

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
Uniform Cover and Calendar Sheet

1. <b>REPORT DATE:</b> November 5, 1992	:	2 <b>BUREAU AGENDA NO.</b> NOV-92-T-1010*
3. <b>BUREAU:</b> Transportation	:	
4. <b>SECTION:</b> Technical Review	:	5. <b>PUBLIC MEETING DATE:</b>
6. <b>APPROVED BY:</b> <i>RE</i> Director: Ernst 7-2154 Supervisor: Marzolf 3-5945	:	November 24, 1992
7. <b>PERSON IN CHARGE:</b> White 7-4387	:	
8. <b>DOCKET NO.:</b> A-00099448, F. 1, Am-C	:	
9. (a) <b>CAPTION</b> (abbreviate if more than 4 lines)		
(b) Short summary of history & facts, documents & briefs		
(c) Recommendation		

(a) Application of Toy Trucking Company, Worthington, Armstrong County, for amendment to its common carrier certificate: SO AS TO PERMIT the transportation of coal, from points within 125 statute miles from the borough of Worthington, Armstrong County, to points in Pennsylvania, provided no haul shall exceed 125 statute miles from point of origin to point of destination.

(b) The application was protested by 23 carriers. A prehearing conference and two evidentiary hearings were held. The applicant submitted a restrictive amendment limiting the proposed service for four specifically named shippers, resulting in a withdrawal of all protestants. The service needs as expressed by the shippers in the verified statements are not compatible with the service allowed by the restrictive amendment. The applicant submitted a revised restrictive amendment to all of the protestants. The protests of thirteen carriers were satisfied, however, 10 protestants objected to the revised restrictive amendment. For reasons more particularly described in the order, the application remains protested.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order referring the application to the Office of Administrative Law Judge for further oral hearing.

10. <b>MOTION BY:</b>	Commissioner Chm. Rolka	Commissioner Holland - Yes	
		Commissioner	
<b>SECONDED:</b>	Commissioner Rhodes	Commissioner	
<b>CONTENT OF MOTION:</b>	Staff recommendation adopted.		

NVL

**DOCKETED**  
FEB 05 1993

**DOCUMENT  
FOLDER**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

December 4, 1992

IN REPLY PLEASE  
REFER TO OUR FILE

A-00099448  
F.1,AM-C

BLAIR F GREEN ESQUIRE  
125 NORTH MCKEAN STREET  
KITTANNING PA 16201-1517

RLS

Application of Toy Trucking Company,  
a corporation of the Commonwealth of Pennsylvania,  
for amendment to its common carrier certificate

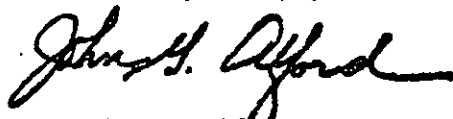
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To Whom It May Concern:

This is to advise you that an Order has been adopted by  
the Commission in Public Meeting on November 24, 1992 in the  
above entitled proceeding.

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

Very truly yours,

  
John G. Alford, Secretary

DOCUMENT  
FOLDER

DOCKETED

JAN 06 1993

smk  
Encls.  
Cert.Mail

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held November 24, 1992

Commissioners Present:

David W. Rolka, Chairman  
Joseph Rhodes, Jr., Vice-Chairman  
Wendell F. Holland, Commissioner

Application of Toy Trucking Company, a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate, which grants the right, inter alia, to transport by motor vehicle, coal for Amerikohl, Inc., and Amerikohl Mining, Inc., from their facilities in the counties of Butler, Lawrence and Armstrong, to the Bruce Mansfield Station of Ohio Edison Power located in the borough of Shippingport, Beaver County: SO AS TO PERMIT the transportation of coal, from points within one hundred twenty-five (125) statute miles from the borough of Worthington, Armstrong County, to points in Pennsylvania, provided no haul shall exceed one hundred twenty-five (125) statute miles from point of origin to point of destination.

A-00099448  
F. 1  
Am-C

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INDEXED

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Blair F. Green for the applicant.

Pillar and Mulroy, by John A. Pillar for protestants: Wayne W. Sell Corp., Don Martin Trucking Co., Gajda Trucking Company, David Tesone Trucking, Inc., McCleary-Christie Trucking, Inc., and William P. Mauthe, t/d/b/a DGB Trucking.

David H. Radcliff for protestant, R. T. Merryman Trucking, Inc.

Kriner, Koerber & Kirk, by Dwight L. Koerber, Jr., for protestant, Kephart Trucking Co.

Sally A. Davoren for protestant, Coal Transport, Inc.

Vuono, Lavelle & Gray, by William J. Lavelle for protestants: Bulk Transportation Services, Inc., Wayne W. Friedline, Rosie B. Amsler and Sheila A. Brocius, Copartners, t/d/b/a Marianne Industries, McClymonds Supply & Transit Co., Inc., Bruce Trent Trucking, Inc., Homer R. Sleek & Sons, Inc., Taylor Services, Inc., William J. Brown Trucking, Inc., and C. D. Ambrosia Trucking Co.

John E. Fullerton for protestants: William C. Confer, R. J. Glass, Inc., Powers Trucking Co., and Hiram Wible & Son, Inc.

McNees, Wallace & Nurick, by Herbert R. Nurick for protestant, Samuel J. Lansberry, Inc.

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O R D E R

BY THE COMMISSION:

This matter comes before the Commission by an application filed on September 14, 1990, and published in the Pennsylvania Bulletin of October 6, 1990. A total of 23 carriers protested the application. A prehearing conference was held on April 9, 1991, and evidentiary hearings were held on September 24, 1991 and November 26, 1991, in Pittsburgh, with Administrative Law Judge Larry Gesoff presiding. The applicant submitted restrictive amendments at each hearing which ultimately resulted in the withdrawal of all protests. The testimony developed at the hearings focused only on the amendments and the applicant's interpretation and understanding of the contents of the amendments. There were no shipper witnesses.

The final amendment dated November 26, 1991, has the effect of limiting service for four specifically named shippers, i.e., B & B Coal Associates, Inc., Pittsburgh and Shawmut Coal Company, Amerikohl, Inc., and Amerikohl Mining, Inc. Service for the first two named shippers is limited to and from the facilities of certain businesses, and service for the latter two shippers is limited from their facilities located west of U.S. Highway Route 219, to points located west of U.S. Highway Route 219.

The unopposed record is now certified to the Commission for its decision without oral hearing. Verified statements were submitted by the applicant and four supporting shippers.

David C. Toy, managing officer and secretary/treasurer of Toy Trucking Company (Toy or applicant), states that the company has its principal place of business located at R.D. #1, Worthington, Armstrong County, and that it has been providing intrastate service in Pennsylvania pursuant to a certificate issued to it on February 4, 1976. It operates under 11 individual paragraphs of authority, primarily as a hauler of coal, lumber, lime, gravel, sand, coke, building materials and slag. Neither the applicant nor its officers are affiliated with other carriers.

The applicant conducts business with nine company-owned tri-axle dump trucks which are dispatched from the terminal in Worthington (West Franklin Township), Armstrong County. It employs full-time qualified mechanics and ensures that the equipment is maintained in good operating condition and inspected as required by State law. The trucks are equipped with two-way radios.

An unaudited balance sheet shows that at year-end 1990, the applicant had current assets of \$132,110, total assets of \$433,810, with current liabilities of \$99,422 and total liabilities of \$171,978, leaving stockholders' equity of \$261,832.

Stephen J. Black, president of B & B Coal Associates, Inc., (B & B or shipper), supports the applicant stating that the company is engaged in the business of producing, selling and brokering coal since 1986, and has its principal place of business located at R.D. 6, Kittanning, Armstrong County. It has two mines and a tipple located in Butler County, and a second tipple located in Armstrong County. Coal is shipped from each facility to various power plants and blending yards throughout Pennsylvania. In addition, coal is purchased from other coal producers which is shipped for B & B directly from the point of purchase to customers.

The specific needs of B & B consist of picking up, hauling and delivery of coal, in bulk, in dump vehicles, from the facilities of B & B and from the facilities of 16 specific coal producers, i.e., B & B Coal Mining, Inc., BMB Management, Inc., B & B Coal Associates, Inc., Bill Turner Enterprises, Inc., Daybrook Coal Company, Atwell Coal Company, Eastern Materials Corp., Cherep's Excavating, Glacial Minerals, Walter L. Houser Coal Co., M.R.C. Mining, Reddinger Coal Co., Rosebud Mining Co., Tripple K Coal Co., Valley Coal Co. and VanLeer Coal Co., The coal will move from the facilities of the shippers to various power plants in Erie, Warren, Clearfield, Indiana, Allegheny, Armstrong and Lawrence Counties.

B & B has had a standing relationship with the applicant who has provided dependable, efficient service under its existing authority and, in fact, hauls up to 12,000 tons of coal per day for the company. B & B is anxious to have the applicant's service available under the expanded territory proposed herein, and believes its continuing problem of not having a lot of trucks available on short notice will be greatly alleviated due to the applicant's capable efforts in securing extra trucks quickly for long, short and difficult hauls.

Dane A. Potts, shipping director for Pittsburgh & Shawmut Coal Co. (P & S or shipper), has submitted a supporting verified statement in which he sets forth, inter alia, that the company has been engaged in the business of coal production, sales and brokerage since 1960, and through sales agreement with independent coal producers, it purchases coal from them and then resells the coal which is delivered from the coal producer facilities to various Pennsylvania markets. At present, it is purchasing coal from Allegheny River Mining Co., Pittsburgh & Shawmut Railroad Co., Shawmut Development, Inc., TDK Coal Sales, Inc., Walter L. Houser Coal Co., SBP Coal Co., DJW Mining, Inc., Hilliard Mining, Inc., DWL Coal Co., Mahoning Mining, Eastern Materials Corp., and Canterbury Coal Co.

P & S Buys coal from each of the foregoing producers and has it shipped directly to numerous users located in the counties of Erie, Warren, Westmoreland, Indiana, Lawrence, Beaver, Allegheny, Mercer, Butler, Armstrong and Venango. During 1991, the company's sales were in excess of 1,600,000 tons, with a projected increase of approximately 300,000 tons in 1992. If the applicant obtains the expanded authority proposed herein, it will be given approximately 260,000 tons on an annual basis.

Gerard P. Baroffio, vice president of Amerikohl Mining, Inc. and Amerikohl, Inc. (or shippers), supports the applicant. Both entities are

engaged in the business of bituminous coal production, sales and brokerage. In addition to producing coal, the shippers purchase coal from other producers which is then resold and delivered direct to customers at points in Erie, Warren, Westmoreland, Indiana, Lawrence, Beaver, Allegheny, Mercer, Butler, Armstrong and Venango Counties. The coal will originate at the shipper's own facilities and the facilities of other coal producers in Armstrong, Beaver, Butler, Fayette, Greene, Lawrence, Somerset and Westmoreland Counties.

The applicant has been providing both shippers with service under its existing authority, hauling as much as 1,000 tons of coal a day. The service has been very reliable and both shippers are anxious to be able to use the applicant to a larger extent in the expanded territory under consideration in this application.

#### DISCUSSION AND FINDINGS

Toy Trucking Company has held a common carrier certificate at A-00099448 and various amendments thereto since February, 1976. For the most part, the rights authorize the transportation of coal and other commodities which lend themselves to bulk transportation, in areas of western Pennsylvania. The length of haul is generally restricted to a specific number of miles from point of origin to point of destination.

By this application, it seeks to expand upon the operating authority so that it will have the right to transport coal from points located within 125 miles of the borough of Worthington, Armstrong County, to points in Pennsylvania with no haul to exceed 125 miles from point of origin to point of destination. Twenty-three carriers filed protests, resulting in a prehearing conference on April 9, 1991, and two evidentiary hearings held on September 24, 1991 and November 26, 1991. Administrative Law Judge Larry Gesoff presided over each proceeding.

In order to satisfy the interests of the 23 protestants, the applicant submitted a restrictive amendment which decreases the level of the proposed authority to the following extent:

- (1) To transport coal, for B & B Coal Associates, Inc., and for Pittsburgh & Shawmut Coal Company, from points within 125 statute miles of the borough of Worthington, Armstrong County, to points in Pennsylvania;

subject to the following conditions:

- (A) That no haul shall exceed 120 statute miles from point of origin to point of destination.
- (B) That transportation for B & B Coal Associates, Inc., shall be limited to transportation to and from the facilities of B & B Coal Mining, Inc., BMB Management, Inc., Bill Turner Enterprises, Inc., Daybrook Coal Company, Atwell Coal Company, Eastern Materials Corp.,

Cherep's Excavating, Glacial Minerals,  
Walter L. Houser Coal Company, N.R.C. Mining,  
Reddinger Coal Company, Rosebud Mining Co.,  
Tripple K Coal Company, Valley Coal Company  
and VanLeer Coal Company.

- (C) That transportation for Pittsburgh & Shawmut Coal Company shall be limited to transportation to and from the facilities of Allegheny River Mining Company, Pittsburgh & Shawmut Railroad Company, Shawmut Development, Inc., TDK Coal Sales, Walter L. Houser Coal Company, SBP Coal Company, DJW Mining, Inc., Hilliard Mining, Inc., D.W.L. Coal Company, Mahoning Mining, Eastern Materials Corp., and Canterbury Coal Company.
  - (D) That no right, power or privilege shall be granted to provide service from or between points in Somerset, Cambria, Clarion, Jefferson, Indiana, Fayette and Westmoreland Counties, except as otherwise authorized.
- (2) To transport coal, for Amerikohl, Inc. and Amerikohl Mining, Inc., from the facilities of Amerikohl, Inc. and Amerikohl Mining, Inc., located in that part of Pennsylvania west of U.S. Highway Route 219 to points in that part of Pennsylvania located west of U.S. Highway Route 219;

subject to the following conditions:

- (A) That no haul shall exceed 125 statute miles from point of origin to point of destination.
- (B) That no right, power or privilege shall be granted to provide transportation for Amerikohl, Inc., and Amerikohl Mining, Inc., to or from the facilities of United Eastern Coal Sales Corp., White Star Coal Co., Inc., Kent Coal Mining Company, or Purco Coal Company, Inc.
- (c) That no right, power or privilege shall be granted to provide service to, from or between points in Somerset, Cambria or Clarion Counties.
- (D) That no right, power or privilege shall be granted to provide service from or between points in Jefferson, Indiana, Fayette and Westmoreland Counties, except as otherwise authorized.

The restrictive amendment resulted in the withdrawal of all protestants, and Judge Gesoff referred the matter for further handling by modified procedure. Since the service has been limited for four specifically named shippers, the applicant complied with our request to submit supporting verified statements from each of the four shippers.

Upon thorough review of the verified statements, a glaring difference has been noted between the transportation needs as expressed by the shippers and the type of service proposed and contained in the amendment. Specifically, in Right (1) of the amendment, service is limited for B & B Coal Associates and Pittsburgh & Shawmut Coal Company and conditioned at (B) and (C) so that the service shall be to and from the facilities of certain named coal producers. Very simply, under this language, any shipment picked up within the 125-mile radius of the borough of Worthington must be picked up at the facilities of one of the named business concerns and then delivered to another of the named business concerns.

The transportation needs as expressed by B & B Coal Associates consist of picking up coal at the facilities of any one of the 16 named coal producers and then delivering the coal directly from the coal producers' facilities to various power plants such as General Electric in Erie County, West Penn Power in Armstrong County, etc. The needs of Pittsburgh & Shawmut Coal Company are similar in that it purchases coal from each of the named coal producers and then has it shipped from the coal producers' facilities direct to numerous customers such as Hammermill Paper in Erie County, Slippery Rock University in Butler County, etc. Under the parameters of the restrictive amendment, the applicant cannot meet these needs.

It appears that in the construction of the restrictive amendment, the term "to or from" the facilities of the named coal producers would have been more appropriate than the term "to and from" the facilities. In fact, the issue was discussed and the shortcomings were pointed out to the applicant by Judge Gesoff and protestants' counsel at the hearing of November 26, 1991.

A conflict also exists between the shipper's actual service needs and the needs proposed in Right (2). The applicant proposes to transport coal for Amerikohl Mining, Inc., and Amerikohl, Inc., from their facilities located in that part of Pennsylvania west of U.S. Highway Route 219. The needs differ in that both shippers purchase coal from various producers in counties such as Armstrong, Beaver, Butler, etc., and then have the coal shipped directly from the producers' facilities to customers in the counties of Erie, Warren, Indiana, etc. Obviously, the facilities of the coal producers are not the facilities of Amerikohl Mining, Inc. or Amerikohl, Inc., therefore eliminating service by the applicant.

By Staff letter of May 29, 1992, the shortcomings were pointed out to counsel for the applicant with the suggestion that the applicant present each of the protestants with a revised restrictive amendment containing the more appropriate language of "to or from" the named shipper's facilities and ascertain whether or not they have any objections. This approach was taken by staff in lieu of the alternative of basing our determinations on the record now

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3. Article Addressed to: *(C.O.)*  
*A-00099448, F.I. AM-C*

*William J. Lavelle, Esq*

4a. Article Number *44396*

4b. Service Type  
 Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise *1000*

7. Date of Delivery *DEC 8 1991*

5. Signature (Addressee)

6. Signature (Agent)  
*A.R.*

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

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3. Article Addressed to: *(C.O.)*  
*A-00099448, F.I. AM-C*

*Herbert R. Murick, Esq*

4a. Article Number *44397*

4b. Service Type  
 Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

7. Date of Delivery *DEC - 7 1992*

5. Signature (Addressee)

6. Signature (Agent)  
*M. Shirokawa*

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

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*A-00099448, F.I. AM-C*

*John E. Fullerton, Esq*

4a. Article Number *44398*

4b. Service Type  
 Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

7. Date of Delivery *DEC 1 1992*

5. Signature (Addressee)  
*R. Buyer*

6. Signature (Agent)

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

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before us and by so doing, more than likely reaching a decision unfavorable to the applicant.

By letter dated June 4, 1992, counsel for the applicant did indeed furnish counsel for each protestant with a revised amendment, asking whether or not they have objection to changing the "to and from" language to read "to or from". In response, all protestants with the exception of the 10 represented by the law firm of Vuono, Lavelle & Gray and the one represented by McNees, Wallace & Nurick, stated that there was no objection to the revision. Attorney William J. Lavelle voiced strong objections on behalf of his nine protestants, stating that had the amendment been worded as it is now proposed, his clients would not have withdrawn at the hearing of November 26, 1991. Attorney Herbert R. Nurick voiced similar objection on behalf of his client.

We find:

1. That the applicant applied for authority to transport coal from points within 125 miles of the borough of Worthington, Armstrong County, to points in Pennsylvania, limited to length of haul of 125 miles from origin to destination.
2. That the application was protested by 23 carriers.
3. That a prehearing conference and two evidentiary hearings were held.
4. That the applicant submitted a restrictive amendment resulting in the withdrawal of all protestants.
5. That, among other restrictions, the amendment limited service for four specifically named coal shippers.
6. That for two of the coal shippers, service is further restricted so as to apply only to and from certain named coal producers.
7. That for the two other shippers, service is restricted so as to apply only from their facilities.
8. That the shippers' transportation needs differ from the service allowed by the restrictive amendment.
9. That the applicant's counsel presented a revised restrictive amendment to all protestants of record.
10. That 13 of the protestants had no objection to the provisions of the revised restrictive amendment.
11. That 10 of the protestants objected to the provisions of the restrictive amendment.
12. That the application remains in a protested status; THEREFORE,

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4a. Article Number *12-7-92*

- 4b. Service Type
- Registered  Insured
  - Certified  COD
  - Express Mail  Return Receipt for Merchandise

7. Date of Delivery *12-7-92*

*Sally A. Davoren, Esq.*

5. Signature (Addressee) *Sally A. Davoren*

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

6. Signature (Agent)

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4a. Article Number *12-7-92*

- 4b. Service Type
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  - Certified  COD
  - Express Mail  Return Receipt for Merchandise

7. Date of Delivery

*Dwight K. Koerber, Esq.*

5. Signature (Addressee)

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

6. Signature (Agent) *K. Koerber*

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3. Article Addressed to: *A-00099448, F1, AM-0* CO

4a. Article Number *12-7-92*

- 4b. Service Type
- Registered  Insured
  - Certified  COD
  - Express Mail  Return Receipt for Merchandise

7. Date of Delivery *12-7-92*

*David H. Radcliff, Esq.*

5. Signature (Addressee)

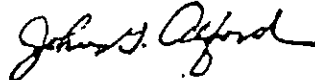
8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent) *DR*

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IT IS ORDERED: That the application be referred to the Office of the Administrative Law Judge for further oral hearing.

BY THE COMMISSION,



John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: November 24, 1992

ORDER ENTERED: DEC 0 4 1992

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3. Article Addressed to:  
*A00099448, F/AM-C*

*CO*

4a. Article Number  
*1-52413*

- 4b. Service Type
- Registered  Insured
  - Certified  COD
  - Express Mail  Return Receipt for Merchandise

7. Date of Delivery  
*12/8/92*

*Blair F. Green, Esq*

5. Signature (Addressee)

*J. Dwyer*

6. Signature (Agent)

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

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0001  
TOY TRUCKING COMPANY  
R D 1  
BOX 103  
WORTHINGTON PA 16262  
SELF

0002  
BLAIR F GREEN ESG  
125 NORTH MCKEAN STREET  
KITTANNING PA 16201-1517  
APPLICANT

0003  
JOHN A PILLAR ESG  
SUITE 700  
312 BOULEVARD OF THE ALLIES  
PITTSBURGH PA 15222  
WAYNE W SELL CORP PROTESTANT

P

0009  
DAVID H RADCLIFF ESG  
407 NORTH FRONT STREET  
HARRISBURG PA 17101  
R T MERRYMAN TRUCKING INC PROTESTANT

P

0010  
DWIGHT L KOERBER JR ESG  
110 NORTH SECOND STREET  
P O BOX 1320  
CLEARFIELD PA 16830  
KEPHART TRUCKING CO PROTESTANT

P

0011  
SALLY A DAVOREN. ESQUIRE  
201 PILGRAMS BUILDING  
508 ALLEGHENY RIVER BOULEVARD  
OAKMONT PA 15139  
COAL TRANSPORT INC - PROTESTANT

P

0024  
JOHN E FULLERTON ESG  
407 NORTH FRONT STREET  
HARRISBURG PA 17101  
HIRAM WIBLE & SON INC PROTESTANT

0025  
HERBERT R NURICK ESG  
100 PINE STREET  
P O BOX 1166  
HARRISBURG PA 17108  
SAMUEL J LANSBERRY INC PROTESTANT

INT

0012  
WILLIAM J LAVELLE ESG  
2910 GRANT BUILDING  
PITTSBURGH PA 15219  
BULK TRANSPORTATION SERVS INC PROTESTANT

P