

COMMONWEALTH OF PENNSYLVANIA

APR 25 1986

PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY
Public Utility

In re: A-00065936, F003, Am-A Norman M. Earhart, t/d/b/a Earhart Trucking Amendment to his common carrier certificate, *** to permit the transportation of coal, for North Cambria Fuel, Inc., from its mines and tipples, in the counties of Cambria, Jefferson, Indiana and Clearfield, to other points in said counties. Initial hearing.

Verbatim record of hearing held at the State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania, on Wednesday,

April 9, 1986
10:00 a.m.

BEFORE: ROBERT MEEHAN, ESQUIRE, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

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COMMENT
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For - Applicant

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For - Bulk Transportation Services, Inc.

APR 25 1986

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ADMINISTRATIVE LAW JUDGE MEEHAN: This is the date set by the Commission for the initial hearing on the application of Norman M. Earhart, t/d/b/a Earhart Trucking for an amendment to his common carrier certificate, to permit the transportation of coal, for North Cambria Fuel, Incorporated, from its mines and tipples, in the counties of Cambria, Jefferson, Indiana and Clearfield, to other points in said counties.

My name is Robert Meehan. I am the Administrative Law Judge assigned by the Commission to preside at the hearing and render an initial decision in this matter.

I would note that initially protests to the application had been filed by Wayne W. Sell Corporation; Ritchey Trucking, Inc.; C. L. Feather, Inc.; Thomas H. Loughry and Bulk Transportation Services.

As of the commencement of the hearing, the only protestant remaining in the proceeding is Bulk Transportation Services. The other protests having been withdrawn.

Before we commence with the taking of the testimony in this matter, let me ask counsel if there are any preliminary matters to be discussed. Mr. Diskin?

MR. DISKIN: None, Your Honor. We are not making any restrictive amendments and are proceeding on the application as filed.

JUDGE MEEHAN: Mr. LaVelle?

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1 MR. LAVELLE: No, sir, I have nothing.

2 JUDGE MEEHAN: Alright. Then we will proceed with
3 the taking of the applicant's testimony and evidence.

4 Mr. Diskin, your first witness.

5 MR. DISKIN: Mr. Earhart.

6 NORMAN M. EARHART, called as a witness, being duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. DISKIN:

10 Q Would you state your name for the record, Mr.
11 Earhart?

12 A Norman M. Earhart.

13 Q What is your business address?

14 A R.D. 1, New Alexandria, PA.

15 Q You are the applicant?

16 A Yes, sir.

17 Q And you operate as Norman M. Earhart trading and
18 doing business as Earhart Trucking?

19 A I do.

20 Q This application was filed on or about November 1,
21 1985, is that correct?

22 A Yes, that's correct.

23 Q And it was published in the Pennsylvania Bulletin
24 on Saturday, November 30, 1985, is that correct?

25 A That's correct.

1 Q And you are seeking authority to transport one
2 item, namely, coal, is that correct?

3 A That's right.

4 Q And it is for one single shipper, namely, North
5 Cambria Fuel, Incorporated?

6 A That's correct.

7 Q And it's from its mines and tipples in the counties
8 of Cambria, Jefferson, Indiana and Clearfield to other points
9 in said counties, correct?

10 A That is right.

11 Q I show you what has been marked as Applicant's
12 Exhibit 1 for identification which is a certificate at
13 A-65936 Folder-3 and ask you if you obtained this by order
14 adopted November 26, 1974?

15 A That is correct.

16 Q Was this a transfer from an individual who sold it
17 to you?

18 A Yes, it's a transfer.

19 Q From a Mr. Taylor?

20 A That's correct.

21 Q Are you using the authority at the present time?

22 A Yes, I am.

23 Q What was your gross revenue in 1984?

24 A It was around \$940,000.00.

25 Q It was \$914,000.00 to be exact, is that correct?

1 A That's correct.

2 Q As reflected in your annual report?

3 A That's correct.

4 Q What about 1983?

5 A It was around \$880,000.00.

6 Q As I understand it, your accountant has gotten an
7 extension to file your 1985 report, but, approximately, what
8 would the revenue be?

9 A In the nine hundred thousands.

10 Q About \$900,000.00?

11 A Yes.

12 Q In your application, you indicated that you
13 operate 17 leased dump vehicles and you own four dump vehicles,
14 is that still the case?

15 A That's correct.

16 Q The four dump vehicles that you own, what are they,
17 tractors, trailers or straight trucks?

18 A There are two straight triaxle dump trucks and
19 two tractor and trailer dumps.

20 Q So there are four units in which cargo can be
21 transported, is that correct?

22 A Yes.

23 Q Do you own those in your individual name?

24 A Yes.

25 Q Where are they garaged and repaired?

1 A R.D. 1, New Alexandria, PA.

2 Q Will you describe your terminal facilities there?

3 A Well, we have a steel building there to do our
4 maintenance in. It is about 40 by 100 feet.

5 We have the necessary tools, air compressor and
6 for any major jobs Mack Watt Sales is in New Alexandria and
7 we send our trucks to them. They do all of the heavy
8 maintenance work. They are neighbors of ours.

9 Q How often do you check the vehicles for the tires,
10 brake lights, air hoses and so on?

11 A They are checked everyday.

12 Q With regard to your vehicles, both owned and leased,
13 do you have a safety program for the repair and maintenance
14 of these trucks?

15 A Yes. We have a program whereby they are supposed
16 to be checked, that is, the tires, the air leaks and the lights
17 and the travel on the slack adjusters and that is everyday.

18 Q Everyday?

19 A Everyday.

20 Q Have you been involved in any serious, major or
21 fatal accidents?

22 A No, we haven't.

23 Q Does that go back to the year that you started in
24 1974?

25 A Yes, sir, it does.

1 Q Have you been accused by the P.U.C. or the I.C.C.
2 or D.O.T. or any other agency of any violations of the
3 safety regulations?

4 A No, we have not.

5 Q Have you been accused by the P.U.C. of any
6 violations of your operating rights?

7 A Yes, we have.

8 Q When was that?

9 A That was around in January.

10 Q What happened after that?

11 A We just stayed out of those territories.

12 Q After the Commission warned you--was that a warning?

13 A No. We were fined in two cases, one hundred dollars
14 each.

15 Q And you paid the fine?

16 A Yes.

17 Q Did the Commission terminate the proceedings after
18 that?

19 A Yes, they did. They sent us a receipt clearing
20 things.

21 JUDGE MEEHAN: Excuse me, Mr. Diskin, if I may
22 interrupt.

23 When you mentioned this occurrence in January,
24 was that January of 1986?

25 MR. EARHART: Yes, that would be January of 1986.

1 This year.

2 JUDGE MEEHAN: Thank you.

3 BY MR. DISKIN:

4 Q The rights that you have as shown in Exhibit 1,
5 are they the only P.U.C. rights that you have, all of your
6 rights are in this one document?

7 A That's right.

8 Q How long have you been serving North Cambria Fuel
9 Company?

10 A Since the rights were granted in 1974.

11 Q And of the 17 trucks that you lease and the four
12 that you own, what percentage of these vehicles are used in
13 the service for North Cambria Fuel?

14 A All of them are.

15 Q All of them?

16 A Yes, sir.

17 Q These 17 leased trucks, are they owned by 17 owner
18 operators or by whom?

19 A In most cases, by the owner operator. In all of the
20 cases, but one owner operator might have more than one truck.

21 Q And he employs the driver?

22 A Yes.

23 Q Are they permanently leased to you?

24 A Yes.

25 Q Do they serve any other trucker or any other firm?

1 A No, they don't. Not to my knowledge.

2 Q What has been your approximate monthly revenue from
3 North Cambria Fuel Company?

4 A I don't understand what you mean.

5 Q How much do they pay you a month, North Cambria
6 Fuel?

7 A It runs around \$70,000.00.

8 Q Now, that would be--

9 A Wait a minute. Yes, seventy-some thousand dollars.

10 Q So that would be over \$800,000.00 a year on a 12
11 month basis?

12 A Yes.

13 Q How often do you serve North Cambria now under
14 your present rights, daily, weekly or what?

15 A Daily.

16 Q How many days a week?

17 A Five to five and a half.

18 Q How many weeks a year?

19 A Practically every week.

20 Q Do you serve them on Saturdays, Sundays, holidays
21 or emergencies, night calls and things of that nature?

22 A Yes, we do.

23 Q Do you have any I.C.C. authority?

24 A No; we don't.

25 Q So all of your operations are under the P.U.C., is

1 that correct?

2 A That's correct.

3 Q Now, who selected the territory that you have applied
4 for, namely, these four counties?

5 A Well, Mr. Bloom and myself.

6 Q And that is B-L-O-O-M?

7 A Right.

8 Q And he is here in the hearing room?

9 A Yes, he is.

10 Q In other words, did you and he get together and
11 discuss the territory that you would seek to acquire and
12 decided on the four counties, Cambria, Jefferson, Indiana
13 and Clearfield?

14 A Yes, we did.

15 Q And all of the operations under this certificate,
16 will be devoted to that one shipper, is that correct?

17 A Yes.

18 Q You won't serve anybody else under these rights?

19 A No, sir.

20 Q Now, will it be necessary to add any additional
21 trucks, either company owned or leased, if this authority is
22 granted?

23 A It's possible if their coal output is increased,
24 yes.

25 Q Are you reading, willing and able to add more trucks

1 by purchasing them if necessary?

2 A Yes, sir.

3 Q Are there owner operators who are willing to lease
4 to you in your area?

5 A Yes, we have a list right now.

6 Q Would you tell the Judge what that entails, are
7 there people who call you for work?

8 A Yes. They call and we take the information so
9 that at the time that we might need a truck or have work for
10 additional trucks, we can contact them and get the trucks.

11 Q Are all of your leases executed in writing?

12 A Yes, they are.

13 Q Has that ever been questioned by the P.U.C.?

14 A No, sir. They have checked time and again. They
15 will take the lease and send it to Harrisburg and then give
16 us a receipt to carry in that truck. Then they will return
17 the lease to us after they have checked it out.

18 Q Have you ever been accused of any violations of the
19 leasing regulations?

20 A No, sir.

21 Q Well, how much additional revenue do you feel that
22 you will be earning under the present rate schedule if these
23 rights are granted?

24 A Well, at the present time it wouldn't be increased
25 too much, but in the future when they open up new fields in

1 these areas, we would be increasing. It may be 25 percent.

2 Q Now, as I understand it, you propose to transport
3 coal from the mines or tipples of this company in these
4 four counties, Cambria, Jefferson, Indiana and Clearfield
5 and you are going to haul it to other points in the same four
6 counties?

7 A That's correct.

8 Q Has the shipper described to you the destinations,
9 are they factories, rail heads, hospitals or what are they?

10 A At the present, it is all rail heads.

11 Q Would you describe what the shipper has asked you
12 to do?

13 A What do you mean?

14 Q Well, are you going to pick up the coal and take it
15 to a railroad yard and put it in a rail car?

16 A We will pick up the coal at the different strip
17 jobs to be transported to Blairsville and that is in Indiana
18 County and from there it's blended and put in rail cars.

19 Now and then we will haul from another tipple.
20 They will need a different coal down to the Blairsville job.

21 Q You are not limiting the rights strictly to a
22 destination in Blairsville, are you?

23 A No.

24 Q Are you holding yourself out to serve any other
25 point in these four counties?

1 A Yes.

2 Q Such as what?

3 A Well, it will be as we applied for, Clearfield.

4 Q Alright. What is in Clearfield County?

5 A Right now they have none in Clearfield.

6 Q What about in Indiana County as a destination?

7 A They have at least seven jobs or so.

8 Q I am talking about places where you are going to
9 haul to.

10 A Just the one. That would be the Blairsville
11 destination.

12 Q Didn't you indicate to me that you are going to
13 haul to Penelec in Indiana County?

14 MR. LAVELLE: Your Honor, I am going to object to
15 the leading question.

16 JUDGE MEEHAN: We will sustain that objection.

17 BY MR. DISKIN:

18 Q So that I don't lead you and tell you the answer
19 which is what Mr. LaVelle is talking about, can you tell us
20 what the points are that you are going to haul to and not
21 from but to?

22 A The points will be right in Blairsville.

23 Q Alright. Go ahead.

24 A Then there have been times that North Cambria has
25 supplied coal to Penelec. That is also in Indiana County

1 that we have a year or two ago hauled coal to Penelec for
2 North Cambria.

3 Q Any others?

4 A That's it.

5 Q Now, what would be the shortest haul in terms of
6 miles under these new rights?

7 A Probably 12 miles.

8 Q That is from where to where?

9 A That would be Westmoreland County to Indiana County.

10 Q And the longest haul in miles?

11 A Probably 50 miles.

12 Q That would be from where to where?

13 A That would be from up in Hamilton to Blairsville.

14 Q Where is Hamilton?

15 A That is in Jefferson County.

16 Q Would the other moves be somewhere in between the
17 12 and the 50 mile limits?

18 A Yes. Fifty miles would probably be the longest.

19 Q Will you continue to hold yourself out to serve
20 North Cambria or any other coal shipper under your present
21 authority?

22 A Yes.

23 Q In other words, you are not giving up these rights?

24 A No.

25 Q Under the present authority that you have, you can

1 haul from Indiana, Westmoreland, Armstrong and Allegheny,
2 that is to say, between points in those four counties with
3 a 35 miles point to point restriction, is that correct?

4 A That is correct.

5 Q Have you been utilizing these rights for North
6 Cambria Fuel?

7 A Yes, we have.

8 Q At the present time, you can serve Indiana County
9 plus Westmoreland County plus Armstrong and Allegheny?

10 A That is correct.

11 Q Have you transported for North Cambria between
12 points in these four counties?

13 A Yes, we have.

14 Q During the years since 1974, have the origin points
15 for North Cambria changed from time to time?

16 A Yes.

17 Q What causes a change?

18 A When a strip mine is finished out and they open
19 another strip mine in a close by area.

20 Q Now, will there be anything basically different
21 under the new rights from what you have been doing under the
22 old rights except for the change in the territory?

23 A That's all.

24 Q Will the characteristics of hauling be the same,
25 will you use either a triaxle dump truck or a dump trailer?

1 A It will be the same. There are times that dump
2 trailers cannot be used and that is why we go mostly with the
3 triaxle dumps.

4 Q What causes the problem?

5 A The weather conditions coming out of the strip
6 mine.

7 Q What is the problem?

8 A Well, a tractor trailer just cannot come out of
9 these steep grades when there is ice and snow.

10 Q So you have to use a what?

11 A We use a triaxle dump. That is what is favorable
12 to the shippers.

13 Q Do you strive to supply the shipper with the type
14 of equipment that he specifies that he needs?

15 A Yes, we do. It is mostly triaxles.

16 Q Now, since the bulk of your business is devoted to
17 North Cambria Fuel, do you make every effort to comply with
18 their requests for service?

19 A Yes, we do.

20 Q How frequently are you in touch with either Mr.
21 Bloom or somebody who works for him?

22 A Daily, several times a day.

23 Q And you are located where, physically? Your address
24 is R.D. 1, New Alexandria, Westmoreland County.

25 How far is that from the present location of the

1 shipper?

2 A Well, at the terminal, it would only be nine miles
3 from the terminal.

4 Q To where.

5 A From my place to their terminal. That is up at
6 their tipple where they load the trains.

7 Q Where is that tipple located?

8 A That is in Blairsville just across the Westmoreland
9 County line into Indiana.

10 Q How long does it take you to have a truck, either
11 a triaxle or a tractor trailer, move from your terminal to
12 their tipple?

13 A Fifteen minutes.

14 Q How many loads a day are you presently handling
15 under your existing rights for North Cambria?

16 A Probably, 120 loads.

17 Q In one truck, that is, either a tractor trailer or
18 a triaxle, how many trips a day can they make?

19 A They are making four to five trips a day depending
20 on the distance, but it averages out to about that.

21 Q And you indicated earlier in your testimony that
22 you anticipate that the increased business may be as much as
23 25 percent over and above what you are doing now?

24 A That is correct.

25 Q Will you be able to supply all of the vehicles

1 required if indeed there are extra trucks needed?

2 A Yes.

3 Q How many leased trucks could you put your hands on
4 today, for example, if you had to?

5 A There are five right at present.

6 Q Additional?

7 A Yes, sir.

8 Q Are they ready, willing and able to work for you?

9 A They are waiting right now.

10 Q Would five take care of the overflow that you would
11 have?

12 A It would at the present to start out with.

13 Q Then you don't feel that it is necessary to go out
14 and buy any trucks, is that correct?

15 A Not right at present.

16 Q These people that work for you, the 17 that you have
17 now and the five that you could get, have they been involved
18 in any accidents?

19 A Not to my knowledge.

20 Q Are their trucks triaxles, straight trucks, tractor
21 trailers or what?

22 A There are four triaxles and one trailer.

23 Q That you are going to hire?

24 A We could hire, yes.

25 Q And the 17 that you have now, are what?

1 A There are 17 triaxles and five tractors and trailers
2 combined.

3 Q You indicated earlier that you had 17 under lease,
4 is that correct?

5 A Under lease, yes.

6 Q And they are all triaxles?

7 A No. There are two tractor and trailers.

8 Q So there are 15 triaxles?

9 A Yes.

10 Q So you do have a variety of dump equipment to supply
11 the shipper?

12 A Yes, we do.

13 Q And you can get these five more, as I understand it,
14 immediately if you had the authority?

15 A That's correct.

16 Q Based on your discussions with Mr. Bloom, how long
17 do you anticipate that the need to serve these additional
18 four counties will continue into the future?

19 A Probably indefinitely.

20 Q In other words, there is no time limit on these?

21 A That's correct.

22 Q As far as you are concerned, at the present time,
23 are you in good standing with the P.U.C.?

24 A I think I am, sir.

25 Q Do you have insurance on file as required?

1 A Yes, I do.

2 Q And you filed your annual report, have you?

3 A Yes, sir.

4 Q As I understand it, your accountant got an extension
5 to file your 1985 report, is that correct?

6 A That's correct.

7 Q Have you paid all of your assessments to the
8 Commission?

9 A Yes, I have.

10 Q Are there presently any complaints outstanding
11 against you?

12 A Not that I know of.

13 Q Has any trucker other than the P.U.C., that is to
14 say, a private complainant, ever filed a complaint against
15 you?

16 A No, sir.

17 MR. DISKIN: Cross-examine.

18 CROSS-EXAMINATION

19 BY MR. LAVELLE:

20 Q Mr. Earhart, you mentioned that about two years ago
21 you performed some service for the Cambria Fuel Company going
22 to the Penelec Power plant?

23 A Yes.

24 Q In Indiana County?

25 A Yes.

1 Q What was the origin of that travel?

2 A The tipple in Blairsville.

3 Q So that would have been an origin in Indiana County
4 and a destination in the same county?

5 A Yes.

6 Q And you already have that authority?

7 A Yes.

8 Q You indicated then, the next question was, what
9 was the shortest haul that you would anticipate having and
10 you indicated that it would be about 12 miles from Westmore-
11 land County?

12 A Yes.

13 Q And you apparently referring to your present
14 authority?

15 A Yes.

16 Q Because Westmoreland County is not involved in this
17 application at all?

18 A No, it's not.

19 Q Can you tell me at the present time where the origin
20 points are of the traffic that you are handling for this
21 supporting shipper?

22 A Yes. In Westmoreland County we have Lycippus.

23 Q Are these going to be towns or company names?

24 A Towns. I think it might be better if we go by job
25 numbers. That would be job number 188. Then we have job

1 number 182. That is between Lycippus and Stahlstown.

2 Then there would be job number 214. That is by
3 Norvelt, the city of Norvelt, in Westmoreland County.

4 Then in Indiana County we have job number 197 and
5 it would be near Hesbon.

6 Then job 196 and that would be near Josephine.

7 MR. DISKIN: He asked you about all of your
8 counties. This should help you.

9 MR. EARHART: We just finished up in one place
10 down by our place. We don't have any in Armstrong right now.
11 That's about it. Those are the five big operations.

12 BY MR. LAVELLE:

13 Q I take it that there are none in Allegheny County
14 either, there are no origin points in Allegheny County
15 either?

16 A No.

17 Q You said that you are handling perhaps 120 truck-
18 loads a day on an average for the shipper?

19 A That's correct.

20 Q So the bulk of that traffic comes out of any one
21 of these five, is there any one that is very heavy?

22 A Well, the number 182 job would be quite heavy.
23 182 and 166 is heavy.

24 Q So the first two that you mentioned are the heavy
25 ones in Westmoreland County?

1 A Right. We also have job number--well, they are all
2 pretty heavy, all of these jobs.

3 Q Heavy in the sense that--the traffic is equally
4 divided among the five origin points?

5 A Pretty close. It is because of the blending of
6 the coal that they take from these jobs. They will shut it
7 down and ship us during the day to another job to keep the
8 blend right.

9 Q And the only destination of this coal, regardless
10 of which mine it is coming from, is the Blairsville tipple
11 which is at a rail head?

12 A Yes. At the present time, yes.

13 Q The equipment that you are currently leasing, I
14 think you said they are under written leases?

15 A Yes, sir, written leases.

16 Q What is the--strike that. How long have these people
17 been with you?

18 Do you pick them up on a month to month basis?

19 A No. The old drivers have been there a year after
20 I started.

21 Q Most of them are all--

22 A Eleven years.

23 Q So most of them are long time employees?

24 A Yes, sir.

25 Q And the five that you say, the five additional

1 owner operators that are available, that is as of today,
2 they could go out and find some other employment with some
3 other trucking company tomorrow, couldn't they?

4 A They could, that's correct. But we still have them
5 waiting.

6 Q Based on our earlier discussions here, would it be
7 fair to say that approximately 40 percent or so of your
8 current monthly revenue is coming from shipments that you
9 handle at the two Indiana County points?

10 A Eighty percent of it.

11 Q Eighty percent of it?

12 A Yes.

13 Q Well, let me make this clear. You indicated that
14 your monthly revenue averages about \$70,000.00 for this
15 supporting shipper, correct?

16 A Yes.

17 Q And you're saying that of that, 80 percent of the
18 revenue comes from the shipments originated at Hesbon and
19 Josephine in Indiana County?

20 A Yes, that's correct. The other five in Westmoreland
21 County, or three, three in Westmoreland County.

22 Q So only 20 percent of your revenue comes from
23 shipments that originate at the three Westmoreland County
24 points?

25 A No, that's not right.

1 Q Then you tell me what is right.

2 A I would say that there is probably 60 percent from
3 Westmoreland and 40 percent from Indiana.

4 Q What happened to the 80 percent?

5 A Well, we would have to take that out of there
6 because we do some stone hauling in Westmoreland County.

7 Q I wasn't talking about anything else that you might
8 be doing. I was using the revenue that you get from Cambria
9 Fuel on a monthly basis and that was \$70,000.00.

10 I am asking you how much of that is generated by
11 shipments from Hesbon and Josephine and you are saying that
12 that is about 40 percent?

13 A I would say 40 percent of that is from Indiana
14 County and 60 percent is from Westmoreland County of the
15 \$70,000.00.

16 Q Alright. That would square with your earlier
17 testimony then about--that your tonnage is equally divided
18 among the five origin points.

19 A Yes, it is.

20 Q You indicated that there was a complaint against
21 the company that goes back to January of 1986?

22 A The complaint was settled then. We didn't get
23 around to--they didn't get around to billing us or deciding
24 what the fine was until this year, but the complaint was
25 back in 1985.

1 Q Did the complaint involve two instances?

2 A Yes.

3 Q Did that involve transportation performed for
4 Cambria Fuel?

5 A Yes, sir.

6 Q Can you tell me what the territory was, origin
7 and destination, that was involved?

8 A It would have been Cambria County.

9 Q The origins were in Cambria County and you moved
10 them into Blairsville?

11 A Right.

12 MR. LAVELLE: I have no further questions of Mr.
13 Earhart.

14 JUDGE MEEHAN: Any redirect, Mr. Diskin?

15 MR. DISKIN: Nothing, Your Honor.

16 JUDGE MEEHAN: Mr. Earhart, you are excused as a
17 witness.

18 MR. DISKIN: May I offer Exhibit 1?

19 JUDGE MEEHAN: Any objections?

20 MR. LAVELLE: No objection.

21 JUDGE MEEHAN: Applicant's Exhibit 1 will be
22 admitted.

23 MR. DISKIN: Are you ready for the next witness?

24 JUDGE MEEHAN: Certainly.

25 MR. DISKIN: I would call Mr. Bloom.

1 GIRARD BLOOM, called as a witness, being duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. DISKIN:

5 Q Would you state your name and spell it for the
6 record so that we have it right?

7 A Girard Bloom. G-I-R-A-R-D B-L-O-O-M.

8 Q What is your business address?

9 A 936 Philadelphia Street, Indiana, PA.

10 Q By whom are you employed?

11 A North Cambria Fuel, Inc.

12 Q What is your title?

13 A Vice President of Quality Control.

14 Q Are you authorized to testify in this proceeding?

15 A I am.

16 Q Are you the person in the company who has to do with
17 the selection of the carriers that you use?

18 A Yes, sir.

19 Q Are you supporting this application?

20 A Yes, sir.

21 Q Did you have a hand in formulating the language that
22 was used to describe the operating rights that we are applying
23 for?

24 A Yes, sir.

25 Q Now, would you describe the company called North

1 Cambria Fuel, what is it?

2 A It's a coal surface mining company.

3 Q It's a corporation?

4 A Yes, sir.

5 Q Where is the headquarters?

6 A Well, the headquarters for shipping is at I-22,
7 Blairsville.

8 Q And the headquarters for the office?

9 A That's at 936 Philadelphia Street, Indiana, PA.

10 Q Would it be revealing trade secrets if you told the
11 Commission your approximate gross revenue in a year?

12 A Yes, it would be.

13 Q Is it substantial?

14 A Yes.

15 Q Does your company operate openly and advertise so
16 that anybody who is interested in the transportation of coal,
17 for coal shippers, would find out who you are and where you
18 are?

19 A Yes.

20 Q How do you obtain your business?

21 A I don't understand that.

22 Q How do you sell your coal, to whom do you sell it
23 and how do you go about making contacts to sell it?

24 A Well, we have a broker. We are under contract with
25 P.P. & L. We have been.

1 JUDGE MEEHAN: Excuse me. When you say P.P. & L.,
2 what do you mean?

3 MR. BLOOM: Pennsylvania Power & Light.

4 BY MR. DISKIN:

5 Q Now, P.P. & L. and I don't want to put words in
6 your mouth, is that a big public utility that sells electricity?

7 A Yes, sir.

8 Q Where are they located?

9 A Allentown.

10 Q Pennsylvania?

11 A Yes.

12 Q Do you have any contracts with any other consumer
13 of coal?

14 A No, sir.

15 Q Is that your primary customer?

16 A Yes, sir, at the present time.

17 Q Have you had other customers over the years?

18 A Yes, we have.

19 Q How long have you been using the service, the
20 trucking, of Mr. Earhart?

21 A Since 1974.

22 Q How long have you been in business in general?

23 A Since 1953.

24 Q Now, again, I don't want to put words in your mouth,
25 but you will have to supply the information.

1 Do you have your broker go out and find large
2 customers of coal with whom you make a contract to sell?

3 A Yes.

4 Q Is that generally the nature of your business?

5 A That is not my nature. All I am is Quality Control.
6 I have nothing to do with the selling.

7 Q But somebody else in the company does?

8 A Yes.

9 Q How big is your company from the standpoint of
10 personnel, how many people do you employ?

11 A Approximately, 350.

12 Q Can you break those down by types of employees?

13 A Well, in the mining fields, probably 300. In
14 engineering, management capacity, probably 50.

15 Q Fifty in the white collar work and 300 in the actual
16 mining operations?

17 A Yes.

18 Q You selected the counties of Cambria, Jefferson,
19 Indiana and Clearfield for the applicants who applied for,
20 is that correct?

21 A Yes.

22 Q Would you describe what facilities, either mines or
23 stripping operations or whatever, are located in those four
24 counties?

25 A Well, in Clearfield County we have Sheriff's Pride

1 which is a loading facility. That is near Glen Campbell.

2 We have one job site in Mahaffery (phonetic).

3 We have one job site in Hastings.

4 In Cambria County we have--well, scratch that.

5 Hastings is in Cambria County and Johnstown is in Cambria
6 County. That is a holding facility.

7 In Indiana County we have jobs in Hesbon which
8 would be three at the present time.

9 In Westmoreland County we have one in Ligonier,
10 Stahlstown and Lycippus.

11 Q In Jefferson County?

12 A We have one in Jefferson County, Hamilton.

13 Q Now, when you give us numbers of these points, what
14 are you talking about, is that a strip mine, a deep mine or
15 a tipple or what are they?

16 A They are all surface mines right now except the one
17 in Clearfield County at Sheriff's Pride. That is a loading
18 dock.

19 Indiana County, I-22, is a main loading facility.

20 Q Now, you indicated to me in our discussions that
21 there is a blending process that you are involved in. Would
22 you explain for the record what is involved in that?

23 A Well, it's a certain blend that you have to meet
24 for the power plant of your sulphurs, your ashes and your
25 B.T.U.'s and it takes a certain amount of different coals from

1 different job sites to come up with the right blend for the
2 finished product.

3 Q Who performs the blending work?

4 A That is my job.

5 Q How many different places are there where this
6 blending is performed?

7 A Actually, at two different tipplers, but right now
8 I am responsible for Indiana-22. That is what we are concerned
9 about.

10 Q Could you briefly describe without taking too much
11 time what actually happens in this blending procedure?

12 A Well, I take coal from four or five different jobs
13 and bring it in truck by truck to try and balance truckload
14 for truckload to dump into a rotary braker which goes out on
15 the stacker belt which is the blend product which is loaded
16 onto the railroad cars.

17 Q Why do you have to blend the coal in the first
18 place?

19 A To make the specifications for the power plants,
20 the right quality.

21 Q Does P.P. & L. negotiate with you to acquire from
22 you a coal of a certain type and certain blend with this
23 sulphur and B.T.U. content, etc., taken into account?

24 A Yes, sir.

25 Q What happens if you miss something or if you don't

1 blend it properly or fail to do something?

2 A Well, you are either penalized or you just aren't
3 anymore.

4 Q Do you mean that you are cut out from any further
5 contracts?

6 A Right.

7 Q Now, what does all of this have to do with the
8 service of the trucker, Mr. Earhart?

9 A Well, he is a close trucker and the time is very
10 important, he is right on top of everything. We are in radio
11 communications and I can switch him four times a day from
12 job to job to make a certain blend.

13 Q Is that important?

14 A That is important because we are on a time schedule
15 with loading our unit trains.

16 Q Let's go into that. What is a unit train?

17 A That is a train consisting of ten thousand tons
18 which is 100 cars plus.

19 We are on a schedule, a time schedule, with Conrail
20 and the power plant to load it when it comes in.

21 Q How far is it from this Blairsville railroad head
22 to P.P. & L. in Allentown?

23 A Well, the train goes to Harrisburg which is an
24 eight hour rail trip.

25 Q How does it get from Harrisburg to Allentown?

1 A Well, Allentown is just the main office for
2 Pennsylvania Power & Light. The power plants that we supply,
3 of which they have several, is at Brunner (phonetic) Island
4 which is in Harrisburg.

5 Q So actually the move is between the Blairsville
6 rail head and Harrisburg?

7 A Yes.

8 Q How many trains a day, week or a month are you
9 concerned with?

10 A We are talking about five to six a month.

11 Q Would you describe what the time factor is in
12 terms of Mr. Earhart or any other trucker that you might use?

13 A Well, I am talking within hours because of inclement
14 weather, inclement stripping conditions. Everything is a
15 factor. In this business, there is nothing for sure. It is
16 not off a stockpile. It is right out of the solid and whenever
17 we get it uncovered and it is the right specification of coal,
18 it has to be moved and not in a day or two days, but right
19 now.

20 Q When you use the term surface mine, are you and I
21 talking about the same thing, namely, a strip mine?

22 A Yes.

23 Q On the average, how long does a strip mine last
24 before it is depleted?

25 A Well, it takes a lot of things into consideration,

1 the cover and the acres that we have. We have some that have
2 lasted three months and some have lasted ten years. I would
3 say two years is about an average anymore for us.

4 Q Does that influence the fact that he has applied
5 for broad rights in four complete counties?

6 A Yes, because we have other leases in different
7 counties.

8 Q In other words, if a strip mine is depleted in a
9 matter of months in, for example, Cambria County, his rights
10 are not going to be limited to that specific mine, but do
11 you want him to have rights to pick up at any other mine that
12 you might open in Cambria County?

13 A Yes.

14 Q Does that apply to these other three counties?

15 A Yes.

16 Q Do you have at the present time in these four
17 counties, either active mines or leases where you are going
18 to actually start mining coal?

19 A Yes. We have active mines in most of them. In
20 fact, in all of them right now.

21 Q So that technically, could you start to use his
22 service today?

23 A Yes.

24 Q After these active mines are depleted, are there
25 leases that you have or arrangements to open other mines?

1 A Yes.

2 Q Approximately, how many do you have that you could
3 open if the others are depleted?

4 A That information is not really available to me.
5 That is in the Engineering Department.

6 Q Do you know as a fact that there are leases in these
7 four counties?

8 A Yes.

9 Q But you haven't actually started to mine them yet?

10 A Right.

11 Q Now, Mr. Earhart testified that he does about
12 \$70,000.00 a month for your company. Does that ring a bell?

13 A Yes.

14 Q Is that about the number that you have in mind?

15 A Between 70,000 and 80,000, I would say.

16 Q How long has this been going on?

17 A Since 1974.

18 Q How has the service been?

19 A Terrific.

20 Q The obvious question is, why don't you operate your
21 own trucks?

22 A It's not feasible.

23 Q Why not? Did you at one time?

24 A At one time we had a couple and we didn't have a
25 P.U.C. for one thing and we didn't want to get involved in it.

1 We had too much trouble with our men just sitting
2 around and waiting until all the contracts, the truckers,
3 got loaded and it was just too much of a hassle to get into.

4 Q Do you use other truckers in addition to Mr.
5 Earhart?

6 A I do.

7 Q Can you name some of them?

8 A Loughry.

9 Q Is he one of the protestants who withdrew?

10 A Yes, sir.

11 Q Who else?

12 A Ritchey Trucking, Inc.

13 Q Is he one of the protestants who withdrew?

14 A Yes.

15 Q Do you give them anywhere near the volume that you
16 give Mr. Earhart?

17 A Not at present.

18 Q Did you ever use the services of this gentleman who
19 is protesting today, Bulk Transportation Services, I believe
20 is the name of the firm?

21 A I have never used Bulk, no. Whether it has any
22 bearing on Merlo, because Merlo Trucking, I have used Merlo
23 Trucking and it must have been seven or eight years ago.

24 Q Well, as I understand it, and, of course, Mr.
25 LaVelle is here to cross-examine you, but Merlo is Bulk

1 Transportation, they formed a corporation, correct?

2 A Yes.

3 Q When was the last time that you used Merlo or Bulk
4 Transportation?

5 A To the best of my knowledge, it was in 1974 or '75.

6 Q In the intervening years, have they solicited your
7 business?

8 A Not until April 4 of this year, to my knowledge.

9 Q This application appeared in the Pennsylvania
10 Bulletin on November 30, 1985. I am showing you the notice.

11 During the months of December, January, February
12 or March, were you contacted by either Merlo or Bulk or anybody
13 connected with those firms?

14 A Not to my knowledge.

15 Q Can you tell us what happened on April 4?

16 A I was contacted by Bulk Haulers if I had any work,
17 any return work, to haul into the power plant and if I had
18 any return work back to whatever destination. There wasn't
19 any destination really specified because I didn't have any
20 haul back. They were just inquiring.

21 Q Well, the name of the firm is not Bulk Haulers,
22 the name of the firm is Bulk Transportation Services, Inc.
23 Is that the company that called you?

24 A Right. Well, if Mr. Merlo is the head of it, yes.

25 Q Who was the person who called you?

1 . A His name was John.

2 Q John who?

3 MAN AT OTHER COUNSEL TABLE: I called you. My name
4 is Rorabaugh and I called you.

5 BY MR. DISKIN:

6 Q So we can stipulate that the gentleman sitting
7 here in the hearing room contacted you on when, Friday?

8 A It was Friday afternoon and I came into the tipple
9 and there was a message to call John at Merlo and there was
10 a number there to call.

11 Q Did you?

12 A Yes, sir.

13 Q What was the nature of the conversation?

14 A They had some coal to be hauled into Indiana
15 County and they were looking for a return load and if we had
16 any return, to pick up a load, to take back.

17 Q From where to where?

18 A Well, it would have been from our tipple or any job
19 that would have been close to the power plant.

20 Q In other words, it was a solicitation for work?

21 A Yes.

22 Q And it wasn't until Friday, April 4, that they
23 contacted you?

24 A Right.

25 Q And the last time that you had ever used them was

1 when?

2 A . 1974 or '75.

3 Q And since 1974 or '75, had this gentleman or anybody
4 else, to your knowledge, in that company, solicited your
5 business?

6 A Not to my knowledge.

7 Q Now, do you want to drop your support of Mr. Earhart
8 and turn the traffic over to this gentleman?

9 A No.

10 Q How much revenue have you given either Merlo or
11 Bulk Transportation Services since 1975?

12 A None.

13 Q None?

14 A None to my knowledge.

15 Q As far as you are concerned, would the granting of
16 this application have any effect, detrimentally, on Bulk
17 Transportation Services?

18 A No.

19 Q Did they come to you and give you a list of the
20 points that they can legally serve and the trucks that they
21 have and the rates that they have or any other useful informa-
22 tion upon which you could make a decision?

23 A No.

24 Q Do you of your own knowledge right now know whether
25 they can serve this territory?

1 A No.

2 Q Do you know how many trucks they have?

3 A No.

4 Q Do you know what they charge?

5 A No.

6 Q Did you ever receive what is known in the business
7 as a point card, which is a list of territories that a trucker
8 can legally serve?

9 A No.

10 Q Did you ever receive a tariff which is a list of
11 rates that they charge?

12 A No.

13 Q Did you ever receive what is known as an equipment
14 list showing the trucks that they have available to use for
15 you?

16 A No.

17 Q As I understand it, you do use Loughry and Ritchey,
18 is that correct?

19 A Yes.

20 Q You are still supporting this applicant though?

21 A Yes.

22 Q Now, in terms of the territory, is it your desire
23 that the rights be granted as applied for, namely, between
24 points in all four counties?

25 A Yes.

1 Q Do you want the rights limited to the destination
2 at the Blairsville rail head only?

3 A No.

4 Q Why not?

5 A Because in the future we could be hauling to different
6 locations which mainly would be the power plants of Penelec.

7 Q Have you had any discussions with either your broker
8 or Penelec about future work for that company?

9 A Yes.

10 Q Where are their power plants?

11 A Homer City, New Florence and Keystone in Schlocta.
12 That would be the Keystone plant.

13 Q What counties are they in?

14 A Two are in Indiana and I believe Schlocta is in
15 Jefferson. It may be right on the line.

16 Q What county is Blairsville in?

17 A Indiana. Armstrong County. It's Armstrong County
18 and not Jefferson. Armstrong would be Schlocta.

19 Q So you are saying that Schlocta is in Armstrong
20 County?

21 A Right.

22 Q And Penelec is where?

23 A Two of the plants are in Indiana.

24 Q And Blairsville is also in Indiana?

25 A Yes.

1 Q Now, if this application is granted, will you use
2 the service between points in these four counties?

3 A Yes.

4 Q Do you have a need for that service?

5 A Yes.

6 Q Now, when you contact Earhart, are you the gentleman
7 who is in day to day touch with Mr. Earhart?

8 A Yes.

9 Q How much lead time or advance time do you give him
10 for pickups and deliveries?

11 A It varies from an hour to three or four hours.

12 Q Has he always performed within those time limits?

13 A Always.

14 Q Have you had any problems with him?

15 A No problems at all.

16 Q At the present time, do you know of any trucker who
17 could perform the same type of work, either under the old
18 rights that he now has or the new rights that he is applying
19 for?

20 A No.

21 Q He indicated that the additional potential gross
22 revenue would be maybe 25 percent over and above what he is
23 getting now. Does that meet with your understanding?

24 A Yes.

25 Q And that he uses both company owned and leased

1 trucks?

2 A Yes.

3 Q Do you have any problems with the fact that the
4 majority of the trucks are leased from owner operators?

5 A No, I don't.

6 Q How do they perform?

7 A Very well.

8 Q Can you predict today where you are going to open
9 a strip mine or a tipple or a blending plant in these four
10 counties, let's say six months or a year from now?

11 A No. Because there is so much paperwork to go
12 through and permits to get and the permit is what really ties
13 us up. It is really a hit and miss.

14 Q Is that why you wanted the applicant to get unlimited
15 rights inside the four counties?

16 A Yes.

17 Q Is it your understanding that if he is doing about
18 \$70,000.00 a month now, the potential would be maybe around
19 \$90,000.00 gross under the old and the new rights?

20 A I would say yes.

21 Q Would that be a fair statement?

22 A That's fair.

23 Q Will there be any adverse effect on any trucker if
24 these rights are granted?

25 A Not that I can see.

1 Q Would you continue to use either Ritchey or Loughry
2 or anybody else to the extent that they serve you?

3 A Yes. I would use them as a standby.

4 Q If a trucker came to you and said, I have certain
5 rights, but I don't have all four counties that we are apply-
6 ing for, would you want to use him?

7 A No.

8 Q Is it your desire that the applicant be 100 percent
9 legal with the P.U.C.?

10 A Yes.

11 Q And is that what you are doing here today?

12 A That's what we are here for today.

13 MR. DISKIN: Cross-examine.

14 JUDGE MEEHAN: Excuse me, Mr. LaVelle. Let's take
15 a five minute recess.

16 (The hearing recessed at 11:10 and the hearing
17 resumed at 11:20.)

18 JUDGE MEEHAN: Alright, Mr. LaVelle, you may proceed.

19 CROSS-EXAMINATION

20 BY MR. LAVELLE:

21 Q Mr. Bloom, you mentioned that you have a broker that
22 works for the company. Does that broker deal solely with
23 obtaining customers for the coal?

24 A Yes.

25 Q You don't have any operations that would be the type

1 where a broker goes out and finds sources of coal and then
2 buys the coal from an independent coal miner which you then
3 take title to and ship?

4 A No. That is really--in a sensible way, that was
5 my job when I couldn't meet the demand of supply. I used to
6 do the buying if there was coal to be bought, but we mine all
7 of ours right now.

8 Q You don't have any operations that would be what
9 I just described where you would get it from some mine that
10 is not your own facility?

11 A Yes, definitely.

12 Q You do?

13 A If I understand this question right, if I buy coal
14 off of Joe Smith, I will send a truck there to pick it up
15 and bring it to my operation.

16 Is that what you are getting at?

17 Q Right. You do that kind of an operation?

18 A Yes.

19 Q Does the applicant participate in that today?

20 A Yes.

21 Q Would it be your intention that he would do so in
22 the future if this application is granted?

23 A Yes.

24 Q The application, at least as was published in the
25 Pennsylvania Bulletin, reads, coal for North Cambria Fuel,

1 Inc. from its mines and tipples, in the counties of Cambria,
2 Jefferson, Indiana and Clearfield and I understood that to
3 mean that the mines and tipples, which would be the origin
4 points of the transportation, would be mines and tipples
5 owned or leased by North Cambria Fuel, Inc.?

6 A Well, I'll tell you what. The mines that I am
7 talking about are leased property to individual shippers.

8 Q As an example, Hesbon, for example, is in Indiana
9 County and that one is presently being served. Is that a
10 mine or a tipple?

11 A Hesbon?

12 Q Yes.

13 A Yes.

14 Q Is that one that is owned and leased directly by
15 North Cambria Fuel?

16 A It is owned by North Cambria.

17 Q That one is owned?

18 A Yes.

19 Q How about the facility or the location at Hamilton
20 in Jefferson County?

21 A That is owned.

22 Q By your company?

23 A Yes.

24 Q You mentioned Hastings in Cambria County?

25 A That is company owned.

1 Q And you mentioned Johnstown?

2 A That is company owned.

3 Q Mahaffery in Clearfield County?

4 A That is our own.

5 Q And Sheriff's Pride or Glen Campbell?

6 A It is Sheriff's Pride. That is company owned now.

7 It wasn't but it is now.

8 Q So in each of those instances then, the points that
9 you mentioned is a mine or tipple of North Cambria Fuel?

10 A At the present time, yes.

11 Q The ones that are independently owned at the present
12 time, I take it, would be the ones that were mentioned in
13 Westmoreland County?

14 A Those are all company owned.

15 Q They are all company owned?

16 A The only one which really would have been--it would
17 have been the Sheriff's Pride operation which was previously
18 owned by P.P. & L. which we have taken over within the last
19 few months.

20 MR. LAVELLE: May I ask Mr. Diskin a question about
21 the intentions of this, Your Honor?

22 JUDGE MEEHAN: Let's ask it off the record and then
23 we can go back on the record.

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

25 JUDGE MEEHAN: There has been a brief off-the-record

1 discussion concerning the interpretation of the application
2 as published in the Pennsylvania Bulletin as to the meaning
3 of transporting coal for North Cambria Fuel, Inc. from its
4 mines and tipples.

5 The discussion indicates that the interpretation of
6 the phrase from its mines and tipples is intended to mean
7 mines and tipples either owned by the shipper directly or
8 operated by the shipper under lease arrangements.

9 MR. DISKIN: I think that is a fair analysis, Your
10 Honor. That was our intention.

11 We did not intend to apply for the right to go
12 to a stranger's place of business and pick up. This was
13 designed to be limited to the pickups at the facilities
14 operated by North Cambria Fuel, Inc.

15 JUDGE MEEHAN: Alright. Mr. LaVelle.

16 BY MR. LAVELLE:

17 Q Let's go to the facility at Sheriff's Pride or
18 Glen Campbell which according to the map that I have would
19 be in the extreme southwestern corner of Clearfield County,
20 correct?

21 A Right.

22 Q I think you said that there was a loading dock
23 there?

24 A Yes.

25 Q Would you explain the nature of that facility and

1 what that loading dock is?

2 A The loading dock, they have a rotary braker there
3 and a crusher. They process the coal and they push it all
4 into the underground conveyer belt which is loaded onto the
5 railroad cars.

6 It's a blending place the same as Indiana-22.

7 Q Are you operating today any of these unit trains
8 out of that point?

9 A No. Out of Sheriff's Pride?

10 Q Yes.

11 A No.

12 Q All of the coal is being mined there today is being
13 trucked down to Blairsville?

14 A No. It's the same facility as the I-22 facility.
15 It is all trucked in there and blended from different jobs
16 in that area.

17 We operate--the company operates it, I don't.

18 Q Let me ask you this. When you say I-22, what are
19 you referring to?

20 A Indiana-22, Blairsville. That is the I.D. number.

21 Q I-22 refers to your tiple and rail siding at
22 Blairsville?

23 A Yes.

24 Q And you said that there is another similar type
25 facility at Sheriff's Pride in Clearfield County?

1 A Right.

2 Q But it is not presently being used for purposes of
3 loading rail cars?

4 A Yes, it is.

5 Q I understood you to say that it was not.

6 A No, it is.

7 Q It is?

8 A They are not loading the train today, but it runs.

9 Q If I say today in any of my questions, unless I
10 specifically say this day, April 9, I mean currently.

11 A Currently, it is running.

12 Q Is that also loading for the same customer?

13 A Yes.

14 Q What motor carriers are hauling the coal inbound
15 to that facility today?

16 A D & G from Tyrone.

17 Q How long have they been doing that?

18 A Since the existence of that operation started.

19 Truthfully, I couldn't tell you.

20 Q Does it go back more than 12 months?

21 A Definitely, yes. Like I said, that operation was
22 just taken over in the first of the year by our company.

23 They buy a lot of outside coal. So there are a lot
24 of different suppliers.

25 Q Sheriff's Pride then, is that the location of a mine

1 facility?

2 A It is just a loading facility.

3 Q So that is not really an origin point of the trucked
4 coal, it is a destination?

5 A It's a destination.

6 Q And that coal would come from what area?

7 A Mostly all from Clearfield. Mostly, it all comes
8 from Clearfield County and Jefferson County and Cambria.

9 Q Is there coal moving from Hastings in Cambria County
10 to Sheriff's Pride?

11 A Yes. It moves both ways.

12 Q What do you mean by that?

13 A It just depends of the demand of the quality. It
14 could be moved from Hastings to Sheriff's Pride or from
15 Hastings to Blairsville.

16 Q When you said both ways, you meant to the two
17 destinations and not to Sheriff's Pride or from Sheriff's
18 Pride back to Hastings, it is not a reverse?

19 A No, it's not reversed.

20 Q Does the Johnstown facility ship up to that point?

21 A It ships to Blairsville at the present time. It
22 could ship to Sheriff's Pride.

23 Q Do any of the Hesbon jobs in Indiana County ship
24 north into Sheriff's Pride?

25 A The bulk of it comes to Blairsville right now.

1 Q Is there any going to Sheriff's Pride?

2 A At the present time; no.

3 Q Has there ever been?

4 A Yes.

5 Q The job in Hamilton, is it operational now?

6 A Yes.

7 Q Does it ship to one or both?

8 A Both.

9 Q Mahaffery was the other point in Clearfield County,
10 that's a mine facility?

11 A Right. It ships to Sheriff's Pride and it can go
12 both ways.

13 Q Has the applicant here been transporting any of
14 this coal up to Sheriff's Pride?

15 A Well, that is Loughry and Ritchey who transport that.
16 Ninety-eight percent of it.

17 Q And the other two percent, is going by the applicant?

18 A Well, he or D & G. Mostly D & G.

19 Q I take it then that Ritchey is the main trucker--

20 A Ritchey and Loughry.

21 Q I am trying to get tied in with your percentage
22 there. Is 98 percent of the coal going into Sheriff's Pride
23 being handled by--

24 A Loughry and Ritchey. It is pretty well evened out.

25 Q Is the other two percent of the traffic that is going

1 into Sheriff's Pride, being handled by Earhart?

2 A Earhart doesn't haul any of it. D & G hauls it.

3 Q You mentioned the possibility of future movements
4 into the Penelec Power plant?

5 A Yes.

6 Q Is there a fixed date now for when that contract
7 is going to be entered into, when it will start?

8 A It is a month to month deal. It's a spot market
9 deal. It could be next month or it could be the next month.
10 It depends on the quality and the price. That is the way that
11 Penelec does business.

12 Q New Florence and Homer City, you testified that you
13 know are in Indiana County?

14 A Yes.

15 Q And Schlocta, according to the atlas that I have
16 here is shown as being in Indiana County as well, correct?

17 A It is right on the Armstrong border.

18 Q So if it is within Indiana County, it is presently
19 within the applicant's authority?

20 A Right.

21 Q If it is in Armstrong County, this application
22 wouldn't do any good because Armstrong County is not one of
23 the counties that he is requesting to serve?

24 A He has Armstrong County now.

25 Q Then, regardless of which county it is in, the

1 applicant already has that operation covered?

2 A Right.

3 Q If this application is approved, that in and of
4 itself will not generate any additional traffic, would it?

5 A It will generate a little extra traffic, maybe
6 for Mr. Earhart.

7 Q I mean for your company, you either have the business
8 or you don't have the business?

9 A Right now, no, but in the present I would say, yes.

10 Q Now, you testified that roughly, maybe, \$20,000.00
11 a month in additional revenue would be available to Mr.
12 Earhart if this application is approved?

13 A Yes.

14 Q What trucking company is going to lose \$20,000.00
15 worth of business in order for Mr. Earhart to pick it up?

16 A There isn't.

17 Q Where is the traffic going to come from?

18 A From our new mine sites when we get the permits and
19 applications to start them which we have a lot of leases in
20 Clearfield, Jefferson County and the other counties.

21 Q But none of those are operational?

22 A Not at the present time.

23 Q And you don't know when they will become operational?

24 A Not right offhand.

25 Q Do you recognize the name of Harry Carlinsey (phonetic)?

1 A Yes, I do.

2 Q Is he an employee of the company?

3 A Actually, he still is. He is on hospital leave
4 right now.

5 Q Was he employed and working towards the end of
6 1985 and the early part of 1986?

7 A No, he wasn't. He was employed until--his last
8 work day was Thanksgiving week, let's put it that way.

9 Q Do you know whether Mr. Carlinsey was contacted by
10 Bulk Transportation Services about a need for trucking services?

11 A To my knowledge, no. If he did--well, I feel that
12 I should be contacted and not just an employee.

13 Q What was his position?

14 A He was a Weigh Master at the Scale House.

15 Q Prior to filing this application, did you make any
16 efforts to determine whether there were other motor carriers
17 with the authority and the equipment and the capability of
18 providing service to you in this four county area?

19 A No. The reason why is that I think we have one
20 of the biggest companies in the area and if anybody was really
21 looking for work they should come and see us. That is the
22 way that I operate.

23 Q The companies that protested the application and
24 since have withdrawn, Loughry and Ritchey, to your knowledge,
25 they do have operating authority that would cover at least a

1 portion, if not all, of the territory that Mr. Earhart is
2 asking to serve, is that correct?

3 A To my knowledge, I have never questioned them.

4 Q But you assume that they do?

5 A Yes, I assume that they do.

6 Q If new mines were opened in Clearfield and the
7 Jefferson County areas, that you are talking about, they
8 might well have the authority to perform that service?

9 A Yes.

10 Q And since you have been using them, Loughry and
11 Ritchey particularly, there are carriers already in place
12 then for which you are familiar which perhaps could give you
13 the service that you need?

14 A Right.

15 MR. LAVELLE: I have no further questions of the
16 witness.

17 JUDGE MEEHAN: Mr. Diskin?

18 MR. DISKIN: I have a couple on redirect.

19 REDIRECT EXAMINATION

20 BY MR. DISKIN:

21 Q This Mr. Carlinsey, is that his name?

22 A Yes.

23 Q Is he still working for the company?

24 A He was going to retire, but he had open heart surgery
25 the day before. It just hit him. So he is still an employee.

1 He is still under the company's hospitalization and everything
2 else.

3 Q Is it anticipated by both you and him that he will
4 come back?

5 A No, he will not come back. He is going to retire.

6 Q Now, assuming that a contact was made by Bulk
7 Transportation to this Mr. Carlinsey, would he have jurisdic-
8 tion or control over the selection of the truckers to use?

9 A No.

10 Q Would that be part of his duties?

11 A No.

12 Q In other words, if I solicited Mr. Carlinsey and
13 say that I have a certificate and a truck and I want to do
14 your work, would he have authority to put me on as a trucker?

15 A No.

16 Q Who would?

17 A Just myself.

18 Q And you say that you did get a contact from somebody
19 in Bulk, this gentleman sitting here, whose name I understand
20 is Robert?

21 A Yes.

22 Q And not John?

23 A Well, it was my misunderstanding or the man at the
24 Scale House. There was a call that came in on Friday after-
25 noon to call John from Merlo Trucking.

1 Q That was the first contact in ten years?

2 A That's the first contact that I have had.

3 Q Now, Mr. LaVelle has asked you questions about why
4 you are bothering to support Mr. Earhart when obviously you
5 have some truckers such as Loughry or Ritchey or D & G or
6 anybody else that might do the work.

7 What is the explanation for your support of this
8 application?

9 A Well, Mr. Earhart has given me the right kind of
10 service since 1974 and at the present time I have to look
11 for nobody else.

12 My other job sites, which are very small, I have
13 two other such truckers, I think. I really don't need any-
14 body else at the present time and in the future Mr. Earhart
15 can expand his fleet, as far as I am concerned, if he has
16 the rights to do it.

17 Q Now, Mr. LaVelle also asked you on cross-examination
18 whether you would be taking business or work or money or
19 revenue away from any trucker that you are using at the
20 present time by cutting them out and giving the work to Mr.
21 Earhart.

22 What is your answer to that?

23 A No, I wouldn't be cutting them out of anything.
24 If we expand we will put more trucks on and Mr. Earhart can
25 expand. That is the way--that is just good business as far

1 as I am concerned.

2 Q Now, your company went into business in what year
3 in Pennsylvania?

4 A 1952, I believe. I haven't been there that long.

5 Q You went with the company in what year?

6 A 1954.

7 Q Has your company expanded since 1954?

8 A Yes, ten fold.

9 Q Ten fold?

10 A Yes, at least.

11 Q Without revealing trade secrets or revenue secrets,
12 is it your statement that since you have been with the company,
13 it has increased its business ten fold?

14 A Yes.

15 Q Is it your reasonable expectation that these leases
16 that you have as well as the properties that you own, will
17 be opened up for production and the shipping of coal?

18 A Yes.

19 Q You are not here just on speculation, are you?

20 A No.

21 Q And will there be transportation in the four counties
22 were are involved here?

23 A Yes.

24 Q Now, Mr. LaVelle asked Me. Earhart about destinations
25 and one of the questions had to do with Blairsville as the

1 only destination, is that correct?

2 A No. Blairsville is not the only one.

3 At the present time, the bulk of the traffic is
4 in there but it is subject to change at anytime.

5 Q Are there present movements that go to points other
6 than the rail head in Blairsville?

7 A Yes.

8 Q Can you give us some examples?

9 A Sheriff's Pride is our other loading facility right
10 now and it is subject to the quality of the coal.

11 Q What about Penelec?

12 A Penelec is subject to the market. It's a hit and
13 miss. We are not tied down to really the one utility, but--

14 Q Well, Penelec, is that a different corporation from
15 P.P. & L.?

16 A Yes.

17 Q They are two different companies?

18 A Yes.

19 Q Is it your desire that the applicant be limited
20 to serving as a destination only the rail head at Blairsville?

21 A No, sir.

22 Q Will there be work in the four counties other than
23 Blairsville?

24 A Yes.

25 Q In terms of what we are doing here today and this

1 protest, do you find it peculiar that on Friday, April 4,
2 1986, almost a couple of days before the hearing, that you
3 get a call from somebody at Bulk Transportation soliciting
4 your work?

5 MR. LAVELLE: Your Honor, I object to that
6 question, the way it is characterized there.

7 JUDGE MEEHAN: I don't think that his impressions
8 of the contact are necessarily relevant.

9 MR. DISKIN: Well, we will get his emotional feelings
10 out of it.

11 BY MR. DISKIN:

12 Q Did you ever get a call from this company prior to
13 that date?

14 A Not to my knowledge.

15 Q And you have been with the company since 1954?

16 A Well, since 1954 I have, but I was never in this
17 capacity. I have only been in the capacity of this job for
18 the last ten years.

19 Q Alright. Let's restrict your answers to the last
20 ten years. Did this Mr. Robert Rorabaugh or anybody else at
21 Merlo, an individual or some other officer of the corporation,
22 contact you?

23 A To my knowledge, no. I called them probably in
24 1974 and '75 for some trucking. Well, I should strike that.
25 They might have. It's been so far back that I can't really

1 remember.

2 MR. DISKIN: That's all that I have, Your Honor.

3 MR. LAVELLE: I have nothing further for this
4 witness, Your Honor.

5 MR. DISKIN: The applicant rests.

6 JUDGE MEEHAN: Mr. Bloom, you are excused as a
7 witness.

8 ROBERT RORABAUGH, called as a witness, being duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LAVELLE:

12 Q Would you give the reporter your name and business
13 address, please?

14 A Robert Rorabaugh. My business address is R.D. #1,
15 Box 88-A, Mineral Point, Pennsylvania.

16 Q By what company are you employed?

17 A Bulk Transportation.

18 Q How long have you been so employed?

19 A With Merlo and Bulk, I have been with the company
20 for 29 years in different capacities.

21 Q What is your present capacity?

22 A I am a dispatcher of the trucking and purchasing.

23 Q Are you familiar with the company's operating
24 authority?

25 A Yes.

1 Q And with the equipment that it operates?

2 A Yes.

3 Q Are you familiar with the type of service that it
4 holds itself out to offer?

5 A Yes.

6 Q I assume that you have been authorized to testify
7 today in this case?

8 A Yes. In the absence of Mr. Merlo who couldn't make
9 it, I am here in his place.

10 MR. LAVELLE: Your Honor, may we have marked at
11 this point the Public Utility Commission certificate issued
12 to Bulk Transportation?

13 JUDGE MEEHAN: That will be Protestant's Exhibit 1.

14 MR. LAVELLE: That is a one page map and I would
15 like to have that as Exhibit No. 2.

16 JUDGE MEEHAN: It will be so marked.

17 MR. LAVELLE: And the equipment list as Exhibit 3.

18 JUDGE MEEHAN: Alright. We will mark that as
19 No. 3.

20 BY MR. LAVELLE:

21 Q Mr. Rorabaugh, would you look at Exhibit No. 1,
22 the operating authority?

23 A Yes.

24 Q To the best of your knowledge, is this a complete
25 copy of the authority held by Bulk Transportation Services?

1 A Yes, it is.

2 Q The Lead Certificate which is the first two pages,
3 that authority was the original authority of Bulk Transporta-
4 tion, is that correct?

5 A That's correct.

6 Q Has the company recently acquired additional
7 authority from Charles J. Merlo, Inc.?

8 A That's correct.

9 Q Is that authority set forth in the third and fourth
10 pages of Exhibit 1?

11 A Yes, that's correct.

12 Q And according to that second certificate at Folder-1,
13 Amendment-A, the authority was transferred from Charles J.
14 Merlo, Inc. to Bulk Transportation in January of 1986, is
15 that correct?

16 A That's correct.

17 Q What is the relationship between those two companies,
18 Merlo and Bulk Transportation?

19 A Well, Charles J. Merlo is basically a construction
20 company now and Bulk Transportation is trucking.

21 Q Are the two companies commonly controlled in the
22 sense that they have common ownership?

23 A Yes.

24 Q Is that owned by the Merlo family?

25 A That's correct.

1 Q Both companies?

2 A Yes.

3 Q Prior to January, did Merlo operate as a Public
4 Utility Commission authorized carrier under that second
5 certificate?

6 A Yes.

7 Q And now all of the trucking operations are
8 consolidated into the one company known as Bulk Transporta-
9 tion?

10 A That's correct.

11 Q This application, as you have heard, involves the
12 transportation of coal in four counties, Cambria, Jefferson,
13 Indiana and Clearfield.

14 Does Bulk Transportation have authority to serve
15 some or all points in those counties?

16 A Yes, all counties in two of them and parts of
17 Jefferson and Clearfield.

18 MR. DISKIN: Excuse me. I can't hear you. What
19 did you say?

20 MR. RORABAUGH: I said that we have the authority
21 to operate in all points of Indiana and Cambria County and
22 portions of Jefferson and Clearfield.

23 BY MR. LAVELLE:

24 Q If you look at Exhibit 2, the map, there is a circle
25 on there and then there are some southwestern Pennsylvania

1 counties that are outlined.

2 First of all, what is the significance of the
3 counties that are outlined in black?

4 A Those are the original authorities of Bulk Transpor-
5 tation.

6 Q Exhibit 1, there is only one paragraph of authority.
7 Is that where that comes from?

8 A Yes.

9 Q That would indicate that there is authority under
10 that to operate in Cambria County, is that correct?

11 A That's correct.

12 Q Then the circle indicates what?

13 A The circle indicates the original authority of the
14 Merlo authority.

15 Q And by reference to the Folder-1, Amendment-A,
16 certificate, can you pinpoint which authority that would
17 depict?

18 A The circle would depict the Merlo authority.

19 Q I mean, any specific paragraph of it?

20 A Paragraph four.

21 Q Paragraph four on page two and that is coal between
22 points within 45 airline miles of the limits of Nanty Glo in
23 Cambria County, is that right?

24 A That's right.

25 Q And looking at the map then, it would appear that

1 all points in Cambria and Indiana Counties are within that
2 45 mile radius?

3 A Correct.

4 Q As well as the southern half of Jefferson County
5 and approximately half of Clearfield, is that correct?

6 A Correct.

7 Q Were you present in the hearing room when the
8 witness for the applicant and the shipper were describing
9 where the North Cambria Fuel facilities are located?

10 A Yes, sir.

11 Q Do you know geographically where those points are
12 located?

13 A Yes.

14 Q Do you know whether or not the loading dock at
15 Sheriff's Pride near Glen Campbell in Clearfield County is
16 within the operating authority of Bulk Transportation?

17 A Yes, well within.

18 Q How about Mahaffery in Clearfield County?

19 A Yes, it is.

20 Q Are Hastings and Johnstown in Cambria County within
21 the authority?

22 A Yes.

23 Q Are the Hesbon facilities or jobs in Indiana County
24 within the authority?

25 A Yes, sir.

1 Q And there was reference to a Hamilton job in
2 Jefferson County. Is that within the authority?

3 A Yes. That is in southern Jefferson County which
4 is covered.

5 Q Based on the testimony that the supporting shipper
6 gave, is Bulk Transportation able to pick up shipments of
7 coal at the various mines that were referred to and take
8 those shipments to either Sheriff's Pride or the Blairsville
9 facility?

10 A Yes, we are.

11 Q Would you likewise be able to pick up at any of
12 those facilities that were named and deliver to the Penelec
13 plants in New Florence, Schlocta and Homer City?

14 A Yes, we are.

15 Q Where is the company's main office located?

16 A R.D. 1, Mineral Point, Pennsylvania.

17 Q Can you tell us where that is in relationship to
18 some larger city?

19 A It is five miles north of Johnstown.

20 Q Does the company have any other facilities in
21 Pennsylvania?

22 A No.

23 Q Do you do all of the dispatching of the equipment
24 from that Mineral Point office?

25 A Yes.

1 Q Is that where all of the administrative functions
2 are carried on?

3 A That's correct.

4 Q Have you prepared for presentation here a list of
5 the equipment operated by your company?

6 A Yes.

7 Q Is that the document marked as Protestant's Exhibit
8 3?

9 A Yes.

10 Q You heard the testimony of both the applicant and
11 the shipper witness to the effect that dump trucks, triaxle
12 dump trucks, are primarily used in this operation.

13 Are the 95 dump trucks shown here triaxles?

14 A Yes, all but possibly six or seven tandems.

15 Q Is all of this equipment suitable for the transporta-
16 tions of coal?

17 A Yes.

18 Q And there is a statement below the equipment itself
19 that would indicate that all of the equipment is presently
20 leased by Bulk Transportation Services, is that right?

21 A That's correct.

22 Q Can you tell me how much of the equipment is owned
23 by Charles J. Merlo, Inc.?

24 A Of the 95 dump trucks, I have a list of 14.

25 Of the 38 tractors, I have seven and of the 33 dump

1 trailers, I have three that are owned by Merlo.

2 Q And the balance of it would be what is owned by
3 independent owner operators and leased to the company?

4 A Correct.

5 Q Have those owner operators been with the company
6 for some time?

7 A Yes. These have all been with us a good period of
8 time.

9 Q Apparently, it's the company's intention to purchase
10 the equipment of Merlo when the licensing period expires?

11 A That's correct.

12 Q Mr. Rorabaugh, how many days a week is service
13 available from Bulk Transportation?

14 A We are only using five days a week now, but if need
15 be, we could be available seven days.

16 Q Have you ever operated on a seven day a week basis?

17 A Yes, we have. Also, 24 hours a day.

18 Q You are working 24 hours or you have worked 24 hours?

19 A We have in the past.

20 Q Would that include then service on weekends,
21 holidays, after regular business hours?

22 A Whenever necessary.

23 Q How would a shipper go about contacting your
24 company for service?

25 A Just call our main office in Mineral Point.

1 Q What prior arrangements have to be made, in other
2 words, how far in advance of service must you receive a
3 call?

4 A Well, now we usually get calls in the evening for
5 the next morning.

6 We could--we have connections at another location
7 where we could radio contact trucks and be available in a
8 matter of hours or a short period of time.

9 Q When you say that you now get calls the night
10 before, is that a requirement by your company?

11 A Yes. People that we are doing business with now,
12 it works out very well.

13 Q If a company for some reason had shipments come
14 up during the course of a day that had to be covered, is
15 your company able to respond to those kinds of requests?

16 A Yes. We have one operations that we run into
17 that now and we can do it.

18 Q Are you able to divert trucks from one origin to
19 another origin if a shipper has such a requirement?

20 A Yes, we can.

21 Q Do you personally know whether there has been any
22 contacts made with North Cambria Fuel concerning the avail-
23 ability of traffic and the opportunity for Bulk Transportation
24 to handle it?

25 A The contact that I made--I thought it was towards

1 the end of December. I am not sure of the time period.

2 I called and asked for Mr. Bloom and he wasn't in.
3 I had a casual conversation with this Harry Carlinsey and I
4 asked him if they were busy and if there was any need for
5 trucking.

6 The second time was because we will be losing some
7 business shortly. It was April 4, I believe I talked to Mr.
8 Bloom and discussed any need for trucking including the fact
9 that we are available for backhauls if we start a power plant
10 haul. That has been it from my point.

11 Q Is the service that you might be able to make
12 available or would make available to the shipper, North
13 Cambria Fuel, limited geographically to any particular
14 origin or destination, or are you looking only for backhaul
15 traffic into a certain area?

16 A Any origin and any destination.

17 Q Would that include movements between any two points
18 in the Indiana, Cambria, Clearfield and Jefferson County
19 area that your company can serve?

20 A That's right.

21 Q You just mentioned here a minute ago that you
22 would be losing business. Would you explain what you mean
23 by that?

24 A Well, the first of the year, well, towards the end
25 of 1985, the word came out that Barnes & Tucker Mine #20 was

1 closing down.

2 At that time I was looking for extra work. They
3 transferred that business over to their Barnes & Tucker #24
4 Mine. We were doing a sizable amount of business with them
5 and now the word is out that Barnes & Tucker Mine #24
6 operation is going out of business.

7 So whatever period of time it takes them to close
8 their operation, then we will be finished there. There will
9 be a great reduction in the amount of our available work.

10 Q What is the time period that you have heard in
11 which that mine might be closed?

12 A Well, the company itself advertised that it will
13 be out of business in four to six months, but the general
14 feeling is that it will probably only be two or three months.

15 Q What kind of volume did that company represent
16 for you?

17 A Well, this month alone, the month of April, we are
18 doing 29,500 tons of business for Barnes & Tucker #24 opera-
19 tion.

20 Q And your information is that that will terminate
21 within four to six months at the outside?

22 A Even after this month, I believe it will be
23 reduced and it will terminate at the very outside in four to
24 six months.

25 Q Is your company experienced in providing multiple

1 trucks everyday to an individual company to service its needs?

2 A Yes.

3 Q Are you presently doing that with respect to Barnes
4 & Tucker?

5 A Yes.

6 Q Do you know how much equipment is now used on a
7 daily basis--well, let's go back to the last, say, six months
8 when you were serving both operations of Barnes & Tucker,
9 how many trucks you had on that particular job?

10 A That has taken--the Barnes & Tucker operation, if
11 I remember correctly, takes 20 or 25 trucks a day.

12 Q So when that operation shuts down, that much equip-
13 ment will be available?

14 A Unless other work arises, yes.

15 Q Is the type of traffic that you heard described
16 here today by the witness for North Cambria Fuel, the type
17 of traffic that your company would be interested in?

18 A Yes.

19 Q Are there in the ordinary course of your business
20 peaks and valleys in the availability of traffic from various
21 companies?

22 A Yes. It varies from time to time.

23 Q So that during those periods when there is a valley
24 in someone's business, is there equipment available that could
25 be used by other shippers such as North Cambria Fuel?

1 A Yes.

2 MR. LAVELLE: Your Honor, I have one further exhibit
3 that I would like to present at this time. It should be
4 marked as Exhibit 4.

5 JUDGE MEEHAN: Alright.

6 BY MR. LAVELLE:

7 Q Mr. Rorabaugh, let me direct your attention to
8 Protestant's Exhibit 4 and ask you preliminary questions.

9 Does any of the traffic shown on this exhibit--
10 strike that.

11 Did any of the traffic shown on this Exhibit 4 move
12 for the account of North Cambria Fuel?

13 A No.

14 Q It shows that the Barnes & Tucker #20 and 24 mines
15 and a couple of other companies that I assume are your
16 customers, Bethlehem Mine #33?

17 A Yes.

18 MR. DISKIN: Your Honor, I would like to have an
19 offer as to what this exhibit purports to do since it has
20 no relationship to this application.

21 MR. LAVELLE: Your Honor, the exhibit is not being
22 presented for purposes of trying to show a diversion of
23 traffic. We have the underlying documentation here to support
24 this.

25 The purpose of this is to indicate and substantiate

1 Mr. Rorabaugh's prior testimony to the fact that it is doing
2 substantial business for the two Barnes & Tucker operations,
3 Operations #20 and #24.

4 It shows that there are fluctuations in the monthly
5 business of the company which substantiates what he said
6 that there are peaks and valleys in the business which makes
7 equipment available and the underlying data which we have
8 here would indicate the handling of traffic which would be
9 20 or 30 shipments per day for the various accounts here
10 to account for this--to substantiate his testimony to the
11 effect that they are experienced in providing that type of
12 service, providing multiple pieces of equipment and handling
13 that many shipments per day for individual accounts.

14 MR. DISKIN: Well, I object to it, Your Honor.
15 I don't think it is relevant or germane.

16 First of all, I think the ultimate point is going
17 to be that Barnes & Tucker is going to stop using this
18 protestant as a trucker and therefore they would like to pick
19 up the additional traffic from North Cambria Fuel. I can't
20 blame them for that, but I don't see much of a point in
21 putting in an exhibit showing what they are doing for a
22 company that has nothing to do with this application which
23 we don't care anything about. We have no interest in Barnes
24 & Tucker either from a standpoint of the attorney for the
25 applicant or the applicant himself or the supporting shipper

1 and I think it is all irrelevant.

2 The fact that Barnes & Tucker may choose to go out
3 of business or may choose to stop using Bulk Transportation
4 and may choose to buy their own equipment is all irrelevant
5 to this case.

6 MR. LAVELLE: Your Honor, I have already explained
7 three reasons why we are putting this in. Mr. Diskin did
8 elude to a fourth reason and that is, like I said, to show
9 the extent of the tonnage and the revenue that will be lost
10 by Bulk Transportation from this and one of the points is
11 that there is an existing carrier, Bulk Transportation, which
12 has been authorized by this Commission to provide service
13 in this application area.

14 It is our opinion that it has a legitimate interest
15 to protect here and that the loss of that traffic and the
16 revenue will jeopardize its operation and position.

17 It therefore has a legitimate reason for coming in
18 here and objecting to the granting of this further application
19 to an applicant when there is presently and will be in the
20 very near future, substantial additional service available to
21 this supporting shipper.

22 That address is one of the issues in this case and
23 I think we are entitled to present evidence addressing that
24 issue.

25 MR. DISKIN: I think I am going to withdraw my

1 objection because it seems to me that what they are trying
2 to do now is say that we have been hauling for Barnes &
3 Tucker for a long time and we haven't been hauling for North
4 Cambria but now that we are on the verge of losing Barnes &
5 Tucker as a customer, we would like to have North Cambria
6 as a customer and if that is the position that they want to
7 take, fine. I withdraw my objection.

8 JUDGE MEEHAN: Proceed with your questions, Mr.
9 LaVelle.

10 BY MR. LAVELLE:

11 Q Looking at Exhibit 4 then, Mr. Rorabaugh, does this
12 reflect the level of business that you have performed from
13 September of 1985 through March of 1986 for the Barnes &
14 Tucker, Bethlehem Mine #33 and B.S.C.O.--

15 A That is Bethlehem Steel.

16 Q The Bethlehem Steel Company in Johnstown at those
17 accounts?

18 A Yes.

19 Q And you have shown the tonnage by month, the origin
20 and destination and the total tons handled for each of the
21 accounts and the revenue that each of those accounts generate
22 is that correct?

23 A That's correct.

24 Q You heard the applicant testify to the fact that
25 there were certain mines of North Cambria Fuel located in

1 Westmoreland County, correct?

2 A Yes.

3 Q Norvelt and Lycippus?

4 A Yes.

5 Q Those are within your territory of Westmoreland
6 County, is that correct?

7 A Yes.

8 Q Can you transport shipments of coal from those
9 facilities to the Blairsville location?

10 A Yes.

11 MR. LAVELLE: I have no further questions of the
12 witness.

13 CROSS-EXAMINATION

14 BY MR. DISKIN:

15 Q Mr. Rorabaugh, did I understand you to say that
16 you have been with this company 29 years?

17 A Yes. I started out as a driver and then I went
18 into management almost 11 years ago.

19 Q When you say this company, I am confused because
20 I don't know. What is the connection between Bulk Transporta-
21 tion Services and Merlo?

22 A Charles J. Merlo, Incorporated is the company that
23 I started to work for. They formed Bulk Transportation just
24 recently which I am over working for Bulk Transportation.

25 Q Is it the same family that owns the stock?

1 A Yes.

2 Q In effect, it's a change of name more than anything
3 else?

4 A That's right.

5 Q In other words, will Merlo as a business go out
6 of existence or will it remain?

7 MR. LAVELLE: Can I explain that?

8 MR. DISKIN: Sure.

9 MR. LAVELLE: Bulk Transportation Services is a
10 Pennsylvania Corporation formed back in late 1978 or early
11 1979.

12 It then purchased authority from a Ray Kalp. K-A-
13 L-P which was granted on May 7, 1979, the transfer application.
14 That authority is in the first two pages of Exhibit 1.

15 Charles J. Merlo, Inc., a Pennsylvania Corporation,
16 goes back for many years. I am not sure when it was incor-
17 porated. It held authority at several different orders. It
18 goes well back before the existence of Bulk Transportation
19 and for various business reasons it was decided in mid 1985
20 to--well, early 1985 to put all of the trucking operations
21 of these commonly owned companies into Bulk Transportation
22 and Charles J. Merlo, Inc. is handling now only construction
23 type work but not any actual motor carrier work.

24 So the transfer--there was temporary authority
25 granted and then the permanent transfer of the operating

1 authority was granted in January of 1986 and the order has
2 been complied with and all of the operating authority is
3 in Bulk Transportation Services.

4 MR. DISKIN: Am I correct that originally Bulk
5 Transportation as a corporation was formed by Mr. Merlo or
6 members of his family?

7 MR. LAVELLE: Yes. The two companies have always
8 been commonly controlled.

9 MR. DISKIN: And the only actual carrier operations,
10 will now be conducted by Bulk rather than by Merlo?

11 MR. LAVELLE: Right. From 1979 through--well,
12 the latter part of 1985, there were two companies that
13 conducted trucking operations and when the temporary authority
14 was granted in September of 1985 all of the trucking operations
15 went over to Bulk Transportation Services which is now the
16 only company that holds authority.

17 BY MR. DISKIN:

18 Q Well, getting back to your position, Mr. Rorabaugh,
19 are you an officer, stockholder or director of this company?

20 A No. I am a salaried employee.

21 Q You are a hired hand, is that right?

22 A That's correct.

23 Q But you have been with Mr. Merlo and the organiza-
24 tion for 29 years?

25 A Yes.

1 Q Were you there at a time when North Cambria Fuel
2 used the services of Merlo?

3 A Yes.

4 Q Do you remember anything about it?

5 A I vaguely remember that we transported some coal
6 for them.

7 Q Mr. Bloom testified that it was about 1974 or '75
8 when he stopped using your company. Does that jive with what
9 you remember?

10 A That sounds about right. I think it's a little
11 later than that because I started in the office in 1975,
12 September of 1975. I think we did their work just shortly
13 thereafter.

14 Q What did you do after the work terminated?

15 Did you personally have anything to do with
16 soliciting coal shippers?

17 A Yes. We got into the Barnes & Tucker area.

18 Q Well, did you personally go to Mr. Bloom or somebody
19 in his outfit and say, how about giving us some trucking
20 business?

21 A I may have called him from time to time.

22 Q But you don't remember?

23 A No, I don't.

24 Q Actually, the first real solicitation that you made,
25 as I understand it, was back around Thanksgiving time or in

1 December when you called Mr. Bloom and he wasn't in and you
2 say that you talked to this Mr. Carlinsey, is that right?

3 A I talked to him because he answered the phone.

4 Q Do you see the Pennsylvania Bulletin when it comes
5 out with notices of applications?

6 Does this look familiar to you? This is the notice
7 of this application that was published on November 30.

8 Do you have anything to do with reviewing those
9 applications and deciding whether to protest them or not?

10 A Mr. Merlo handles that.

11 Q You personally don't handle this as part of your
12 function?

13 A No. I go over them with him at times.

14 Q What prompted your call back in December then to
15 either Mr. Carlinsey or Mr. Bloom?

16 A I was under the impression that we were going to
17 lose business with the first announcement that Barnes &
18 Tucker would be closing.

19 Q You are going to lose business not with North
20 Cambria though, correct?

21 A That's right. I was looking for other shipments.

22 Q Now, so around December or whenever it was--was it
23 December?

24 A I am pretty sure it was December when I called.

25 Q When you found out that Barnes & Tucker was going

1 to stop using your service for whatever reason, you said,
2 well, now, it's time to start looking for new accounts, is
3 that correct?

4 A Yes.

5 Q And one of the companies that you called was North
6 Cambria?

7 A Yes.

8 Q Did you call others?

9 A I called others in Somerset County.

10 Q How did you know that there was a firm called North
11 Cambria. Fuel to make a call to them in December of 1985?

12 A Well, they are a big company and we knew of their
13 existence. We did some work for them in the past.

14 Q So you know that they do ship coal and they use
15 truckers?

16 A Yes.

17 Q Now, I was looking at your map here which contains
18 the territory and am I correct that on Exhibit 2, looking at
19 the bull's-eye circled territory, that you do not, repeat,
20 do not have authority to serve the northern half of Jefferson
21 County?

22 A That is correct.

23 Q And you do not, repeat, do not, have authority to
24 serve the northern part of Clearfield County which would be
25 about a third of the county?

1 A That's correct.

2 Q And looking at Armstrong County, you do not, repeat,
3 do not, have authority to serve the extreme western and north-
4 western part of that county?

5 A That's correct.

6 Q Then am I correct that the territory which you are
7 authorized to serve would be between points within that bull's
8 eye circle as well as the entire counties that are outlined?

9 A That's correct.

10 Q What would you do if you got a call from a shipper,
11 let's specifically call it North Cambria Fuel, to pick up in
12 a portion of Jefferson County that you are not allowed to
13 serve?

14 A The only thing to do would be to inform them that
15 we didn't have the authority to cover that area.

16 Q Would that same answer apply to Clearfield County?

17 A Yes.

18 Q And Armstrong County?

19 A Western Armstrong.

20 Q I mean the territory that you cannot legally serve?

21 A Right.

22 Q I assume that you would pick up the traffic in the
23 territory that you are authorized to serve, is that correct?

24 A Yes.

25 Q So there are portions of the counties involved here

1 that you legally cannot serve, is that correct?

2 A That's correct.

3 Q Specifically in this application, it is Jefferson
4 and Clearfield, is that correct?

5 A That's correct.

6 Q Concerning the fleet that you have which is reflected
7 in Exhibit 3, as I understand it, Merlo Corporation owns 14
8 dump trucks, seven tractors and three dump trailers which as
9 soon as the license period expires, you will transfer to
10 Bulk Transportation, is that correct?

11 A That's correct.

12 Q Then you have 81 leased dump trucks, just by deduct-
13 ing 14 from 95, is that right?

14 A Yes.

15 Q And you have 31 tractors by deducting seven from
16 38, is that right?

17 A Yes.

18 Q And you have 30 dump trailers by deducting three from
19 33, is that right?

20 A Right.

21 Q And you indicated that these are leased from owner
22 operators on a permanent type of lease, is that correct?

23 A That's correct.

24 Q In other words, the only vehicles that Merlo has to
25 worry about, are the ones that his present corporation or Bulk

1 Transportation will acquire, that is, 14 trucks, seven tractors
2 and three dump trailers?

3 MR. LAVELLE: I object to that. I don't understand
4 what he means by the question, Your Honor.

5 MR. DISKIN: Let me reword the question.

6 BY MR. DISKIN:

7 Q The only vehicles that are directly financially
8 connected with Bulk Transportation, are these vehicles that
9 are owned by Merlo?

10 A Yes.

11 Q In other words, the leases will have a termination
12 at sometime in the future, is that correct, either today,
13 tomorrow, next month, next year or whenever, they do expire,
14 do they not?

15 A They are on a yearly basis.

16 Q And at the expiration of that year, you have the
17 option to release it or to terminate it, is that correct?

18 A Yes.

19 Q Which is perfectly legal, correct?

20 A Correct.

21 Q I am curious about this whole business of Exhibit
22 No. 4, which I objected to and then withdrew my objection.

23 From what I can quickly add up here, these numbers
24 in the last column under revenue come to around five hundred
25 ninety thousand, six hundred thousand dollars. Would you say

1 that that sounds about right? I haven't had the chance to
2 use a machine to add them up.

3 A It sounds correct on the work that is listed.

4 Q Let's cut it back to be a little more conservative
5 and call it 500,000 or a half a million dollars. That is
6 what your company did in hauling during the period of September
7 of 1985 through March of 1986, is that correct?

8 That is under this one deal only with Barnes &
9 Tucker?

10 A Yes. There is some Bethlehem work on here too.

11 Q Is that a different customer?

12 A Yes.

13 Q Is Bethlehem going to cut you off or what, what
14 do they have to do with this exhibit?

15 A Mr. Merlo made this exhibit up primarily to show
16 work that is in the same area as North Cambria Fuel, the
17 Indiana County area.

18 Q Is there any danger of losing this Bethlehem Mine
19 #33 designation which is the fourth item down, is that in
20 danger?

21 A Any coal business is in danger.

22 Q You made a point of saying that you are fearful and
23 expect Barnes & Tucker to go out of business and you are going
24 to lose their traffic. I am not arguing about it. Is that
25 true or not?

1 A I would anticipate Bethlehem's business continuing.

2 Q So that the dollars in Bethlehem Mine #33 which comes
3 to around \$150,000.00, that is going to continue, is that
4 right?

5 A It should.

6 Q Well, while we are on that, what about the last one,
7 B.S.C.O., what is that and will that continue?

8 A That is terminated.

9 Q Now, the ones above where it says Westrick, what is
10 that?

11 A That is a small coal company. That is continuing
12 business.

13 Q Continuing?

14 A Yes.

15 Q What about Barnes & Tucker 20 and Barnes & Tucker 24,
16 are they in or out or what?

17 A Barnes & Tucker 20 has terminated.

18 Barnes & Tucker 24 is in the process of terminating.

19 Q So that if you take my half a million dollar figure
20 and cut it back by the ones that are continuing, it is nowhere
21 near a half a million dollars, is it?

22 You have \$56,000.00 in Westrick which is continuing.
23 You have \$141,000.00 plus \$2,000.00 plus \$11,000.00 in the
24 fourth item, Bethlehem Mine 33, and that is continuing, isn't
25 it?

1 A Yes.

2 Q So all of the complaints about losing business
3 relates to numbers one, two and five, is that correct?

4 A Right.

5 Q Now, when did you find out that Barnes & Tucker might
6 be terminating or did in fact terminate?

7 A You mean Barnes & Tucker 20?

8 Q Yes.

9 A To the best of my knowledge, that started coming
10 out about November.

11 Q 1985?

12 A Yes. October or November.

13 Q And the Barnes & Tucker 24?

14 A Well, back then it looked like Barnes & Tucker 24
15 would be an ongoing thing, but just probably within the last
16 month the decision has been made to terminate Barnes & Tucker
17 24.

18 Q Would that be in March of 1986?

19 A Yes.

20 Q What about the last one, the B.S.C.O. which is about
21 \$5,000.00?

22 A That was a one shot job. We knew that was terminated
23 when we completed in this January.

24 Q So you had no long-term expectations about that
25 business?

1 A No.

2 Q I know that you don't sit with Mr. Merlo all day
3 long talking with him. Is what happened substantially this,
4 Merlo said to you, well, Bob, now that we are losing Barnes &
5 Tucker 20 and Barnes & Tucker 24 and we can use some more
6 business, how about going out and beating the bushes and getting
7 some more customers?

8 A Yes, that type of conversation has been held and I
9 am sure you know that.

10 Q All of this took place about the time that this
11 application or after the application was filed, is that
12 correct?

13 A Yes.

14 Q Well, in terms of "beating the bushes", did you go
15 out and beat the bushes with North Cambria Fuel prior to
16 October of 1985?

17 A No, I didn't.

18 Q Actually, in terms of your revenue, how much business
19 do you do a year?

20 A I don't have those figures.

21 Q Well, can you give me a drug store guess if you don't
22 know for sure?

23 A I don't know.

24 Q Do you do one million, ten million, fifty million
25 dollars or what?

1 A Are you talking only in the trucking business?

2 Q Yes, the business we are talking about here today.

3 Do you have any idea?

4 A No, I don't.

5 Q How much of whatever revenue you get came from
6 hauling for North Cambria Fuel?

7 A In what time period?

8 Q Between 1976 and today?

9 A I only know of a small amount of hauling that we
10 did for them in around 1976. I don't know what it amounted
11 to.

12 Q Would you agree so that the record isn't cluttered
13 up that you have done nothing for them since 1976 and there
14 has been no revenue, is that a fair statement?

15 A There was revenue from Bethlehem Mine to North
16 Cambria Fuel's operation.

17 Q I am talking about North Cambria selecting you and
18 paying you and hiring you?

19 A Directly, nothing.

20 Q I am curious. Did you file the protest?

21 A No.

22 Q Did Mr. Merlo file the protest, I assume that he
23 did?

24 A Yes.

25 Q Did he tell you why?

1 A Because we serviced these areas and our business is
2 apparently declining.

3 Q What if your business, just to use a hypothetical
4 case, what if Barnes & Tucker said that instead of quitting,
5 we are going to expand all over the place, would you still be
6 here today?

7 A Yes.

8 MR. LAVELLE: Your Honor--well, alright.

9 MR. DISKIN: I think that's all that I have. I
10 have no objection to their exhibit.

11 JUDGE MEEHAN: Mr. LaVelle.

12 MR. LAVELLE: I have no redirect for this witness.

13 MR. DISKIN: I have some rebuttal.

14 MR. LAVELLE: I would offer Exhibits 1 through 4.

15 MR. DISKIN: No objection.

16 JUDGE MEEHAN: There being no objection, Protestant's
17 Exhibits 1 through 4 will be admitted.

18 MR. DISKIN: I would like to ask Mr. Bloom a couple
19 of questions on rebuttal if I may, Your Honor?

20 JUDGE MEEHAN: Go ahead. But first let's take a
21 short break.

22 (The hearing recessed at 12:35 p.m. and the hearing
23 reconvened at 12:45 p.m.)

24 MR. DISKIN: Your Honor, I am calling Mr. Bloom on
25 rebuttal.

1 (Mr. Bloom was recalled for rebuttal testimony.)

2 DIRECT EXAMINATION

3 BY MR. DISKIN:

4 Q Mr. Bloom, you have been present during the whole
5 hearing, is that correct?

6 A Yes.

7 Q I am showing you Protestant's Exhibit No. 2 which
8 is a map showing the counties and the territory authorized
9 for the protestant, Bulk Transportation.

10 You heard the cross-examination of Mr. Rorabaugh,
11 didn't you?

12 A Yes.

13 Q He indicated that looking at this map, Exhibit 2,
14 there is a circular bull's-eye and that his company does not
15 have authority to serve north of that line in Jefferson
16 County or north of that line in Clearfield County.

17 Do you, in your business of North Cambria Fuel, Inc.,
18 have either actual mines or leases in the territory north
19 of this circular line?

20 MR. LAVELLE: Objection, Your Honor. This should
21 have been--if there is anything to be said here, it should have
22 been brought out on direct examination. The witness testified
23 where his facilities were located on direct examination.

24 Then on cross-examination I went through the same
25 and pinpointed where they were with respect to these various

1 counties and it turns out that they are all within that 45
2 mile circle which is shown on the map.

3 There is no indication at this point other than
4 a general statement that we may have leases at some undisclosed
5 places in these counties that we are talking about. That
6 was the extent of what was developed through Mr. Bloom on
7 direct and cross-examination on his testimony.

8 It is totally improper now to come back on rebuttal
9 and try to introduce evidence of this type which properly
10 should have been introduced on the case in chief.

11 MR. DISKIN: Your Honor, we are either here in a
12 regular capacity to do something about transportation and we
13 are talking about esoteric legal propositions.

14 This gentleman to my left was a witness and he has
15 stated that they have active mines and leases. I had no
16 access to a map or any reference point to begin to compile a
17 map prior to now and this map is a protestant's map and not
18 mine.

19 I have a perfect right to ask this gentleman, whom
20 this company wants to serve, whether he has actual need or
21 potential need from the territory that the company cannot
22 serve and I think that that is a perfectly legitimate inquiry.

23 After all, if this company is coming in here and
24 saying that we can provide the service and legally they cannot,
25 then there is something wrong.

1 JUDGE MEEHAN: During the witness' testimony he
2 indicated that if there was any contact to provide service
3 in any part of the state outside of that circle, he would
4 be obligated to tell the contacting individual that he could
5 not legally provide the service in those areas.

6 So whether North Cambria Fuel has mines or leases
7 in portions of Armstrong, Jefferson and Clearfield, outside
8 this circle, it is already established on the record that the
9 protestant could not serve.

10 To that extent, I don't really think that that
11 question on rebuttal is necessary. It has been established
12 through the protestant's own witness that they would be
13 obligated to tell this supporting shipper that they could
14 not provide service in those points.

15 MR. DISKIN: But the purpose of the question, Your
16 Honor, is to inquire from this supporting shipper as to whether
17 there are such locations presently either operating or in
18 the prospect of operating within this territory that the
19 protestant cannot serve.

20 JUDGE MEEHAN: Well, the protestant has already said
21 that he cannot serve and he wouldn't serve within those areas
22 and the supporting shipper, even now with the map, even though
23 you didn't have access to it before, is now well aware that
24 even if he contacted the protestant for service that he couldn't
25 use them in any area in those three counties outside the circle.

1 MR. DISKIN: So you are sustaining the objection?

2 JUDGE MEEHAN: Yes, I am.

3 BY MR. DISKIN:

4 Q Mr. Bloom, you heard the colloquy that just went
5 on, is that correct?

6 A Yes.

7 Q I don't want to ask you anything that is objection-
8 able. So I will get down to the point.

9 You have seen the map, correct?

10 A Yes.

11 Q Could you legally use the services of the protestant
12 to or from points north of that circular line?

13 A No.

14 Q What would you do?

15 A I would have to contact a different trucker.

16 Q Turning to Exhibit No. 4 which was introduced by
17 the protestant. You heard the testimony that the protestant
18 is being terminated by Barnes & Tucker under the designation
19 of Barnes & Tucker 20 and Barnes & Tucker 24, you heard that,
20 correct?

21 A Yes.

22 Q As well as this B.S.C.O. which is in Johnstown
23 which is a fairly small amount of revenue.

24 How do you feel about that as far as their soliciting
25 you back in October and now in April for business?

1 Q Well, I think if they wanted any of my business
2 they should have solicited it a long time ago because the
3 trucking, as far as I am concerned, has been up and down for
4 all coal suppliers and not just us, but on given days and
5 given weeks you have the ups and you have the downs.

6 I don't think that that little bit of business from
7 Barnes & Tucker is going to make a lot of difference.

8 MR. LAVELLE: Objection. He has no basis on which
9 to finish this statement and he is not in a position to
10 indicate to the Commission whether or not the loss of that
11 traffic will have any impact, good or bad, on the protestant.

12 MR. DISKIN: I will not debate Mr. LaVelle on the
13 point, but I would simply add this as an aside, we don't have
14 any basis to compute it either since they haven't put any
15 financial figures into show gross revenue or the amount of
16 revenue that is derived from Barnes & Tucker or any other
17 shipper.

18 So I will pass on to another question.

19 BY MR. DISKIN:

20 Q Apparently, it is the position of Mr. Rorabaugh that
21 since they are losing two Barnes & Tucker accounts, that now
22 they want you as a customer. How do you feel about that?

23 A No, I don't need them.

24 MR. DISKIN: Thank you. That's all.

25 JUDGE MEEHAN: Do you have any questions, Mr. LaVelle?

1 MR. LAVELLE: Yes.

2 CROSS-EXAMINATION

3 BY MR. LAVELLE:

4 Q You're saying that you don't need them. Are you
5 telling me that you don't need their services?

6 A I don't need their services, right.

7 MR. LAVELLE: I have no other questions.

8 JUDGE MEEHAN: Alright. Let me ask, do the parties
9 intend to file briefs?

10 MR. DISKIN: No, Your Honor.

11 MR. LAVELLE: Yes, sir, I would like the right to
12 file a brief. I think it is important in this case.

13 MR. DISKIN: Well, then we will file briefs also.

14 JUDGE MEEHAN: How much time after the receipt of
15 the transcript?

16 MR. LAVELLE: Twenty days.

17 MR. DISKIN: That's fine.

18 JUDGE MEEHAN: Reply briefs?

19 MR. DISKIN: Yes, Your Honor.

20 MR. LAVELLE: Fifteen days after that?

21 MR. DISKIN: Yes.

22 JUDGE MEEHAN: Alright. When the transcript is
23 received, we will notify counsel and set the due date for
24 briefs and reply briefs.

25 Is there anything further to be conducted today?

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MR. DISKIN: Not from the applicant.

MR. LAVELLE: No, sir.

JUDGE MEEHAN: Then at this point we will close the record and upon receipt of the transcript, we will advise on the briefing schedule and render a decision thereafter.

(The hearing terminated at 12:55 p.m.)

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.

Jerry Heck
Jerry Heck,
Court Reporter/cme