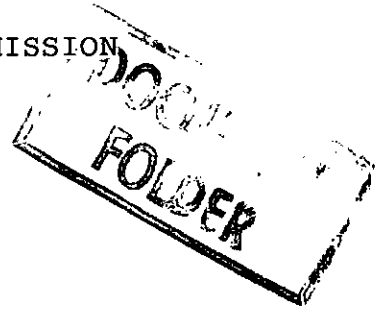


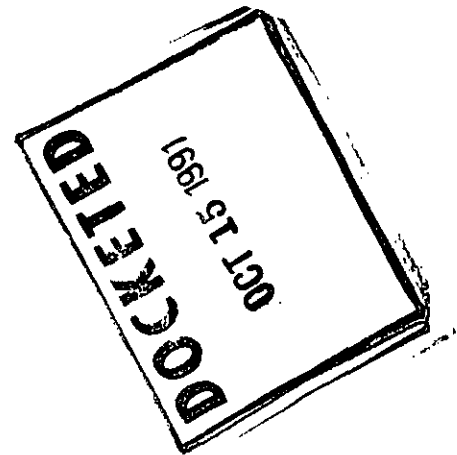
BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION



In Re: A-00099448, F001, Am-C Application of Toy Trucking Company Amendment 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. Initial hearing.

Pittsburgh, Pennsylvania
Tuesday, September 24, 1991



Pages 1 to 29, inclusive

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Public Utility Commission

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RLS *and green*

CERTIFIED ORIGINAL

BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

- - - - -

In Re: A-00099448, F001, Am-C Application of Toy Trucking Company Amendment 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. Initial Hearing.

- - - - -

Stenographic report of hearing held on 11th Floor, State Office Building, Pittsburgh, Pennsylvania 15222

Tuesday
September 24, 1991
at 10:00 o'clock a.m.

- - - - -

BEFORE
LARRY GESOFF, ADMINISTRATIVE LAW JUDGE

HOLBERT ASSOCIATES
(717) 231-4506

1 **APPEARANCES:**

2 BLAIR F. GREEN, ESQUIRE
3 125 McKean Street
4 Kittanning, Pennsylvania 16201-1517
5 Appearing on behalf of Toy Trucking Co.

6 WILLIAM J. LAVELLE, ESQUIRE
7 2310 Grant Building
8 Pittsburgh, Pennsylvania 15219
9 Appearing on behalf of Bulk Transportation
10 Services, Wayne W. Friedline, Marianne
11 Industries, Bruce Trent Trucking, Homer R.
12 Sleek & Sons, Inc., Taylor Services, Inc.,
13 William J. Brown Trucking, Inc., C.D.
14 Ambrosia Trucking Co., McClymonds Supply &
15 Transit Co., Inc.

16 HERBERT R. NURICK, ESQUIRE
17 By William J. Lavelle, Esquire
18 100 Pine Street
19 Harrisburg, Pennsylvania 17108-1166
20 Appearing on behalf of Samuel J. Lansberry, Inc.

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INDEX TO WITNESSES

<u>APPLICANT:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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1 JUDGE GESOFF: This is a hearing in the application of
2 Toy Trucking Company at Docket Number A-00099448, Folder 1,
3 Amendment C.

4 I note the appearance of Blair Green, on behalf of the
5 applicant, and of William J. Lavelle, on behalf of several
6 protestants, and Mr. Lavelle is also appearing here on
7 behalf of Mr. Herbert Norick, Esquire, who represents Samuel
8 Lansberry.

9 The parties informed me that they would like some time
10 to discuss further restrictive amendments which may result
11 in a settlement of the proceedings, so we will take that
12 time now and recess.

13 MR. GREEN: Thank you, Judge.

14 (Recess taken from 10:10 o'clock AM until 11:45
15 o'clock AM.)

16 JUDGE GESOFF: Back on the record. Mr. Green?

17 MR. GREEN: Yes, sir. Counsel for the applicant has a
18 proposed restrictive amendment.

19 Does the Court have one that was submitted on
20 September 13, 1991?

21 JUDGE GESOFF: Yes. I have it somewhere here, yes.

22 MR. GREEN: Okay. If it is okay, if it's all right
23 with you, I could read into the record part number one.

24 We are going to change it into two parts now.

25 This would be with the caption: "Application of Toy

1 Trucking Company."

2 What do you call it? A new proposal?

3 JUDGE GESOFF: Mr. Green --

4 MR. GREEN: All right.

5 JUDGE GESOFF: -- this is yours.

6 MR. GREEN: Okay. "Proposed Restrictive Amendment."

7 MR. LAVELLE: Well, can I stop right here?

8 JUDGE GESOFF: Yes.

9 MR. LAVELLE: As I understand, it is not a proposed
10 restrictive amendment.

11 MR. GREEN: A restrictive amendment. Okay. It is a
12 restrictive amendment.

13 "And now comes Toy Trucking Company, by its attorney,
14 Blair F. Green, and restrictively amends the above
15 application to read as follows," and it will be Roman
16 Numeral I.

17 "To transport coal for B&B Coal Associates, Inc, for
18 the Pittsburgh & Shawmut Coal Company, from points within
19 125 miles of the Borough of Worthington, Armstrong County,
20 to points in Pennsylvania; subject to the following
21 conditions."

22 This is after Roman Numeral A or I?

23 JUDGE GESOFF: You used "I" up above. I imagine you
24 will want to use A here.

25 MR. GREEN: We will use A.

1 "Provided" -- well, I guess we don't have to make it
2 A, B and C.

3 That is how we said we will put them in there. We
4 will put them in there.

5 Okay. "Provided that no haul shall exceed 120 miles
6 from point of origin to point of destination."

7 JUDGE GESOFF: Is that statute miles or --

8 MR. GREEN: Statute miles. "From point of origin to
9 point of destination; and further provided that
10 transportation for B&B Coal Associates, Inc. shall be
11 limited to transportation to and from the facilities from
12 B&B Coal Mining, Inc., B.M.B. Management, Inc., Bill Turner
13 Enterprises, Daybrook Coal Company, S. D. Bowers, Inc.,
14 Atwell Coal Company, Eastern Materials Corp, Cherep's
15 Excavating, C-h-e-r-e-p-s Excavating, Glacial Minerals,
16 Walter L. Houser Coal Company, William McIntire Coal
17 Company, M.R.C. Mining, Perry Brothers Coal Company,
18 Reddinger Coal Company" --

19 JUDGE GESOFF: "Reddinger."

20 MR. GREEN: "Reddinger, R-e-d-d-i-n-g-e-r, Rosebud
21 Mining Co, Triple K Coal Company, Valley Coal Company, and
22 VanLeer Coal Company."

23 I will let you read this. Semicolon. "And further
24 provided" --

25 JUDGE GESOFF: Read it into the record.

1 MR. GREEN: Read it. "Further provided that
2 transportation for Pittsburgh & Shawmut Coal Company shall
3 be limited to transportation to and from the facilities of
4 Allegheny River Mining Company, Pittsburgh & Shawmut
5 Railroad Company, Shawmut Development, Inc., TDK Coal Sales,
6 Inc, Walter L. Houser Coal, Inc. -- Coal Company" -- excuse
7 me -- "SBP Coal Company, D.J.W. Mining, Inc., Hilliard
8 Mining, Inc, D.W.L. Coal Company, and Mahoning Mining,
9 Eastern Materials Corp. and Canterbury Coal Company."

10 And Roman Numeral II, I have agreed that Mr. Lavelle
11 can read that into the record.

12 We have agreed to that.

13 JUDGE GESOFF: Okay.

14 MR. LAVELLE: "To transport coal for Amerikohl, Inc.
15 and Amerikohl Mining, Inc. from the facilities of Amerikohl,
16 Inc. and Amerikohl Mining, Inc. located in that part of
17 Pennsylvania west of U.S. Highway 219 to points in that part
18 of Pennsylvania located west of U.S. Highway 219, subject to
19 the following conditions:

20 "The first condition: Provided that no hauls shall
21 exceed 125 statute miles from point of origin to point of
22 destination."

23 And the second restriction: "Further provided that no
24 right, power or privilege shall be granted to provide
25 transportation for Amerikohl Inc. and Amerikohl Mining, Inc.

1 to or from the facilities of United Eastern Coal Sales
2 Corporation, White Star Coal Co, Inc, Kent Coal Mining
3 Company or PURCO, P-U-R-C-O, Coal Company Inc., and
4 provided, further provided that no right, power or privilege
5 shall be granted to provide service to, from or between
6 points in Somerset or Cambria Counties, period."

7 That is the end of the second part.

8 MR. GREEN: That's it.

9 JUDGE GESOFF: And that concludes the restrictive
10 amendment?

11 MR. GREEN: Yes, Your Honor.

12 JUDGE GESOFF: Okay. That will have to be reduced to
13 writing and submitted to the secretary, to all parties, and
14 also a copy to Dwight Huntingdon in the Office of
15 Administrative Law Judges.

16 Does this result in the withdrawal of all protests?

17 MR. LAVELLE: No, sir.

18 JUDGE GESOFF: Okay.

19 MR. GREEN: Okay. That will be copies to Dwight
20 Huntingdon and -- you said Dwight Huntingdon?

21 JUDGE GESOFF: Forget Dwight Huntingdon.

22 MR. GREEN: Pardon me?

23 JUDGE GESOFF: Forget him. It is not going to result
24 in this being modified, so it is not necessary to send him a
25 copy.

1 Just send a copy as you would any other restrictive
2 amendment.

3 MR. GREEN: Any other? Okay.

4 JUDGE GESOFF: Okay. So who remains as protestor of
5 the --

6 MR. LAVELLE: Your Honor, based on that restrictive
7 amendment, this will mean that it is agreeable to the
8 applicant, who is eventually going to testify and confirm
9 that I am authorized to withdraw the protest of Samuel J.
10 Lansberry, Inc.

11 JUDGE GESOFF: Okay.

12 MR. LAVELLE: We have confirmed that in fact by
13 telephone with -- both Mr. Norick I had a conference call
14 between myself, Mr. Norick and Samuel Lansberry.

15 JUDGE GESOFF: And your other clients are still in the
16 case?

17 MR. LAVELLE: All my other clients that I represent
18 are still in the case, yes.

19 JUDGE GESOFF: Okay. Ready to proceed, Mr. Green?

20 MR. GREEN: Yes, Your Honor.

21 JUDGE GESOFF: Let me ask you, Mr. Green: How does
22 that affect the other protestants who withdrew, based on the
23 other proposed restrictive amendments?

24 MR. GREEN: I will let you know. Actually, it
25 concludes what they had withdrawn from, and it further

1 restricts the application, including what they had
2 withdrawn from.

3 JUDGE GESOFF: Okay.

4 MR. GREEN: I will just ask some questions. I will
5 call Mr. David Toy.

6 DAVID TOY, having been duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GREEN:

10 Q Will you state your full name, please?

11 A David Charles Toy.

12 Q Where do you live?

13 A RD 1, Box 103, Worthington.

14 Q And what township, what County is that?

15 A West Franklin Township, Armstrong County.

16 Q Mr. Toy, how old are you?

17 A 31.

18 Q Are you single or married?

19 A Single.

20 Q You are in what business?

21 A The trucking industry.

22 Q And what vehicles do you have that you own in the
23 trucking business?

24 A Individually? We have nine tri-axles.

25 Q Do you have -- are they the same ones that are

1 attached to your application in this case, or have you
2 acquired any others since that date?

3 A They are the same.

4 MR. GREEN: Does the Court want me to read this into
5 the record, or do you want me to --

6 JUDGE GESOFF: The normal procedure is to submit it as
7 an exhibit, because it is part of your application.

8 It is not going to be an exhibit in the procedure.

9 MR. GREEN: All right. I have to ask your guidance a
10 little bit, because I have never had a full hearing.

11 JUDGE GESOFF: We will identify this one-page
12 document, which has a list of vehicles, as A-1.

13 (Applicant's Exhibit A-1 was produced and marked
14 for identification.)

15 BY MR. GREEN:

16 Q I show you what was marked for identification as
17 Applicant's A-1, or A-1, and ask you if that represents the
18 equipment that you own in this case?

19 A That's correct.

20 Q Okay.

21 Q Do you hold present rights --

22 A Yes, sir.

23 Q -- as a carrier, common carrier for the Public
24 Utility Commission?

25 A Yes, sir.

1 Q Is this a summary of these rights? I put that
2 together (indicating).

3 MR. LAVELLE: Your Honor, are these equipment lists,
4 the first one in what has just been shown to the witness,
5 are they being made exhibits --

6 JUDGE GESOFF: I don't know.

7 MR. LAVELLE: -- that we will have entered into the
8 record, and will I get copies of them?

9 JUDGE GESOFF: I really don't know. Certainly the
10 first one was marked as an exhibit.

11 I don't know what this second document is going to be
12 marked as, because I haven't been asked.

13 MR. GREEN: Do you wish to mark it first, or what?

14 JUDGE GESOFF: A three-page document that has been
15 given to the applicant, which appears to be a rendition of
16 existing rights, is marked as Exhibit A-2, and the question
17 outstanding is: Does Exhibit A-2 portray the existing
18 rights of the applicant?

19 Is that correct, Mr. Green?

20 MR. GREEN: Yes, sir.

21 (Applicant's Exhibit A-2 was produced and marked
22 for identification.)

23 A The -- all but the rights we purchased earlier this
24 spring.

25 Q That was after this particular application?

1 A Yes. That was after this application was made.

2 MR. GREEN: Do you wish me to furnish you with a copy
3 of that?

4 I thought you had a copy of that.

5 JUDGE GESOFF: In the Public Utility Commission
6 regulations, and in the notice of this hearing, you were
7 directed to provide one copy of all exhibits to all parties
8 and myself, and two copies to the court reporter.

9 MR. GREEN: You mean they didn't already get these? I
10 guess not.

11 JUDGE GESOFF: Whether they have been received or not,
12 when they are marked as exhibits, they are to be furnished
13 to all parties, one copy, to myself, one copy, and to the
14 court reporter, two copies.

15 The fact that they received pieces of paper with this
16 information written on them does not make them exhibits.

17 It does not relieve you of that obligation.

18 MR. GREEN: Well, then, apparently I failed to do
19 that.

20 JUDGE GESOFF: Well, that can be remedied, can't it?

21 MR. GREEN: Yes, sir.

22 JUDGE GESOFF: Okay. Off the record.

23 (Discussion off the record.)

24 BY MR. GREEN:

25 Q Have you been asked to expand the present rights

1 that you have to include the rights that we were asking for
2 in this particular application?

3 MR. LAVELLE: Objection. That is hearsay.

4 BY MR. GREEN:

5 Q Well, you filed an application asking for these
6 rights -- is that correct -- and you have now restrictively
7 amended the application? Is that correct?

8 A Yes, sir.

9 Q And are you seeking these rights?

10 A Yes, sir.

11 MR. GREEN: Cross examine.

12 CROSS EXAMINATION

13 BY MR. LAVELLE:

14 Q Mr. Toy, the restrictive amendment that was read
15 into the record at the beginning of the proceeding here a
16 few minutes ago, you were present, and you heard that?

17 A Yes, sir.

18 Q And you understand that it has been divided into
19 two separate sections to accommodate the various restrictions
20 and geographical scope as it applies to the named shippers?

21 A Yes, sir.

22 Q All right. As it was read into the record by your
23 counsel, Part I, and myself, Part II, do you agree that that
24 is the final amended scope of the authority that you are
25 requesting from this Commission now?

1 A Yes, sir.

2 Q And does it supercede the prior amendments that
3 have been presented to the Commission in this case, one of
4 them being dated April 9, 1991, and the other one being
5 dated June 20, 1991, both of which were signed on your
6 behalf by Mr. Green?

7 A Yes, sir.

8 Q With respect to your equipment list which has been
9 identified as A-1, is this equipment owned by the company.
10 Toy Trucking Company?

11 A Yes, sir.

12 Q And is that a corporation?

13 A Yes, sir.

14 Q Do you lease any of the equipment that you show on
15 your equipment list to any other motor carrier?

16 A No.

17 MR. LAVELLE: May I show this to the witness as we
18 discuss this?

19 JUDGE GESOFF: Yes.

20 BY MR. LAVELLE:

21 Q Your Exhibit A-2 is a summary, supposedly, of at
22 least a portion of your operating authority that you now
23 hold? Is that correct?

24 A Yes, sir.

25 Q Is that correct? The first paragraph of authority

1 on the first page, am I correct that that -- strike that.

2 Let me ask you the question: Do you know what grant
3 of authority that comes from?

4 In other words, in terms of your docket number, do you
5 know the lead docket number? Is it -- the lead certificate,
6 is it Folder 1, Amendment A?

7 A That is the original.

8 Q That is the original. All right. On the second
9 paragraph of authority, it is the right to transport coal
10 for Amerikohl, Inc. from certain facilities and so forth.

11 Do you know what the docket number reference of that
12 authority is?

13 A I don't know the individual numbers.

14 Q Would the same be true with respect to the third
15 paragraph, which identifies a shipper, Pittsburgh & Shawmut
16 Coal Company?

17 You don't know where that came from in terms of folder
18 and amendment?

19 A No.

20 Q And the fourth paragraph on that page, for Roswell,
21 R-o-s-w-e-l-l, Coal Company, again, you wouldn't know what
22 the specific reference to that is?

23 A No.

24 Q I am looking at the second page of A-2. It begins
25 by saying, "The above three rights being subject to the

1 following conditions," and it is followed by two numbered
2 paragraphs in terms of restrictions, but Page 1 has four
3 paragraphs of authority on it.

4 Do you know which three paragraphs these restrictions
5 apply to? Are they the last three?

6 A They are the last three, all but the original.

7 Q Okay. And the next grant on that page is authority
8 for Amerikohl, Inc. and Amerikohl Mining, Inc. from certain
9 facilities in the western part of the state to Shippingport.

10 You don't know the exact docket number --

11 A No.

12 Q -- or amendment reference to that?

13 A No.

14 Q Now, the last paragraph on the second page of this
15 exhibit is really a statement of the original application
16 filed in this present proceeding, isn't it?

17 A Yes, sir.

18 Q So that really is not a statement of existing
19 authority --

20 A No.

21 Q -- held by your company? And then the third page
22 of this Exhibit A-2 is a one-paragraph statement basically
23 saying why you filed this new application we are here,
24 hearing today, isn't it?

25 A Part of it.

1 Q Well, I mean, it doesn't set forth any operating
2 authority, does it?

3 A No.

4 Q Okay. That is what I am getting at. Now, you have
5 made some reference to some authority that was purchased.

6 If I show you a copy of a Pennsylvania Bulletin notice
7 dated March 23, 1991, at Folder 1, Amendment D, and it
8 indicates that it is a transfer of certain authority from a
9 Daniel R. Thompson and William Thompson, co-partners, is
10 that the authority you had reference to --

11 A Yes.

12 Q -- that you purchased?

13 A Yes, sir.

14 Q And is that proceeding completed? Is that transfer
15 completed at this point?

16 A Yes, sir. The tariff was filed and is completed.

17 Q Now, looking at the authority here, a portion of
18 that Amendment D certificate duplicates what you are asking
19 for in this present case, does it not?

20 A Yes, sir.

21 Q And going back to Page 1 of Exhibit A-2, Paragraph
22 1 duplicates in part what you are asking for here?

23 A Yes, sir.

24 Q And Paragraphs 2 and 3 of Exhibit A-2 likewise
25 duplicate, at least in part, what you are asking for here --

1 A Yes, sir.

2 Q -- for named shippers? And on Page 2, following
3 the two restrictions, the one paragraph of authority that
4 involves Amerikohl, those two companies to Shippingport,
5 that also duplicates in part what you are asking for?

6 A Yes, sir.

7 Q Let me show you another page. It is a copy, and it
8 contains a notice, another application filed by your company
9 at Folder 1, Amendment E, published in the Pennsylvania
10 Bulletin on July 27, 1991, and does that first part of that
11 application ask for the right to transport property in bulk
12 for Toy Trucking Company between points in Pennsylvania?

13 A Yes, sir.

14 Q Has a hearing been scheduled in connection with
15 that application, to your knowledge?

16 A Yes, sir.

17 Q Do you have any other pending applications?

18 A No, sir.

19 Q None have been filed but not yet published?

20 A No. There's no other ones.

21 Q Has your company been cited during the last 12
22 months by the Public Utilities Commission for any
23 violations?

24 A It wasn't fined for any, to my knowledge. We had
25 some questions, and some letters were written to Harrisburg,

1 but as far as cited and a fine, no.

2 Q Have you had any complaints filed against you by
3 the Public Utility Commission?

4 A Yes, sir.

5 Q And you are saying you haven't paid any fines in
6 connection with any of those?

7 A No, sir.

8 Q Are the cases still pending?

9 A As far as I know.

10 Q So in other words, you were served with one -- do
11 you know how many complaints were filed by the Commission?

12 A Complaints can be filed, but if there is no
13 justification to the complaint, it means nothing.

14 Q That is not my question. Do you know, in the last
15 twelve months, how many complaints you have received where
16 the Commission was the moving party?

17 A I am still not -- still don't understand.

18 Q Well, I thought you had said you had been served
19 complaints from the Commission --

20 A Yes.

21 Q -- during the last one months.

22 A Yes.

23 Q How many?

24 A Two or three.

25 Q And when you say there was an exchange of

1 correspondence or something with the Commission, did that
2 exchange consist of your company filing an answer to the
3 complaint --

4 A Yes, sir.

5 Q -- and offering some sort of a defense?

6 A Yes, sir.

7 Q And at this point, those cases are still pending?
8 They have not yet been assigned to an Administrative Law
9 Judge or otherwise finally disposed of?

10 A That's been three months ago, and I haven't heard
11 any -- any response yet.

12 Q So they must still be pending, then?

13 A Could be.

14 Q All right. What was the nature of the complaints?

15 A Hauling sand from Davidson Sand and Gravel.

16 Q Do they all three involve that?

17 A Hauling topsoil from A. A. Ryan to Toy Trucking
18 Company.

19 Q Okay. And you said two or three. That is two. Is
20 there another one?

21 A Well, the hauling sand from Davidson Sand and
22 Gravel is a couple different ones, two different hauls --

23 Q Okay.

24 A -- two different.

25 Q And the nature of the charge is that you performed

1 that service without having appropriate authority from this
2 Commission to do so?

3 A Yes, sir.

4 Q Okay. The complaint involving topsoil for Ryan, is
5 that what gave rise to your second part of your application
6 at Folder 1. Amendment E, requesting the right to transport
7 property from the facilities of A. A. Ryan Topsoil?

8 A No. It was a misinterpretation of the rules. I
9 was hauling the material for myself, and the Commission
10 stated that you can't do that.

11 Q Well, let me ask it this way, then: Did you file
12 the application at Amendment E before or after you --

13 A After.

14 Q -- received the complaint?

15 A After.

16 Q Okay. If we went back and checked the record of
17 Toy trucking prior to twelve months ago, or roughly
18 September 1 of 1990, would we find other complaints against
19 the company?

20 A For the amount of moves we make in the years we
21 have been in business, very few.

22 Q There would be some?

23 A A few.

24 Q And did you pay fines in connection with any of
25 those?

1 A One hundred dollars at the most at any given time.

2 MR. LAVELLE: Your Honor, I'm not sure if it's
3 appropriate -- I will have to ask you, defer to you on this
4 -- to incorporate by reference those, or if I should develop
5 the information myself to present it or bring it up and ask
6 counsel, as a matter of discovery at this point in the
7 course of the hearing, to provide information with respect
8 to that.

9 I want to do it the easiest possible way for
10 everything.

11 JUDGE GESOFF: It is your cross examination. It is
12 outside the scope of direct testimony, anyway.

13 MR. LAVELLE: But it bears on an important issue in
14 the case.

15 JUDGE GESOFF: Understood.

16 MR. LAVELLE: I would then request the right to have
17 the copies of those various citations and orders against Toy
18 Trucking, including pending complaints, made a part of this
19 record by incorporation by reference, if possible. If not
20 in that fashion, then --

21 JUDGE GESOFF: If you do that --

22 MR. LAVELLE: -- we will get copies and present them.

23 Either I can do it as counsel's exhibits, and if that
24 is not an appropriate procedure, then I will request, as a
25 matter of discovery, that the applicant present copies of

1 all that information as part of his record.

2 JUDGE GESOFF: Under the Commission regulations,
3 documents on file with the Commission, official Commission
4 documents may be incorporated by reference.

5 However, I can request that you provide a copy of them
6 so that we know what they are.

7 Just incorporating them by reference doesn't give us a
8 clue as to how many, or what the nature of them are.

9 MR. LAVELLE: I understand.

10 MR. GREEN: Off the record.

11 (Discussion off the record.)

12 MR. LAVELLE: Your Honor, I would move that I be
13 permitted to incorporate by reference any complaints that
14 might be on file against this company, including what is
15 pending at the present time, and for the convenience of
16 yourself and the applicant, I will obtain copies from the
17 Commission subsequent to this hearing and submit them as
18 counsel's exhibits, if that is the way it should be marked.

19 JUDGE GESOFF: Well, you can mark them as Protestants'
20 Exhibits P-1, P-2, et cetera, and submit them as you see fit
21 during the proceeding.

22 MR. LAVELLE: Thank you, Your Honor.

23 I have no further questions of Mr. Toy.

24 JUDGE GESOFF: Any redirect?

25 REDIRECT EXAMINATION

1 BY MR. GREEN:

2 Q The redirect was: At the time you filed this
3 application, were these citations in effect?

4 Had they been given to you when you filed --

5 A The --

6 Q -- the initial application here?

7 A The -- oh, boy. What is the date of the initial
8 application? Is it --

9 Q No. I just asked you if they were -- when did
10 these citations arise that you are talking about?

11 A January, February of this year.

12 MR. GREEN: Okay. I have another exhibit. Do you
13 want to --

14 JUDGE GESOFF: You are putting that exhibit in on
15 redirect?

16 MR. GREEN: Okay. All right. Forget it.

17 JUDGE GESOFF: What is the exhibit?

18 MR. GREEN: It is the financial condition. I thought
19 you have to do that, too.

20 JUDGE GESOFF: Off the record.

21 (Discussion off the record.)

22 JUDGE GESOFF: Back on the record. While we were off
23 the record, Mr. Green requested a continuance so that he
24 could better prepare his case.

25 I granted that, and I so grant it on the record, and

1 you expect to have how many witnesses, Mr. Green?

2 MR. GREEN: Three, Your Honor.

3 JUDGE GESOFF: That would be Mr. Toy and the two
4 shipper witnesses?

5 MR. GREEN: That is the one thing I do -- yes. Mr.
6 Toy and three shipper witnesses.

7 JUDGE GESOFF: All right. That is four, all together?

8 MR. GREEN: Yes, sir.

9 JUDGE GESOFF: All of them at the next hearing,
10 correct?

11 MR. GREEN: Yes, Your Honor. They will be here.

12 JUDGE GESOFF: Now, I imagine one day would be
13 sufficient for that, Mr. Lavelle.

14 Are you prepared to continue with your case?

15 MR. LAVELLE: At that same set hearing?

16 JUDGE GESOFF: Yes. How many witnesses would you
17 have?

18 MR. LAVELLE: I have nine protestants. The amendment
19 that was made with respect to Amerikohl might take out a
20 couple of them, but at this point I am -- we had discussed
21 it off the record, also -- by further restricting the
22 application beyond what it is today, we can formulate it a
23 little better, but we just couldn't do it today.

24 My expectation would be, at that this point we
25 probably have a minimum of four, four to five witnesses, but

1 if what you are asking -- if we had two days back to back,
2 one for the applicant's side, and one for the protestant's
3 side, you know, I could put my case together, since I know
4 what the shipper is, all right, I could do that.

5 JUDGE GESOFF: All right. Well, I will ask that this
6 be scheduled for a two-day hearing here in Pittsburgh.

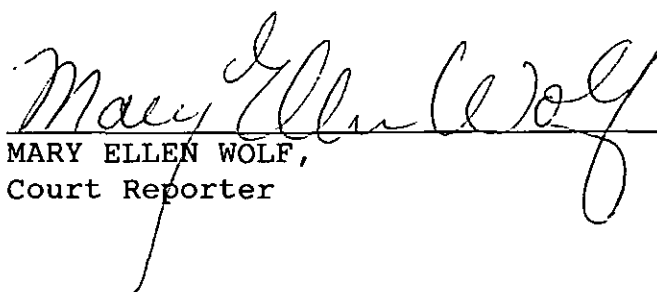
7 You will receive a notification from the Commission
8 as to the specific dates, and I would urge you, Mr. Green,
9 to review the evidentiary criteria at 52 PA Code Section
10 42.14, and also the Bluebird Bus Line case, which recently
11 changed the Cinnard decision, which changed the previous
12 Commission policy on the entrance requirements and the
13 burden of proof for motor carriers.

14 I would also urge you to comply with the Commission
15 requirements, that when you submit exhibits, that you submit
16 one copy to Mr. Lavelle, one copy to me, and two copies to
17 the court reporter, and you will remedy the defect for
18 Exhibits A-1 and A-2 at the next set of hearings.

19 I would also expect that you will come to the hearing
20 with a restrictive amendment in writing, and I, from what
21 Mr. Lavelle has indicated, would suspect that it will not be
22 identical to that which you read into the record.

23 I understand that you might be able to restrict out
24 more of the protestants in this proceeding between now and
25 the next set of hearings.

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and accurate transcript of the same.


MARY ELLEN WOLF,
Court Reporter

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END