to the call report. In the  
16 upper left-hand corner it has imprinted Call Report and that  
17 has been marked MTS Exhibit No. 5. Could you please tell me  
18 what a call report is, in general?

19 A Anytime anybody from our corporation contacts a  
20 customer for any reason, we require that a call report is  
21 made to record what was said in that conversation.

22 Q Are call reports kept in the formal course of your  
23 business?

24 A Yes, they are.

25 Q That would be anytime a customer is contacted?

1 A That's correct.

2 Q And they are kept as business records of the  
3 corporation?

4 A That's correct.

5 Q Can you tell by looking at this document, who the  
6 preparer of this is?

7 A Lou Chiesa.

8 Q What is his position?

9 A Marketing manager.

10 Q Can you tell from looking at this report, the  
11 first date that a phone call was made to Lehigh Portland?

12 A For April 24th, 1985.

13 Q Why would a call have been made at that time if  
14 you were honoring the agreement that your father had made  
15 with Mr. Stickel previously?

16 A Basically, there was rumors that Cement Express  
17 was going to cease from service.

18 Q Can you tell from looking at this who Lou Chiesa  
19 talked to?

20 A Jay Young.

21 Q From looking at this document, is there a summary  
22 of what transpired in that conversation?

23 A Yes.

24 Q Would you please read into the record what transpired  
25 in that telephone conversation?

1 MR. GRAY: I object to the form of the question. What  
2 the document says occurred in that telephone conversation and  
3 what actually took place --

4 MR. BUBBA: I will withdraw the question.

5 MR. GRAY: I think the document speaks for itself.  
6 I haven't objected to this before, but presumedly, he is  
7 going to introduce these as exhibits. I don't know why we  
8 have to read each exhibit into the record.

9 JUDGE CLEMENTS: Well, you're probably technically  
10 correct. I see nothing wrong with counsel emphasizing any  
11 documentation by having him read same, if necessary.

12 BY MR. BUBBA:

13 Q Could you please read the first paragraph under  
14 other comments?

15 A Called Jay Young to inquire about Lehigh Portland  
16 losing Cement Express as its carrier at York.

17 Do you want me to read the whole thing?

18 Q Yes.

19 A Jay confirmed and he thought that though discussions  
20 were being made, no carrier had been chosen to replace Cement  
21 Express. I'm having a little trouble reading this.

22 Q I think it said though discussions were being held,  
23 no carrier had been --

24 A Right.

25 MR. GRAY: I object. You're asking him to read it.

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1 MR. BUBBA: Your Honor, if he has that much of an  
2 objection to reading it in, it doesn't really matter to me.  
3 However you want to work it.

4 BY MR. BUBBA:

5 Q Could you tell from the summary whether or not  
6 Lehigh Portland knew at the time of the April 24th telephone  
7 conversation that Cement Express was not going to be providing  
8 in the future?

9 MR. GRAY: I object. He can't testify as to what  
10 Lehigh Portland knew at that time. He didn't have the  
11 conversation.

12 MR. BUBBA: I didn't ask him.

13 MR. GRAY: You are asking him to speculate on what  
14 Lehigh Portland -- what their state of mind was based upon  
15 something that he wasn't even involved with. I don't think  
16 it is proper form to ask him what the state of mind was even  
17 if he had the conversation. But without him having the  
18 conversation, it makes it even more speculative.

19 JUDGE CLEMENTS: What was the question again?

20 MR. BUBBA: I don't think I asked what Portland  
21 thought at that period of time.

22 BY MR. BUBBA:

23 Q Can you tell from the summary whether or not Lehigh  
24 Portland knew that Cement Express was not going to be providing  
25 service in the future?

1 A No.

2 Q The last sentence of that paragraph says, Jay  
3 suggested MTS speak with Lee Cummings, VP.

4 A I made that call myself.

5 Q Is that what the second paragraph refers to?

6 A Correct.

7 Q When did that phone conversation take place?

8 A The 29th of April.

9 Q Why don't you tell us in your own words what  
10 transpired in that telephone conversation?

11 A Well, I called Lee Cummings. And never having met  
12 him, I identified myself as John Taylor, President of  
13 MTS, and that we had heard that there was a possibility that  
14 Cement Express was not going to be serving them anymore.  
15 And at that point, I offered our assistance, and he stated  
16 to me something to the effect that he had an agreement going  
17 with a trucker that he could not mention; that he didn't  
18 need our service. He had a tentative agreement. I'm not  
19 sure exactly how it was worded.

20 Q That was the April 29th phone call?

21 A Correct.

22 Q Did you relay what you learned from that phone  
23 call to Lou Chiesa?

24 A Yes.

25 Q And did Lou, to the best of your knowledge, put

1 down what had transpired in this conversation?

2 A Yes.

3 Q Did he use the words handshake agreement in the  
4 second paragraph?

5 A Yes.

6 Q Would that sufficiently describe what you told  
7 Lou Chiesa that Mr. Cummings told you?

8 A Yes.

9 Q Mr. Cummings told you something to the effect that  
10 there was an informal or handshake agreement?

11 A Yes.

12 Q And that they could not disclose who it was with?

13 A Yes.

14 Q Did you have an opportunity to tell Mr. Cummings  
15 what services MTS was able to provide?

16 A No, I didn't.

17 Q And at that point in time, did you know that Lehigh  
18 Portland was shipping white cement out of the York facility?

19 A Yes.

20 Q Is that known in the industry?

21 A Oh, yes.

22 Q Did you know that when you made that phone call that  
23 if you would accept, you would have to provide service for  
24 white cement?

25 A Yes.

1 Q Do you know what's required in the industry to  
2 provide transportation services for white cement?

3 A Yes. Because we know what to provide for flour,  
4 for plastic pellets, for resins, and much more critical  
5 substances.

6 Q That is that they cannot be contaminated?

7 A Yes.

8 Q Did Lehigh Portland ask you anything about MTS  
9 rates?

10 A No.

11 Q Did they ask you anything about MTS's operating  
12 authority?

13 A No, they did not.

14 Q Did you indicate any of that to Mr. Cummings?

15 A It was a short conversation. I think that I just  
16 covered the whole thing just now.

17 Q Why was it a short conversation?

18 A Because he said he had other arrangements.

19 Q This was on April 29th?

20 A Correct.

21 Q Would you have been able to supply 12 units --  
22 and let's call them hopper tanks -- to Lehigh Portland in  
23 York County on short notice to transport white cement?

24 A I would say within a few days, yes.

25 Q Would you have made every effort to do that?

1 A Yes, we would have.

2 Q Did you have the rights to carry that cement at  
3 that time?

4 A Yes, we did.

5 Q Could you have utilized part of your existing  
6 idle fleet?

7 A Yes.

8 Q What would you have to have done to get that fleet  
9 ready for white cement in bulk?

10 A Basically, put tires on the trailers, and clean  
11 the whole inside, change the pads, drop the pipes, clean the  
12 valves, and then it would be ready.

13 Q Is that the same system that Mr. Mulroy talked  
14 about earlier?

15 A I would presume.

16 Q Are you familiar with how it is done?

17 A We are familiar with how to clean all of our tanks.

18 Q Were you given the opportunity to provide service  
19 to Lehigh Portland?

20 A No, we were not.

21 Q Have you been given the opportunity to this date?

22 A No, we have not.

23 Q What would be the affect on your business situation  
24 if you were able to provide service to Lehigh Portland?

25 A Well, obviously, it would probably increase our

1 revenue and make us a little healthier.

2 Q Are you constantly seeking additional cement  
3 customers?

4 A Yes, we are.

5 Q Are you constantly seeking additional work from  
6 your customers?

7 A Yes, we are.

8 Q If you are not able to get the additional work or  
9 get the additional customers, what impact does that have on  
10 your business?

11 A It lessens our revenue and ability to work as  
12 affectively. We have to make cutbacks.

13 Q Is that what has happened over the 20 years, little  
14 by little?

15 A Well, we used to have loaders for the mills and  
16 pumpers and interplant movement between the plants that we  
17 don't enjoy right now because there isn't much work.

18 Q Let's clarify. What are those things? Are those  
19 special services that MTS provides?

20 A Yes.

21 Q Are they special services to cement shippers?

22 A We provide off-hours loading by jockeys and  
23 shuttlemen --

24 Q Why don't you tell us what a jockey is.

25 A A driver.

1 Q What other special service?

2 A We haul and pump off pneumatically raw material  
3 between plants. And we move clinger (phonetic) and coal  
4 between plants for our customers.

5 Q Have those services been decreased over the years?

6 A There has been a decrease in all of those over the  
7 years.

8 Q Are these a benefit to the shipping public and to  
9 the public?

10 A I would say so.

11 Q Why has it been decreased?

12 A Usually you need a certain kind of work to cover  
13 all the extra time. Separate jockeys or loaders. You need  
14 to have a certain volume. Right now it would cost too much  
15 to put all those extra services in.

16 Q Do you know if Schwerman Trucking is currently  
17 transporting white cement?

18 MR. GRAY: I object. I don't think there is any  
19 basis for that question. He is not with Schwerman.

20 BY MR. BUBBA:

21 A Not to my knowledge.

22 JUDGE CLEMENTS: Do you want me to rule on the objection?

23 MR. GRAY: It calls for complete speculation. He is  
24 going to get on the record that there might not be any  
25 white cement transported by Schwerman. They may transport

1 tons and tons of white cement. It just calls for absolute  
2 speculation which this witness has no basis for stating.

3 MR. BUBBA: When describing the expertise nature of  
4 white cement previously, they indicated that there are three  
5 cement mills in the United States that made white cement.

6 MR. GRAY: And two of them were theirs. This witness  
7 doesn't have anything to do with those two. So, how in  
8 the world can he possibly know what is going on at those  
9 two facilities? That shows the absurdity of the whole  
10 question.

11 JUDGE CLEMENTS: I suppose you can ask the question  
12 whether or not this witness has ever observed them, absent  
13 of better foundation. I don't think he is qualified to say  
14 if they never have.

15 BY MR. BUBBA:

16 Q Do you know how many white facilities there are in  
17 Pennsylvania?

18 A That's the only active one I know. They used to  
19 have one at Universal Atlas, but that's been closed for  
20 a few years.

21 Q Do you know if Schwerman transports out of the  
22 York facilities white cement?

23 A Not to my knowledge.

24 Q Do you know if Schwerman has vehicles in Pennsylvania  
25 transporting white cement?

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1 A No.

2 MR. GRAY: I object for the same reasons.

3 JUDGE CLEMENTS: He said he doesn't know.

4 BY MR. BUBBA:

5 Q Could MTS provide interstate and intrastate from  
6 York?

7 A Yes, we have that.

8 Q And you also have contract rates?

9 A Yes, we do.

10 Q Will the loss of the opportunity to render this  
11 business injure MTS?

12 A In my opinion, we could use the work, yes.

13 Q In your opinion, will it injure or harm the public?

14 MR. GRAY: I object. I don't think he can speak for  
15 the public.

16 JUDGE CLEMENTS: Well, nonetheless, it's part of the  
17 burden set forth by the Court. I can't very well preclude  
18 him from giving his opinion on it.

19 MR. BUBBA: I'm not sure. This is a contract carrier  
20 case. Whether or not that's correct where you are only  
21 dealing with a specific shipper --

22 JUDGE CLEMENTS: He's right on that. That is from  
23 the Wiley case.

24 MR. BUBBA: Brinks. The fact to consider is the  
25 affect of the harm that may be caused by the presently offered

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1 common carriers -- as it affects the public interest. What- 146  
2 ever that may mean. That's what the standard is.

3 BY MR. BUBBA:

4 A Would you restate the question?

5 Q Does MTS provide specialized service to the public?

6 A Yes.

7 Q Are they currently decreasing those services?

8 A Yes.

9 Q Why?

10 A As I mentioned before, when you don't have a certain  
11 volume of cement movements, it's hard to put additional loaders  
12 and that type of services into affect as when you have a  
13 larger volume.

14 Q And will that trend continue if you are not given  
15 the opportunity to transport out of Lehigh Portland?

16 A That continues to be happening and has continued  
17 to happen along with what has been going on in the industry,  
18 and in this case, I would say.

19 MR. BUBBA: I have nothing further.

20 JUDGE CLEMENTS: Would you like a few minutes?

21 MR. GRAY: I'm ready.

22 CROSS-EXAMINATION

23 BY MR. GRAY:

24 Q You indicated that your father had an agreement with  
25 Dick Stickel at Cement Express not to raid his work, I

1 believe is how you stated it. That agreement, I assume,  
2 was oral and not in writing. Correct?

3 A Correct.

4 Q And did your father or do you have any agreements  
5 with any other carrier that you won't raid their business  
6 or won't compete with them?

7 A No.

8 Q Do you know why this agreement would have occurred  
9 that your father would be agreeing with another motor  
10 carrier that they wouldn't compete with them for certain  
11 business?

12 A I do.

13 Q Why?

14 A Well, my father and Dick Stickel were personal  
15 friends. When we purchased the H.C. Gabler authority,  
16 Gloria Stickel raised some objection -- which is Dick  
17 Stickel's wife -- to us receiving authority for that  
18 particular plant. And she wanted my father to delete  
19 that plant from the purchase.

20 Q As part of this deal in the transfer proceeding,  
21 I assume?

22 A Correct. And he refused to delete anything  
23 to what he paid the \$40,000 for and just agreed verbally  
24 outside the court with Dick Stickel that he wasn't  
25 going to take his work, but he wasn't going to delete the

1 authority.

2 BY MR. GRAY:

3 Q Let me ask you this. Was this ever brought to the  
4 attention of the Public Utility Commission?

5 A I don't think so.

6 Q Did this agreement only relate to this one facility  
7 in West Manchester Township?

8 A That's correct. It was a Medusa facility at the  
9 time. At that time that was his only operation.

10 JUDGE CLEMENTS: By his, do you mean Stickel?

11 MR. TAYLOR: Dick Stickel and Cement Express had only  
12 that one location at that time.

13 JUDGE CLEMENTS: Okay.

14 BY MR. GRAY:

15 Q Has your company ever transported any cement for  
16 Lehigh Portland Cement anywhere? For them. Where they  
17 controlled the shipment and paid the freight charges?

18 JUDGE CLEMENTS: In Pennsylvania or anywhere?

19 MR. GRAY: Anywhere. Anywhere in the world.

20 BY MR. GRAY:

21 A Not to my knowledge.

22 Q And you know, of course, that they have locations  
23 in other places, right?

24 A Right.

25 Q We talked about solicitation of this business. Would

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3 1 it also be correct that you have not solicited them anywhere? 149

2 A That's correct.

3 Q And, of course, the gentlemen's agreement that your  
4 father had with Mr. Stickel only related to this one facility  
5 you said. Correct?

6 A Right.

7 Q Why, if I might ask, if you're bound by a gentlemen's  
8 agreement at the West Manchester Township Facility, why in  
9 the world would you never not ever solicit their business  
10 elsewhere?

11 A At that particular point in time and for a long  
12 time thereafter Lehigh Portland was exclusively dealing with  
13 Mitchell Transport. I don't know if it's still exclusively  
14 done. Obviously -- they mentioned that Schwerman is doing  
15 business with them in some places. But it was, I believe,  
16 all over the country at one time, Mitchell Transport was  
17 handling it. We didn't think that could have been cracked,  
18 so to speak.

19 Q Did you ever ask? Did you ever make an attempt to  
20 try to crack it?

21 MR. BUBBA: I am objecting. There has not been any  
22 record established that MTS has any rights in any of the  
23 other areas. And now he's asking if they solicit the business,  
24 legally, illegally, or whatever.

25 MR. GRAY: Well, you put in exhibits, Mr. Bubba, to show

1 that they have the rights.

2 MR. BUBBA: If you want to ask from that point on,  
3 fine. I haven't put in any other exhibits.

4 JUDGE CLEMENTS: Well, why don't you ask the question  
5 first, what authority he had for the other plant and what he  
6 acquired and then you can ask him some other questions.

7 BY MR. GRAY:

8 Q You have always, since the time you started operation,  
9 had rights that would enable you to serve at Lehigh Portland  
10 Cement. Correct?

11 A Yes.

12 Q And so that the record is absolutely clear in this  
13 case, you have never made any attempt at any location of  
14 Lehigh Portland Cement to solicit their business other than  
15 on April 24 and April 29, 1985. Correct?

16 A Correct.

17 Q Do you haul white cement for any other shippers?

18 A I don't know of any other white cement that's being  
19 produced in this region.

20 Q Has your company ever transported one single  
21 truckload in the history of the company of white cement?

22 A Yes, we have.

23 Q From where?

24 A Points in the Lehigh Valley, between plants in  
25 bag and from Norvall's (phonetic) facilities up in New York.

1 down to the Lehigh Valley and back up again.

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2 JUDGE CLEMENTS: By what facility? I missed the name.

3 MR. TAYLOR: Norvall.

4 JUDGE CLEMENTS: Could you spell that?

5 MR. TAYLOR: I don't know how to spell it.

6 BY MR. GRAY:

7 Q I'm sorry. I meant to ask you in tank vehicles.

8 A No, we haven't.

9 Q Never?

10 A No.

11 Q You indicated that you had -- you thought -- either  
12 a PUC application pending or PUC authority, I'm not quite sure  
13 which, which was contract carrier in nature; is that your  
14 testimony?

15 A Correct. I said that we had ICC contract authority  
16 and that we were applying for PUC contract authority.

17 Q Has that application been filed?

18 A Yes, it has.

19 Q Has it been published?

20 MR. BUBBA: He's calling for a legal conclusion. He  
21 may not know what --

22 BY MR. GRAY:

23 Q Do you know what published is?

24 A I don't know if it's been published.

25 Q Do you know what published is? Do you know what a

1 A Published tariff?

2 Q No. Published in the Pennsylvania Bulletin.  
3 Appeared in the notice that --

4 A Yes. I have read the Pennsylvania Bulletin.

5 Q I'm not sure what your answer to my initial  
6 question was. Do you know if that application has been  
7 published in the Pennsylvania Bulletin?

8 A No, I don't.

9 Q Do you know who that application or contract  
10 carrier authority is for?

11 A All of our current cement mills that we have  
12 requested -- we had contract authority, and basically on  
13 anything we do.

14 Q Let me make sure I understand what you are saying.  
15 You're saying that you have filed a PUC contract carrier  
16 application to serve without name, a general classification  
17 of shippers?

18 MR. BUBBA: He didn't say that.

19 BY MR. GRAY:

20 Q Who are they then? Tell me what named ones if they're  
21 not without names.

22 MR. BUBBA: If you know, tell him --

23 BY MR. GRAY:

24 A I can name some that are specifically requested --

25 Q No, no. I'm talking about your application that you

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1 say is filed. You're the president of the company. I want 153  
2 to delve into what you're doing with this PUC application that  
3 you testified in answer to your counsel's question on.

4 You said you have a PUC application filed for contract  
5 carrier authority. I want to know something about it. Who  
6 are the shippers involved?

7 A Well, I would assume that Copley Cement, General  
8 Clothing Cement, Georgia Pacific, Stoffers, are some of the  
9 supporting shippers that we are using for this authority,  
10 if that answers your question.

11 Q And do you think that those are named shippers in  
12 the request of authority?

13 A I haven't seen the document --

14 Q Or do you think it's general in nature, without  
15 naming specific shippers?

16 A I didn't see it.

17 Q You didn't sign the application?

18 A I don't recall. I signed the document. I'm not  
19 sure what it said. I sign all our applications, for all our  
20 authorities.

21 Q Did you sign the document filed in opposition to  
22 the temporary authority request in this case?

23 A Yes, I did.

24 Q Did you read it?

25 A Yes.

1 Q You read it, but you did not read the application?

2 A I didn't say that I didn't read --

3 MR. BUBBA: He didn't say --

4 BY MR. GRAY:

5 A I don't remember what it said.

6 Q Do you remember what the pleading that you filed  
7 in this case, the temporary authority in this case here --

8 MR. BUBBA: Which pleadings? There have been pleadings  
9 filed throughout.

10 MR. GRAY: The signed one.

11 MR. BUBBA: Do you remember signing one?

12 MR. TAYLOR: Yes.

13 BY MR. GRAY:

14 Q Do you remember signing it? Do you remember what  
15 it said?

16 A Do you want me to quote verbatim what I read one  
17 time when I signed it?

18 Q Do you remember what it said?

19 A Not off the top of my head.

20 Q But you're fairly certain that this contract  
21 carrier application that we have been talking about here has  
22 in fact been filed with the PUC?

23 A Yes.

24 Q And it was filed a contract carrier application  
25 even though your existing authority is common carrier authority?

1 A We have two existing authorities. Contract and  
2 common.

3 Q Are they in the same name?

4 A Yes, they are. Materials Transport Service.

5 Q What specific shippers are you able to serve under  
6 your contract carrier PUC authority now?

7 MR. BUBBA: He said it's pending.

8 MR. GRAY: No. He said he has them already.

9 JUDGE CLEMENTS: I think there's a misunderstanding.  
10 I think the witness might have thought you were referring to  
11 the ICC authority. I'm not sure.

12 MR. GRAY: Let me just ask him.

13 BY MR. GRAY:

14 Q Do you have now any existing PUC contract carrier  
15 authority?

16 A I don't know. I was referring to the ICC.

17 Q Answer my question.

18 MR. BUBBA: He has answered.

19 BY MR. GRAY:

20 Q Do you have PUC authority?

21 A Contract PUC?

22 Q Yes.

23 A No.

24 MR. GRAY: What is the story with this contract carrier  
25 If you want to clarify, I'll be glad to listen.

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1 MR. BUBBA: You have a witness.

2 MR. GRAY: I'll check with the PUC.

3 BY MR. GRAY:

4 Q When was that application filed so that I might  
5 check with the Commission?

6 A I don't know the date.

7 Q Was it filed within the last month?

8 A I can say it was filed this year.

9 Q This year? We're almost in October. Can you be  
10 a little bit more precise?

11 MR. BUBBA: He doesn't know the date. How much more  
12 precise do you want him to be?

13 MR. GRAY: Well, you know, counsel, I think I have a  
14 right to inquire as to whether it's in January or October. I  
15 think your witness should be able to answer --

16 MR. BUBBA: You asked him first the date; he said no.  
17 He told you this year.

18 BY MR. GRAY:

19 Q Was it closer to January or closer to October that  
20 it was filed?

21 A Sometime this year is the best I can tell you.  
22 We file a lot of applications.

23 Q With the PUC?

24 A We file applications with the ICC, with the PUC,  
25 for many different movements that we have. Some with shipper

1 support, some in generalities. And I don't know the date of  
2 every one, at all.

3 Q Do you know how many applications you filed with the  
4 PUC this year?

5 A No, I don't. We have filed several over the last  
6 couple of years for many different commodities. I don't know  
7 how many specifically we filed this year, no.

8 Q And you don't remember if this contract carrier  
9 application was filed in January, February, March, April --

10 MR. BUBBA: Objection. I think he has answered the  
11 question.

12 JUDGE CLEMENTS: I'll let him ask it again.

13 BY MR. GRAY:

14 A No.

15 Q Did you have any discussions with Mr. or Mrs.  
16 Stickel at Cement Express concerning this matter and their  
17 termination of service at any time?

18 A I had discussions with Dick and Gloria Stickel.

19 Q When was the first discussion concerning their  
20 possibility of terminating service?

21 A Sometime in the winter. It could have been March  
22 or February. I don't know for sure.

23 Q And what did they tell you?

24 A They called me and asked me if I wanted to purchase  
25 their company.

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1 Q Did they tell you that they may cease providing  
2 service at some point in the future to Lehigh?

3 A I don't think they said that. They just offered  
4 their business for sale.

5 Q What did you say to that?

6 A I asked if they would send some numbers.

7 Q Did they?

8 A No.

9 Q Did you ever follow up on that?

10 A I talked to them on the phone since that time,  
11 yes.

12 Q Did you talk to them on or about April 24, 1985?

13 A No.

14 Q Did you talk to them within -- at any time within  
15 the month of April?

16 A No.

17 Q When did you first become aware of this situation?  
18 I think that you said that there were rumors in the industry.

19 A Which situation?

20 Q The situation with Cement Express possibly terminating  
21 service for Lehigh.

22 A Sometime in April.

23 Q It was before April 24th?

24 A I think around the 24th because when we found --  
25 when we first heard the rumors that they were terminating, we

1 called. And on our call report it was the 24th.

2 Q Do you think it was that day that you became aware  
3 of it?

4 A I think so.

5 Q And you had not been aware of it before that day?

6 A No.

7 Q Why did Mr. Chiesa call rather than you?

8 A It would be his routine job in marketing to do  
9 all initial calls. I would never make an initial call.

10 Q Do you know why he picked out Jay Young, a  
11 rate clerk to call?

12 A I believe he called Lehigh Portland and that's who  
13 he got. I don't know if we have done any business with them  
14 that we would know who to call.

15 Q I thought that you testified that you hadn't done  
16 any business with them period.

17 A That's what I just said again. He called Lehigh  
18 Portland and got Jay Young.

19 Q You indicated in your testimony that you have had  
20 25 pieces of equipment idle since the first of the year, is  
21 that correct?

22 A Correct.

23 Q Are you here testifying today that you have had  
24 at least 25 pieces of equipment idle every single day?

25 A Yes.

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1 Q Do you consider yourself a good business man?

2 A Of course.

3 Q Have you ever considered selling those 25 pieces of  
4 equipment?

5 A Yes, I did.

6 Q But yet we're now nine months down the road into  
7 1985, and you have kept 25 pieces of equipment that are  
8 idle every single day? Is that your testimony?

9 A Correct.

10 Q Do you have any records with you today which would  
11 show the equipment that you have idle on any particular day?  
12 Or stated otherwise, the equipment that you have in operation  
13 on any given day?

14 A Well, we have what they call utilization reports  
15 that are done daily which shows which trailer is moved which  
16 day.

17 Q Did you bring any of those with you today?

18 A No. They wouldn't affect the ones that are parked  
19 anyway.

20 Q They would show which ones are not parked. Right?

21 A Correct.

22 Q Didn't you think it was important that you're  
23 claiming that you have 25 pieces of equipment idle each  
24 day to bring some documentation to show that? Didn't you  
25 think that was important?

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A I wasn't sure what I would have to have here at this hearing.

Q Look at your Exhibit 5, please. That is the call report.

Is there any writing of yours on Exhibit 5?

A No, there is not.

Q Why is that while you had the conversation on April 29, that somebody else wrote out what was said?

A Somebody always writes my call reports for me. I never write them myself.

Q You're permitted to transport commodities anywhere in the United States as long as it runs in interstate commerce. Correct?

A Not explosives or household goods..

Q When did you get that authority? In 1983?

A Yes.

Q Will you agree with me that the reason that you got the authority set forth in Exhibit 2 and Exhibit 3 is because the ICC grants just about anybody that asks for any authority, the authority?

A I heard it was easier than other authorities.

Q Is that why you applied for it?

A No. We applied for expansion purposes.

Q It had nothing to do with how easy it was to get. Correct?

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1 A I think we applied before and had been shot down  
2 on many authorities. Does that answer your question?

3 Q No. Did you apply and get shot down after 1980?

4 A I think that was the first application we made after  
5 1980. We had made previous attempts, I believe.

6 Q Do you know whether you have any protests to this  
7 PUC application that you filed?

8 A No. Not that I am aware.

9 Q Now, I guess when you filed that, that you didn't  
10 really care that you might be stepping on somebody else's  
11 toes that were already providing service under the authority  
12 that you are seeking. Correct?

13 A We have filed for PUC authority in the state of  
14 Pennsylvania with general commodities and had about 65  
15 protests.

16 Q The fact that somebody else may have authority and  
17 may be providing service under their authority isn't a factor  
18 whenever it comes time for you to apply --

19 MR. BUBBA: I object.

20 BY MR. GRAY:

21 Q -- for authority. Correct?

22 MR. BUBBA: He is implicating that anybody that files  
23 an application, you're attempting to step on someone's toes.  
24 They filed the application because it was necessary to get the  
25 authority.

1 JUDGE CLEMENTS: The way it appears -- unless I  
 2 misunderstand the nature of the testimony -- the witness has  
 3 indicated in his direct testimony that there is a probability  
 4 of future financial harm if he is continuing not to serve  
 5 this particular plant in question.

6 I believe Mr. Gray is inquiring as to what other  
 7 opportunities for financial gain there may be with other  
 8 applications. And I don't think that that question is so  
 9 far removed from that line of questioning as to be improper.

10 MR. TAYLOR: Would you restate that question?

11 BY MR. GRAY:

12 Q Isn't it true that at the time you filed your  
 13 PUC applications, you never even considered -- couldn't care  
 14 less whether you would be taking traffic away from other  
 15 carriers?

16 MR. BUBBA: Same objection.

17 JUDGE CLEMENTS: Overruled.

18 BY MR. GRAY:

19 A We needed the authority to do whatever we needed  
 20 to do. Most of the time we had shipper support. Not in  
 21 every area, but in the areas that we went for.

22 Q You indicated that you're the largest carrier in  
 23 the Lehigh Valley for cement; is that correct?

24 A That's correct.

25 Q Are you the largest cement hauler in the United

1 States?

2 A No.

3 Q How many carriers are larger than you in the  
4 United States?

5 A Strictly speaking cement?

6 Q Yes.

7 A Schwerman probably is. Mitchell used to be. But  
8 in the northeast, we're the largest cement carrier in our  
9 region, which would include Chemical Leaman, Matlack, and  
10 Schwerman.

11 Q How many shippers would you estimate you serve on  
12 an annual basis?

13 A Shippers?

14 JUDGE CLEMENTS: Do you mean different shippers?

15 MR. GRAY: Yes.

16 BY MR. GRAY:

17 Q Different shippers.

18 A At one time we only served about a dozen shippers.  
19 And now I would say we serve about two dozen. In excess of  
20 two dozen.

21 Q How many of the 25 units that you talked about as  
22 being idle are tankers?

23 A The majority of them I would say -- at least 20  
24 are tankers.

25 Q What are the balance?

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1 A Platform trailers.

2 Q In other words called flatbeds?

3 A Flatbeds, yes.

4 Q You said that you were down 2,000 cement loads from  
5 January 1 to July -- the end of July.

6 A The first of July.

7 Q Do you have any records in the hearing room to  
8 support that statement?

9 A No, I don't. But we would carry that on our  
10 production reports made daily, monthly, and quarterly.

11 Q Did you not think of bringing any of them today?

12 A No.

13 Q I assume you went over your testimony with your  
14 attorney before you came?

15 A I don't understand what you mean.

16 Q Did you go over your proposed testimony? Did he  
17 tell you basically what he would be asking you?

18 A Oh, yes.

19 Q And still despite that fact, you didn't think to  
20 bring any records with you? Correct?

21 A I didn't bring any records.

22 Q Exhibit 5 says at the top, next to talked to Jay,  
23 L.C. Cummings, RBT. You didn't write that, did you?

24 A No.

25 Q Is it your understanding that the reference to

1 Jay Young relates to the first conversation?

2 A Correct.

3 Q And that says in Mr. Chiesa's writing that, quote,  
4 called Jay Young to inquire about Lehigh Portland losing  
5 Cement Express as its carrier at York.

6 A That's correct.

7 Q Wouldn't that indicate to you that he had this  
8 Jay Young's name in mind at the time he called, and specifically  
9 called for a Jay Young?

10 A It could very well be.

11 Q So that the record is clear, in your phone  
12 conversation -- the one that you had with Lehigh --

13 A Right.

14 Q -- that was on 4-29, and that was with Mr. Cummings;  
15 is that correct?

16 A Yes. I might have had a secretary to get me to  
17 him, but no other official.

18 Q In that phone conversation, you indicated on this  
19 Exhibit 5 -- or it is indicated on this Exhibit 5 -- that Mr.  
20 Cummings reported that Lehigh had a handshake agreement with  
21 a carrier. That's your recollection, correct?

22 A Yes.

23 Q We don't know or you can't tell us that when the  
24 service -- when it was anticipated by Lehigh -- that the  
25 service would have begun to be provided by this other carrier.

1 Correct?

2 A I wasn't told that.

3 Q For all you know the service was going to start  
4 being provided at some period down the road. Correct?

5 A I wasn't told that by Mr. Cummings. I was told  
6 that he had an agreement with the trucker which he was not  
7 at liberty to disclose. I wasn't told when, what trucker,  
8 or how many trucks, or anything. He didn't tell me any of  
9 that stuff.

10 Q Now, you indicated in your direct testimony that  
11 this discussion was to the affect that Mr. Cummings said that  
12 he had a, quote, tentative agreement going with another  
13 carrier. Is that still your testimony?

14 A We had a trucker which he was not at liberty to  
15 tell me who it was.

16 Q But you used the words that he said, he had a  
17 tentative agreement with another carrier, in your direct  
18 examination. Is that still your testimony?

19 A As well as I can recall. That was how many months  
20 ago? April.

21 Q Did you tell the PUC in any pleadings that you filed  
22 with them -- did you use the word tentative, do you know?

23 A No.

24 MR. GRAY: That's all.

25 JUDGE CLEMENTS: Mr. Bubba?

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BY MR. BUBBA:

Q Mr. Taylor, what did you call the documents which MTS would keep which would show that there has been 2,000 loads less?

A That would be a production report.

Q Do those production reports contain confidential information?

A Of course.

Q Do you recall having a meeting with me and others where we indicated whether or not we would disclose confidential information at this hearing?

A We decided not to disclose confidential information.

Q Do you recall me asking you to review those reports so that you could tell us in quantitative fashion the amount of loads less there were this year than last year?

A Yes.

Q Do you recall that conversation?

A Yes.

Q With respect to this call report, you said that you never produce your own call report.

A Correct.

Q Is there a reason why this summary of the 4-29 phone call would be on this document which contains the 4-24 phone call also? Why would they be on the same document?

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1 A It obviously wasn't full. If there's the same  
 2 conversation with the same customer, we can sometimes put it  
 3 on the previous call report if there's room to do it.  
 4 Otherwise, we initiate a fresh one.

5 Q All the calls on this sheet would be about the same  
 6 customer?

7 A Oh, yes.

8 MR. BUBBA: Nothing further.

9 JUDGE CLEMENTS: Mr. Gray?

10 MR. GRAY: I have nothing further.

11 JUDGE CLEMENTS: Very well.

12 Would you like to move for the admission of your  
 13 exhibits?

14 MR. BUBBA: I would like to move for the admission of  
 15 MTS Exhibit 1-5.

16 JUDGE CLEMENTS: Do you have any objection to any  
 17 of those exhibits, Mr. Gray?

18 MR. GRAY: I object to MTS Exhibit 5, particularly  
 19 because there's information on that exhibit for which there  
 20 was no testimony, and which there is no basis for -- and I'm  
 21 speaking in terms of the information at the bottom of that  
 22 call report.

23 JUDGE CLEMENTS: You are not objecting to all the  
 24 information above that line, above May 1st of 1985?

25 MR. GRAY: No. There's been testimony concerning

1 that.

2 MR. BUBBA: I'm not attempting to introduce below the  
3 line, but I could not purge the document.

4 JUDGE CLEMENTS: Very well. I will admit all the  
5 exhibits with the exception of not considering any information  
6 below that line in reaching my decision in this matter.

7 MR. GRAY: May I take a very short recess to determine  
8 whether I'm going to call a rebuttal witness? It won't  
9 even be five minutes.

10 JUDGE CLEMENTS: Fine.

11 (Whereupon there was a pause in the proceedings.)

12 MR. GRAY: Your Honor, I would ask to recall Mr.  
13 Cummings for just one question on rebuttal.

14 JUDGE CLEMENTS: Very well.

15 LEE CUMMINGS, called as a witness, having been  
16 previously duly sworn, was examined and testified as follows:

17 FURTHER REDIRECT EXAMINATION

18 BY MR. GRAY:

19 Q Mr. Cummings, there was some testimony by the  
20 witness for MTS that the cement industry -- my recollection  
21 was that the cement industry business was down in 1985. Is  
22 that at all true?

23 A No. In the northeast, we are having about the  
24 best year we have had in many, many years. We can't supply  
25 demand. We have been buying cement wherever we can get it.

1 For example, from Indiana and to North Carolina or Alabama,  
2 we have been importing it. It's been a fantastic year for  
3 us.

4 Q You're a member of the cement industry. You know  
5 generally what the industry is doing, do you not?

6 A Yes..

7 Q Has it also been a banner year generally in the  
8 cement industry?

9 A This will be the third largest year in the history  
10 of the cement industry, exceeded only by 1973 and one other  
11 year.

12 MR. GRAY: That's all I have.

13 JUDGE CLEMENTS: Do you have any questions?

14 FURTHER RE-CROSS EXAMINATION

15 BY MR. BUBBA:

16 Q Are several of the sources of cement imported?

17 A Yes..

18 Q And is that different from 1960?

19 A 1960?

20 Q Yes.

21 A What's the relevance of 1960?

22 Q I'm asking the questions.

23 A I don't recall 1960, whether it was different from  
24 1960. I would assume so because we are having the biggest  
25 import year.

1 Q You are having the biggest year for import.  
2 Are you familiar with any cement companies going out  
3 of business in the last five years?

4 A Some have. I really don't recall specifically.

5 Q Are there domestic corporations? Do you know of  
6 any domestic corporations going out of business?

7 A The toughest thing in the world is to close a  
8 cement plant. There are very, very few to close, actually.  
9 The plants have been replaced by other plants. That's my  
10 recollections.

11 MR. BUBBA: Just one minute.

12 (Whereupon, there was a pause in the proceeding.)

13 BY MR. BUBBA:

14 Q Do you know Martin Marietta?

15 A Yes.

16 Q Where were they located?

17 A In a plant in Northampton. They closed it.  
18 Universal Atlas closed a plant.

19 Q Martin Marietta closed a plant and Universal Atlas.  
20 Do you recall any others?

21 A I don't recall off hand. There were some closings.  
22 No questions about it.

23 Q That's two within the city of Northampton, is  
24 that correct?

25 A Yes.

1           Lehigh Valley has plants that are located fully to  
2 serve the market. It's a fundamental economic problem;  
3 nothing else.

4           Q How about National? Have you heard the word  
5 National Cement?

6           A Yes.

7           Q Did they close?

8           A They closed also.

9           Q How about Copley?

10          A That's a case where the plants close and they open  
11 a one million ton plant which is more than replacing the  
12 plants they close.

13          Q Do you have information with you today to indicate  
14 that that has taken place? That the new plant has taken up  
15 the slack from the closed plants?

16          A It's a matter of public record if you care to look.

17          Q You don't have that information?

18          A No.

19          Q What's the tonnage that is being produced by this  
20 other plant?

21          A Their plant is rated at a million tons.

22          Q Did they close two plants?

23          A I don't recall.

24          Q Are they in the Lehigh Valley, the four that we  
25 mentioned -- Martin Marietta, Universal Atlas, National Portland,

1 and Copley?

2 A Yes.

3 MR. BUBBA: That's all.

4 JUDGE CLEMENTS: Do you have any surrebuttal?

5 MR. GRAY: No.

6 JUDGE CLEMENTS: Do the parties wish to submit briefs  
7 in this matter?

8 MR. GRAY: Yes, Your Honor.

9 JUDGE CLEMENTS: As the deadline for briefing and  
10 so forth starts running when the record is closed, it's  
11 generally my policy to close the record 30 days from the  
12 date of the hearing. That gives counsel a chance to look  
13 at the transcript and so forth. And then have briefs due  
14 30 days after that, reply briefs 15 days after that, if that  
15 schedule agrees with everybody.

16 MR. GRAY: Are you saying that the briefs would be due  
17 60 days from today?

18 JUDGE CLEMENTS: That's the way I usually do it. I  
19 will be willing to go along with any schedule counsel would  
20 like to agree to.

21 MR. GRAY: It doesn't bother me particularly.

22 MR. BUBBA: I would like a shorter period.

23 MR. GRAY: I would be agreeable to 45 days. You can't  
24 really advance it too much because it takes a while for  
25 the transcript. But 45 days would probably be --

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MR. BUBBA: Is that postmarked 45 days from today's date?

JUDGE CLEMENTS: Off the record.

(Whereupon there was discussion held off the record.)

JUDGE CLEMENTS: During an off-record discussion it was decided that the main briefs would be due on November 18 and reply briefs on December 2.

If there's nothing else anybody wants to bring up --

MR. BUBBA: I'll waive summary if Applicant waives summary.

MR. GRAY: No.

Oh, summary today? I thought you meant summarizing the testimony in the briefs.

Yes, that's fine. I'm sorry.

JUDGE CLEMENTS: If there's nothing else, I thank everybody for your cooperation.

I wish you a safe trip back to Allentown. And everybody have a good evening.

MR. GRAY: Thank you.

(The hearing terminated at 4:15 p.m.)

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I hereby certify that the proceedings and evidence taken by me before the Pennsylvania Public Utility Commission are fully and accurately indicated in my notes and that this is a true and correct transcript of same.

*Mary Baldwin*  
Mary Baldwin, Reporter/ksp