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COMMONWEALTH OF PENNSYLVANIA DEC 5 1991

PUBLIC UTILITY COMMISSION

SECRET
Public Utility Commission

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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. :
 Further hearing. :
 ----- X

Docket Number :
 A-00099448, :
 F001, Am-C :

Pages 30 through 42

State Office Building
 11th Floor
 300 Liberty Avenue
 Pittsburgh, Pennsylvania

Tuesday, November 26, 1991

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

LARRY GESOFF, Administrative Law Judge

APPEARANCES:

BLAIR F. GREEN, Esquire
 125 McKean Street
 Kittanning, Pennsylvania 16201-1517
 (For the Applicant)

WILLIAM J. LAVELLE, Esquire
 2310 Grant Building
 Pittsburgh, Pennsylvania 15219
 (For the Protestants)

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C O N T E N T S

WITNESSES

DIRECT CROSS REDIRECT RECROSS

David Toy

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E X H I B I T S

NUMBERS

FOR IDENTIFICATION IN EVIDENCE

Applicant's

1 (Restrictive Amendment)

31

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FORM 2

P R O C E E D I N G S

10:00 a.m.

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3 ADMINISTRATIVE LAW JUDGE LARRY GESOFF: This is
4 the time and place set for the hearing by the Public Utility
5 Commission for an evidentiary hearing in the application of
6 Toy Trucking Company at Docket Number A-99448, Folder 1,
7 Amendment C.

8 My name is Larry Gesoff. I'm the Administrative Law
9 Judge assigned to this proceeding and I note the appearance
10 of Blair Green on behalf of the application and of William
11 Lavelle on behalf of several protestants.

12 As I understand it, a restrictive amendment has or will
13 result in the withdrawal of the remaining protests; is that
14 correct Mr. Green and Mr. Lavelle?

15 MR. GREEN: Yes, Your Honor.

16 MR. LAVELLE: Yes.

17 JUDGE GESOFF: Mr. Green?

18 MR. GREEN: Your Honor, if it would please the
19 court, he's just about finished with the copy that he made on
20 his word processor and if it agrees, I can submit this.

21 JUDGE GESOFF: We'll take a minute here.

22 (Off the record.)

23 (On the record.)

24 MR. GREEN: We have agreed to use that we could
25 use his copy and he's made copies of his restrictive

1 amendment. We'll accept it as our position.

2 JUDGE GESOFF: We'll put this in as Applicant's
3 Exhibit A.

4 MR. LAVELLE: I made seven copies just in case we
5 had a problem so we could have them signed right now by the
6 applicant or whoever's going to sign it.

7 MR. GREEN: Do you have that for me to sign or
8 him?

9 MR. LAVELLE: I'd prefer if the applicant signed
10 it.

11 JUDGE GESOFF: I only need three.

12 MR. GREEN: I can make photocopies. Just sign
13 them all, I'll give you three and we'll mail them out to
14 everybody, and we have to send them to Harrisburg too, don't
15 we?

16 JUDGE GESOFF: No, it will be in the record. This
17 will be identified as Exhibit 1. It's a two page document
18 which is restrictive amendments.

19 (Whereupon, the document was marked as
20 Applicant's Exhibit Number 1 for
21 identification and was received in
22 evidence.)

21 JUDGE GESOFF: Mr. Lavelle?

22 MR. LAVELLE: Your Honor, I would like to have the
23 applicant's witness sworn and called to the stand because I
24 have a few questions to ask him concerning the restrictive
25 amendment.

1 JUDGE GESOFF: Very well. Who might that be?

2 MR. LAVELLE: I believe it's Mr. Toy.

3 JUDGE GESOFF: He's already been sworn.

4 Mr. Toy, you testified at a previous hearing and you're
5 still under oath.

6 (Whereupon,

7 DAVID TOY

8 having been previously duly sworn, or affirmed, testified
9 further as follows:)

10 JUDGE GESOFF: Go ahead, Mr. Lavelle.

11 DIRECT EXAMINATION

12 BY MR. LAVELLE:

13 Q Mr. Toy, do you have a copy in front of you of the
14 restrictive amendment that's been signed and entered into the
15 record today?

16 A Yes, I do.

17 Q I have a few questions I'd like to ask you about
18 this amendment. First of all, do you understand that this is
19 the final amendment as of today in this proceeding?

20 A Yes, I do.

21 Q It supersedes -- Does it supersede the amendments
22 that have previously been submitted to the Commission that
23 were dated April 9, 1991, June 20, 1991, September 13, 1991
24 and October 22, 1991?

25 A Yes, sir.

1 Q Now, with that understanding, then, I just want to
2 run through the amendment with you and ask you a few
3 questions.

4 Under the first part on page 1, there are two shippers,
5 B&B Coal Associates, Inc., Pittsburgh, and Shawmut Coal
6 Company.

7 Each of those company names are preceded by the word
8 for, f-o-r. What is your understanding of the significance
9 of that word in the context of this amendment?

10 A The names of the coal companies that we have listed
11 in the rest of the amendment, the only way that that coal can
12 be moved for the 125 or 120 miles on a different stated
13 mileage is for either one of the two coal companies?

14 Q Being the two I named?

15 A Yes, sir.

16 Q Are those the companies from which you are going to
17 be receiving your shipping instructions?

18 A Shipping instructions and payment.

19 Q So, you'll send bills to them and you'll receive
20 freight charges paid by them?

21 A Yes, sir.

22 Q As opposed to, for example, Eastern Materials
23 Corporation?

24 A We would receive a check from either B&B or
25 Pittsburgh and Shawmut.

1 Q Now, going down to sub-paragraph (b) on page 1
2 which is the second condition, there are a number of
3 companies listed there for B&B Coal Associates. What is your
4 understanding of the origin and destination of any shipment
5 you will handle?

6 A For Pittsburgh and Shawmut and B&B, those are just
7 for B&B. We could load at their facilities, except in the
8 counties of Somerset, Cambria, Clarion, Jefferson, Indiana,
9 Fayette, Westmoreland.

10 Q You could load at whose facilities?

11 A At the name shippers.

12 Q Beginning with B&B Coal Mining, Inc.?

13 A B&B Coal Mining, B&B Management, Bill Turner
14 Enterprises and so forth.

15 Q So, you will load at any one of those facilities of
16 any one of those name companies?

17 A Yes.

18 Q And, what is your understanding of what the
19 destination of that shipment can be; any one of those
20 shipments can be?

21 A Basically anywhere within 125 mile, all from point
22 or origin for strictly B&B Coal.

23 Q The reason I ask that is because in the third line
24 of paragraph B, condition B, and the same applies to
25 condition C, the third line, the phrase is used, "to and from

1 the facilities," and my interpretation, at least, and I'm
2 going to pose it to you and you tell me if you agree or not,
3 is that both the origin and the destination of the traffic
4 must be a facility of one of the following named companies?

5 A One or the other.

6 Q I'm saying it has to be both.

7 A It was never stated to me like that.

8 Q I didn't draft that language, but going back a few
9 words, it says, "the transportation shall be limited to
10 transportation to and from the facilities of," and then
11 there's a list of companies.

12 My interpretation or understanding of that would be
13 that both the origin and the destination of the traffic would
14 have to be the facility of one or more.

15 It could be two facilities of B&B Management, Inc., or
16 it could go from Eastern Materials Corporation to Glacial
17 Minerals or vice versa, any combination of two, but that's
18 the extent of the identification of origins and destinations.

19 A It was never explained to me like that.

20 MR. GREEN: Either to these facilities or from
21 these facilities?

22 JUDGE GESOFF: You just used the word, "or."
23 That's disjunctive. "And" is conjunctive.

24 THE WITNESS: To and from?

25 JUDGE GESOFF: To and from means it has to be both

1 to and from. To or from means it could be either one. It
2 could be either to or from.

3 THE WITNESS: We did not understand it that way.

4 MR. LAVELLE: I put my position on the record,
5 other parties have withdrawn previous to this and that
6 language, I believe, it appeared in the amendments presented
7 by the applicant to the Commission at least as early as the
8 third restrictive amendment dated September 13, 1991.

9 It was carried through into the fourth amendment and
10 now is tracked into this last amendment dated today, but...

11 JUDGE GESOFF: And, what is the withdrawal of your
12 protestants based upon; does it matter whether it's "and" or
13 does it matter whether it's "or"?

14 MR. LAVELLE: I can probably safely say that we're
15 willing to withdraw on the basis of an "or," but I just
16 wanted to draw the issue here to make sure that's what the
17 applicant intended to do by this application. I can't speak
18 for the other protestants in the case, though.

19 JUDGE GESOFF: Very well.

20 BY MR. LAVELLE:

21 Q Moving on with respect to part 1. At the top of
22 the second page, there's amendment or addition D, I should
23 say, and you understand by that that you will not be able to
24 provide any service for B&B Coal Associates or Pittsburgh and
25 Shawmut Coal Company in any respect whatsoever between points

1 in the seven named counties?

2 A Yes, sir.

3 Q And, you will not be able to provide any service
4 for either of those two shippers in any respect where the
5 traffic originates in one of those seven counties?

6 A Yeah, that's right.

7 Q Moving on to page 2, to part 2 of the amendment
8 having to do with Amerikohl, Inc., and Amerikohl Mining,
9 Inc., here not only will you be paid by one of those two
10 companies, but the origin of the traffic must also be one of
11 their facilities; is that correct?

12 A Only Amerikohl or Amerikohl Mining, Inc.

13 Q And, geographically, those facilities that will be
14 served must lie west of U.S. Highway 219?

15 A Yes, sir.

16 Q And, a destination must be a point west of U.S.
17 Highway 219?

18 A Yes, sir.

19 Q So, geographically, that's much more limited than
20 part 1?

21 A Right.

22 Q Then, going to the third condition, C, on page 2,
23 in no way will you be able to provide any service to, from or
24 between any points in Somerset, Cambria, or Clarion Counties;
25 is that correct?

1 A That's right.

2 Q And, finally, under condition D, you will not
3 provide any service between points in the four named counties
4 or any service that originates in one of those four named
5 counties for either of the two counties. Is that your
6 understanding?

7 A Yes, sir.

8 MR. LAVELLE: Your Honor, I have no further
9 questions of the applicant at this time. The amendment in
10 this form, submitted to this point, at least, to the
11 Commission, I'm authorized to withdraw the protests of the
12 nine carriers on whose behalf I entered an appearance.

13 JUDGE GESOFF: Very well.

14 Mr. Green, do you wish this to go to the Bureau of
15 Transportation for modified procedure?

16 MR. GREEN: Yes, Your Honor.

17 JUDGE GESOFF: Is there anything else to be
18 discussed before we conclude the hearing?

19 MR. GREEN: No, Your Honor, nothing else.

20 THE WITNESS: If we modified that "and" to "or"
21 before it was sent in, is that acceptable?

22 JUDGE GESOFF: If you do that, it's very possible
23 that some of the protestants might change their position and
24 if they do, I will not sent it to modified procedure until
25 they notify me in writing that the latest restrictive

1 amendment - we've had five already - that the sixth
2 restrictive amendment is acceptable to them because it is
3 different than the restrictive amendments that they have
4 received before now.

5 MR. GREEN: We aren't going to worry about that.

6 JUDGE GESOFF: Then, based upon the restrictive
7 amendment which is admitted into the record as Exhibit 1,
8 this matter will be referred to the Bureau of Transportation
9 for modified procedure and applicant will be notified of the
10 steps that need to be taken to complete the application, but
11 the rights are not authorized until there is a Commission
12 order to that effect.

13 Anything further?

14 MR. GREEN: Thank you, Your Honor.

15 JUDGE GESOFF: The hearing's concluded.

16 (Whereupon, at 10:20 a.m. the hearing was
17 concluded.)
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C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were reported by me and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

BY: Thelma M. Mitchell
Thelma M. Mitchell

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FORM 2