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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.

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Pittsburgh, Pennsylvania
April 9, 1991

pages 1 to 11, inclusive

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HOLBERT ASSOCIATES
Suite 203, Cranberry Court
212 North Third Street
Harrisburg, Pennsylvania 17101

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Public Utility Commission

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Stenograph report of hearing held in
Eleventh Floor Hearing Room, Pittsburgh,
State Office Building, 300 Liberty Avenue,
Pittsburgh, Pennsylvania,

Tuesday,
April 9, 1991
at 10:00 o'clock a.m.

BEFORE

LARRY GESOFF, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

BLAIR F. GREEN ESQUIRE
125 North McKean Street
Kittanning, Pennsylvania 16201-1517
Appearing on behalf of Toy Trucking Company

WILLIAM LAVELLE, ESQUIRE
Vuono, Lavelle & Gray
2310 Grant Building
Pittsburgh, Pennsylvania 15219
Appearing on behalf of Bulk Transportation Services, Inc.
Wayne W. Friedline
McClymonds Supply Transit Co., Inc.
Bruce Trent Trucking, Inc.
Homer R. Sleek & Sons, Inc.
Taylor Services, Inc.
William J. Brown Trucking, Inc.
C.D. Ambrosia Trucking Company
Marianne Industires

Also For - David H. Radcliff, Esquire
Representing:
R. T. Merryman Trucking, Inc.

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APPEARANCES (Continued):

WILLIAM LAVELLE, ESQ.
VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, PA 15219
Also for - John Fullerton, Esquire,
representing:
William C. Confer
R.J. Glass, Inc.
Powers Trucking Company
Hiram Wible & Son, Inc.

JOHN A. PILLAR, ESQ.
PILLAR & MULROY
312 Boulevard of the Allies
Pittsburgh, PA 15222
For - Wayne W. Sell Corporation
Don Martin Trucking, Inc.
Gajda Trucking Company
David Tesone Trucking, Inc.
McCleary-Christie Trucking, Inc.
William P. Mauthe, d/b/a DGB Trucking

Also for - Dwight L. Koerber, Esquire,
representing:
Kephart Trucking Company

SALLY A. DAVOREN, ESQ.
1126 Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222
For - Coal Transport, Inc.

HOLBERT ASSOCIATES
Suite 203 Cranberry Court
212 North Third Street
Harrisburg, PA 17101

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WITNESS:

CROSS-EXAMINATION

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1 ADMINISTRATIVE LAW JUDGE GESOFF: This is the time and
2 place set by the Pennsylvania Public Utility Commission for
3 a prehearing conference in the application of Toy Trucking
4 Company, docketed at A-00099448, F.1, Am-C.

5 I'm Larry Gesoff, the Administrative Law Judge
6 assigned to this proceeding. And I note the appearance of
7 William Lavelle on behalf of several Protestants and William
8 Lavelle for David Radcliffe on behalf of one Protestant, of
9 Mr. Lavelle for John Fullerton, on behalf of four
10 Protestants; of John Pillar on behalf of several
11 Protestants; of Sally Davoren on behalf of one Protestant;
12 and of Blair Green on behalf of the Applicant.

13 This hearing was originally -- this proceeding today
14 was originally scheduled to be a hearing, an evidentiary
15 hearing, and to my understanding, Mr. Green requested a
16 continuance. They are very difficult to come by and,
17 therefore, this was turned into a prehearing conference.

18 In an attempt to settle this matter, I will give the
19 parties whatever time they need.

20 Is that what you would desire, Mr. Green?

21 MR. GREEN: Yes, Your Honor.

22 JUDGE GESOFF: Anything anyone wishes to mention
23 before we take a recess for that purpose?

24 First, let me ask counsel present, are you authorized
25 to enter into some kind of a settlement based on restrictive

1 agreements, Mr. Lavelle, on behalf of Messrs. Radcliff and
2 Fullerton?

3 MR. LAVELLE: Yes.

4 JUDGE GESOFF: Good. Then we will take a recess for
5 purposes for settling this, if possible.

6 MR. PILLAR: I forgot to put in an appearance for
7 Kephart and Mr. Koerber.

8 JUDGE GESOFF: And that is an appearance for Dwight
9 Koerber and Kephart Trucking?

10 MR. PILLAR: Yes.

11 JUDGE GESOFF: We are in recess.

12 (Whereupon, a brief recess was taken.)

13 JUDGE GESOFF: We are back on the record. Any
14 success?

15 MR. GREEN: We would like to make this Restrictive
16 Amendment, and we are going to pass some more things around
17 to try to take care of some other things that have risen
18 here and to get out more of the Protestants.

19 Unfortunately, while I was writing on this, I wrote
20 -- instead of writing on the copy, I wrote on the
21 Restrictive Amendment itself, and we will send a new one
22 out. But that, in essence -- I don't know whether we can
23 erase that, or we will send you a new one.

24 If that was read into the record, and I can read it
25 or that could -- that would be our present -- we would be

1 restricting it to that. That is not a proposal. We would
2 make that Restrictive Amendment at this point.

3 MS. DAVOREN: Without the writing on it.

4 JUDGE GESOFF: Without the writing on it. You will
5 read it into the record and submit a clean copy.

6 Is that going to result in the withdrawal of all
7 Protestants or not?

8 MR. GREEN: No. It will result in the withdrawal of
9 at least one Protestant. And with the next Restrictive
10 Amendment from what we have garnered here today, we feel
11 that we can withdraw six or seven other ones.

12 JUDGE GESOFF: Off the record.

13 (An off-the-record discussion was held.)

14 JUDGE GESOFF: It appears that the Restrictive
15 Amendment which Mr. Green will read into the record will
16 result in the withdrawal of the protest of Ms. Davoren's
17 client, which is Coal Transport, Inc., and that a subsequent
18 Restrictive Amendment to be arrived at and submitted at a
19 later date will result in the withdrawal of protests of
20 several other Protestants.

21 And then I imagine, Mr. Green, that we will need to
22 set this for hearing; is that correct?

23 MR. GREEN: Yes, Your Honor, because the next one I'm
24 going to try to make -- I'm pretty sure that the next one
25 will satisfy Mr. Pillar's Protestants.

1 But there's a big question about Mr. Lavelle on some
2 of them. He is going to submit that one and then let us
3 know.

4 JUDGE GESOFF: Who is going to submit what?

5 MR. GREEN: Mr. Lavelle is going to submit the one
6 that I sent that I think will take care of Mr. Pillar's and
7 the other one, Mr. Nurick's protest.

8 JUDGE GESOFF: You're not being clear, Mr. Green.
9 What you are saying to me, I think, if I'm reading between
10 the lines, is Mr. Lavelle will submit a second Restrictive
11 Amendment which will take care of Mr. Pillar's clients? To
12 his, meaning Mr. Lavelle's clients, to see how they feel
13 about it; is that correct?

14 MR. GREEN: Yes, sir. He has indicated that probably
15 some of them would drop out at that point, but most of them
16 would not.

17 JUDGE GESOFF: All right.

18 And do you feel that there's no other Restrictive
19 Amendment that would result in the withdrawal of the rest of
20 his clients?

21 MR. GREEN: He wants a complete withdrawal of any
22 hauls for Amerikohl, and I have not got my client to agree
23 to that yet.

24 JUDGE GESOFF: Okay. Then why don't you read into
25 the record the Restrictive Amendment that you prepared

1 today?

2 MR. GREEN: Okay.

3 The Restrictive Amendment, Application of Toy
4 Trucking Company -- do you want me to --

5 JUDGE GESOFF: Just read the Restrictive Amendment,
6 Mr. Green.

7 MR. GREEN: "And now comes Toy Trucking Company, by
8 its attorney, Blair F. Green, and restrictively amends the
9 above application to read as follows:

10 To transport coal, for B&B Coal Associates, Inc.,
11 Pittsburgh & Shawmut Coal Company, Amerikohl, Inc., and
12 Amerikohl Mining, Inc., from points within 125 statute miles
13 of the Borough of Worthington, Armstrong County, to points
14 in Pennsylvania; subject to the following conditions:

15 Provided that no haul shall exceed 125 statute miles
16 from point of origin to point of destination; and

17 Further provide that no right, power or privilege
18 shall be granted to provide transportation to or from the
19 facilities of United Eastern Coal Sales Corp., White Star
20 Coal Company, Incorporated, Kent Coal Mining Company, or
21 Purco Coal Company, Inc."

22 JUDGE GESOFF: Ms. Davoren.

23 MS. DAVOREN: Your Honor, I would like to request
24 that Mr. Toy be sworn in so that I can ask him a few
25 questions on cross-examination about the Amendment.

1 JUDGE GESOFF: All right.

2 DAVID TOY, having been first duly sworn by Judge
3 Gesoff, was examined and testified as follows:

4 CROSS-EXAMINATION

5 BY MS. DAVOREN:

6 Q Mr. Toy, my name is Sally Davoren and I represent
7 Coal Transport, Incorporated, one of the Protestants to this
8 application.

9 Were you present and did you hear the Restrictive
10 Amendment to the application that your attorney just read in
11 the record?

12 A Yes, I did.

13 Q Do you understand that if this Amendment is
14 accepted by the Commission, your application will be
15 restricted so that you can only provide service for B&B Coal
16 Associates, Inc., Pittsburgh & Shawmut Coal Company,
17 Amerikohl, Inc., and Amerikohl Mining, Inc.?

18 A Yes.

19 Q And you also understand that transportation will
20 be limited to transportation for those companies such as
21 said, and even within that you will not be able to provide
22 any service to or from the facilities of United Eastern Coal
23 Sales Corp., White Star Coal Company, Inc., Kent Coal Mining
24 Company, or Purco Coal Company, Inc.?

25 A Yes.

1 Q So that if Amerikohl, for example, called you and
2 the service was for Amerikohl, if they were purchasing from
3 Purco Coal, you would not be able to do it?

4 A Not within these rights.

5 Q And if this Restrictive Amendment is accepted by
6 the Commission, do you agree to abide by the restriction of
7 your service and authority granted?

8 A Yes.

9 MS. DAVOREN: Your Honor, I have no further
10 questions.

11 Mr. Green has indicated that he is going to submit
12 the Amendment to the Commission in Harrisburg and send
13 everyone copies, and then I will send a letter withdrawing
14 the protest of my client.

15 JUDGE GESOFF: Please send a copy of the letter to
16 all parties and to Bud Huntington.

17 MS. DAVOREN: Yes, Your Honor.

18 JUDGE GESOFF: Very well.

19 And then, Mr. Green, you will do the same thing with
20 your Restrictive Amendment, although you don't have to send
21 it to Mr. Huntington. But any withdrawal letters should be
22 copied to Mr. Huntington.

23 MR. GREEN: Is his name actually Bud?

24 JUDGE GESOFF: No, it's Dwight.

25 Anything further?

1 MR. LAVELLE: Nothing.

2 JUDGE GESOFF: All right. We will schedule another
3 hearing.

4 Mr. Green, when shall we schedule this?

5 MR. GREEN: Thirty days, sixty -- forty days;
6 somewhere in that neighborhood.

7 JUDGE GESOFF: Sometime in the summer. My schedule
8 is very busy.

9 MR. GREEN: That's fine. That will give us longer to
10 work on it.

11 JUDGE GESOFF: Very well. The hearing is concluded.

12 (Whereupon, the hearing was concluded at 11:00 a.m.)

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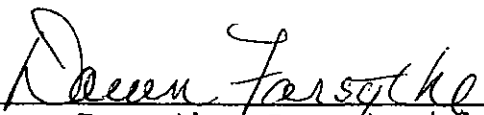
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I hereby certify that the proceedings and evidence
taken by me in the above-entitled matter are fully and
accurately indicated in my notes and that this is a true and
correct transcript of same.


Dawn Forsythe, Reporter/slg

END