

APPEARANCE SHEET

HEARING REPORT

DOCKET NO. A. 102471, F.1, Am-F

CASE NAME Pitt-Ohio Express, Inc.

HEARING LOCATION Pittsburgh, PA.

HEARING DATE March 25, 1985

ALJ Porterfield

CHECK THOSE BLOCKS WHICH APPLY:

Hearing concluded

Record closed

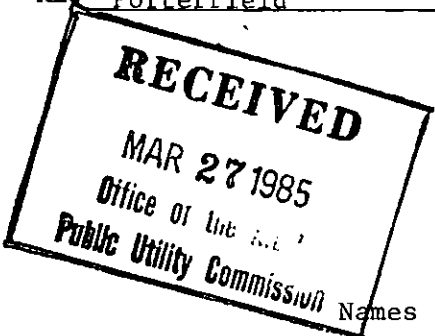
Briefs to be filed

Further hearing

Estimated add'l days

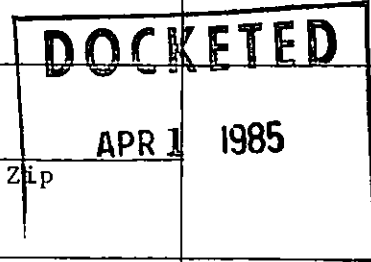
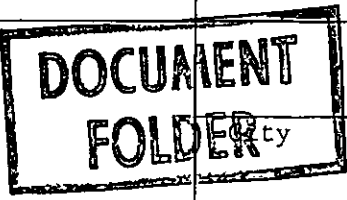
BENCH DECISION

REMARKS: There are two additional exhibits to come in from applicants. Briefs will be filed.



Names and addresses of parties or counsel of record
Please Print Clearly
Incomplete Information May Result in Delay of Process

NAME	ADDRESS	APPEARING FOR
<i>William J. Leubke</i>	<i>2310 Grant Bldg.</i>	
	City <i>Pittsburgh</i>	State <i>Pa.</i>
	Zip <i>15219</i>	<i>Pitt-Ohio Express, Inc.</i>
<i>John A. Poller</i>	<i>1500 Bank Tower 307 Fourth Ave.</i>	
	City <i>Pittsburgh</i>	State <i>Pa</i>
	Zip <i>15222</i>	<i>Newcomer Trucking, Inc.</i>
	City	State
	State	Zip



Check this box if additional parties of counsel of record appear on back.

Arline Skane
Reporter

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Room 1103, State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

April 17, 1985

To All Parties of Record

Re: Application of Pitt-Ohio Express, Inc.
A. 102471, F. 1, Am-F

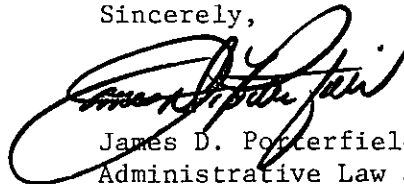
Notice of Briefing Schedule

I have received the transcript, on April 8, 1985, in the above case in which the parties have indicated a desire to file briefs.

Main briefs are due in Harrisburg on or before May 9, 1985; Reply Briefs are due on or before May 29, 1985. Your main briefs should be concise and should include proposed findings of fact with references to the record and proposed conclusions of law.

This Commission requires the filing of the original and nine copies of all briefs with the Secretary, three copies to all parties and one to me.

Sincerely,



James D. Potterfield
Administrative Law Judge

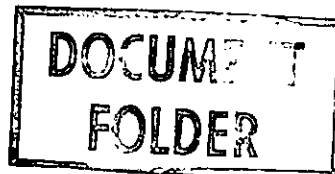
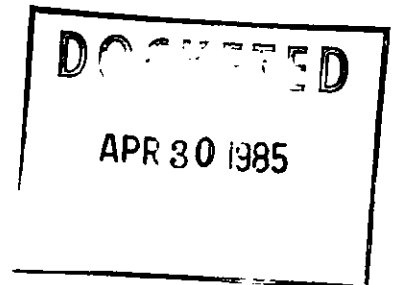
JDP:bjm

cc: Stephanie Lyons
File Room

Parties of Record

John A. Pillar, Esq.
1500 Bank Tower
307 Fourth Avenue
Pittsburgh, PA 15222

William Lavelle, Esq.
2310 Grant Bldg.
Pittsburgh, PA 15219



ORIGINAL

LAW OFFICES

VUONO, LAVELLE & GRAY

2310 GRANT BUILDING
PITTSBURGH, PA 15219

(412) 471-1800

JOHN A. VUONO
WILLIAM J. LAVELLE
WILLIAM A. GRAY
MARK T. VUONO
RICHARD R. WILSON
DENNIS J. KUSTURISS

May 8, 1985

Re: Pitt-Ohio Express, Inc.
Docket No. A. 00102471, F. 1, Am-F
Our File 2691-12

RECEIVED

MAY 9 1985

SECRETARY'S OFFICE
Public Utility Commission

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Room B-18
North Office Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

Dear Mr. Rich:

We enclose for filing with the Commission three copies of each of the following exhibits:

1. Applicant's Exhibit No. 5--Balance Sheet as of December 31, 1984.
2. Applicant's Exhibit No. 6--Applicant's Income Statement for 1984.

The above documents are being submitted as late-filed exhibits in accordance with the directions of Administrative Law Judge James Porterfield at the hearing in Pittsburgh, Pa. on March 25, 1985. Copies are being served simultaneously on Administrative Law Judge James Porterfield, John A. Pillar, Esquire, the representative of the sole protestant, and Arlene B. Kiger, the Official Reporter.

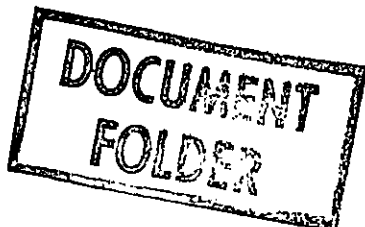
Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to us in the self-addressed, stamped envelope provided for that purpose.

Sincerely yours,

VUONO, LAVELLE & GRAY

William J. Lavelle

William J. Lavelle



pa

cc: James Porterfield, Administrative Law Judge
John A. Pillar, Esquire
Ms. Arlene B. Kiger
Pitt-Ohio Express, Inc.

PITT-OHIO EXPRESS, INC.
COMPARATIVE BALANCE SHEET - UNAUDITED

MAY 9 1985

SECRETARY'S OFFICE
Public Utility Commission
December 31

<u>ASSETS</u>	<u>1984</u>	<u>1983</u>
<u>CURRENT ASSETS</u>		
Cash in Bank	\$ 572,521	\$ 129,490
Accounts Receivable - Customers	541,369	369,405
Accounts Receivable - Other	1,421	1,325
Prepaid Items	107,925	88,778
Material & Supplies	33,947	11,427
<u>TOTAL CURRENT ASSETS</u>	<u>1,257,183</u>	<u>600,425</u>
<u>FIXED ASSETS AT COST</u>		
Revenue Equipment - C - D	1,770,872	988,441
Miscellaneous & Office Equipment	61,045	20,586
	<u>1,831,917</u>	<u>1,009,027</u>
Less: Allowance for Depreciation	631,343	273,065
	<u>1,200,574</u>	<u>735,962</u>
<u>OTHER ASSETS</u>		
Deferred Interest	48,351	None
Franchises & Organization Costs - E - F	119,638	110,013
	<u>167,989</u>	<u>110,013</u>
Less: Allowance for Amortization	91,173	71,076
	<u>76,816</u>	<u>38,937</u>
<u>TOTAL ASSETS</u>	<u>\$ 2,534,573</u>	<u>\$ 1,375,324</u>
<u>LIABILITIES AND SHAREHOLDERS' EQUITY</u>		
<u>CURRENT LIABILITIES</u>		
Equipment Obligations - C	\$ 281,492	\$ 96,847
Accounts Payable	262,878	195,365
Interline Accounts Payable	2,709	5,221
Payroll Deductions	18,992	8,883
Accrued Salaries & Wages	52,038	54,283
C.O.D.'s Payable	None	788
Accrued Taxes	23,099	18,354
Other Accrued Liabilities	127,312	72,579
Federal & State Income Taxes	176,324	80,619
<u>TOTAL CURRENT LIABILITIES</u>	<u>944,844</u>	<u>532,939</u>
<u>LONG-TERM DEBT</u>		
Equipment Obligations - Long-term - C	362,179	158,909
Note Payable - Other - D	194,564	80,000
<u>TOTAL LONG-TERM DEBT</u>	<u>556,743</u>	<u>238,909</u>
<u>SHAREHOLDERS' EQUITY</u>		
Common Stock	50,000	50,000
Retained Earnings	982,986	553,476
<u>TOTAL SHAREHOLDERS' EQUITY</u>	<u>1,032,986</u>	<u>603,476</u>
<u>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</u>	<u>\$ 2,534,573</u>	<u>\$ 1,375,324</u>

DOCKETED
MAY 10 1985DOCUMENT
FOLDER

The accompanying footnotes are an integral part of these statements.

See Accountants' Review Report.

PITT-OHIO EXPRESS, INC.

COMPARATIVE STATEMENT OF INCOME AND RETAINED EARNINGS - UNAUDITED

	<u>December 31,</u>	
	<u>1984</u>	<u>1983</u>
<u>INCOME</u>		
Freight Revenue	\$ 6,844,553	\$ 3,631,403
C.O.D. Fees	8,167	4,828
<u>TOTAL REVENUE</u>	<u>6,852,720</u>	<u>3,636,231</u>
<u>EXPENSES</u>		
Salaries - Officers	147,000	117,000
Salaries & Wages	2,078,708	1,026,122
Other Fringes	554,028	253,147
Operating Supplies & Expenses	1,210,487	559,629
General Supplies & Expenses	177,389	88,027
Operating Taxes & Licenses	135,987	74,197
Insurance	129,480	73,685
Communications & Utilities	119,735	58,635
Depreciation & Amortization	378,375	210,654
Equipment Rents & Purchased Transportation	1,028,563	686,352
Building & Office Equipment Rents	115,433	49,630
Gains on Operating Assets	(3,833)	None
Miscellaneous Expenses	20,010	20,135
<u>TOTAL EXPENSES</u>	<u>6,091,362</u>	<u>3,217,213</u>
<u>NET OPERATING REVENUE</u>	761,358	419,018
<u>OTHER INCOME & EXPENSES</u>		
Interest Income	25,527	8,731
Interest Expense	(45,301)	(7,667)
<u>NET PROFIT BEFORE INCOME TAXES</u>	741,584	420,082
Federal & State Income Taxes	306,724	144,712
<u>NET INCOME</u>	434,860	275,370
<u>RETAINED EARNINGS - BEGINNING OF YEAR</u>		
Officers' Life Insurance Premiums	(8,090)	(8,827)
Prior Period Adjustment	2,740	(2,752)
<u>RETAINED EARNINGS - END OF YEAR</u>	<u>\$ 982,986</u>	<u>\$ 553,476</u>

The accompanying footnotes are an integral part of these statements.
See Accountants' Review Report.

PITT-OHIO EXPRESS, INC.

COMPARATIVE STATEMENT OF CHANGES IN FINANCIAL POSITION - UNAUDITED

	December 31,	
<u>SOURCE OF WORKING CAPITAL</u>	<u>1984</u>	<u>1983</u>
Net Income	\$ 434,860	\$ 275,370
Depreciation of Fixed Assets	358,278	190,419
Amortization of Organization Expense	97	235
Amortization of Operating Rights	20,000	20,000
<u>WORKING CAPITAL PROVIDED FROM OPERATIONS</u>	813,235	486,024
Additions to Long-term Debt	577,749	365,527
Prior Period Adjustment	2,740	None
Decrease in Working Capital	None	None
	<u>\$ 1,393,724</u>	<u>\$ 851,551</u>
<u>APPLICATION OF WORKING CAPITAL</u>		
Additions to Deferred Interest	\$ 48,351	\$ None
Officers' Life Insurance Premiums	8,090	8,827
Prior Period Adjustment	None	2,752
Additions to Franchises	9,625	8,840
Additions to Property, Plant & Equipment	822,890	609,761
Current Maturity of Long-term Debt	259,915	155,294
Increase in Working Capital	244,853	66,077
	<u>\$ 1,393,724</u>	<u>\$ 851,551</u>
<u>CHANGES IN WORKING CAPITAL</u>		
Increases (Decreases) in Current Assets		
Cash	\$ 443,031	\$ 52,179
Notes & Accounts Receivable	172,060	218,201
Other Current Assets	41,667	73,519
	656,758	343,899
Decreases (Increases) in Current Liabilities		
Notes Payable	(184,645)	(82,511)
Accounts Payable	(67,513)	(89,997)
Federal & State Income Taxes	(95,705)	(62,234)
Other Current Liabilities	(64,042)	(43,080)
	(411,905)	(277,822)
<u>NET INCREASE (DECREASE) IN WORKING CAPITAL</u>	<u>\$ 244,853</u>	<u>\$ 66,077</u>

The accompanying footnotes are an integral part of these statements.

See Accountants' Review Report.

PITT-OHIO EXPRESS, INC.

NOTES TO FINANCIAL STATEMENTS - UNAUDITED
FOR THE YEARS ENDED DECEMBER 31, 1984 AND 1983

NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The financial statements of the Corporation are prepared on the accrual basis of accounting, consistent with reporting for federal income tax purposes.

Property is recorded at cost. Depreciation is provided for on the straight-line method based upon the estimated useful lives of the assets. Assets acquired after January 1, 1981 are being depreciated according to the new accelerated cost recovery system, as defined in the Economic Recovery Tax Act of 1981.

NOTE B - LEASE AGREEMENTS

The Corporation leases revenue equipment on a monthly basis with annual rentals amounting to \$202,152 and \$131,340 for 1984 and 1983, respectively.

The Corporation also leases terminal facilities with annual rentals amounting to \$91,877 and \$43,769 for 1984 and 1983, respectively.

The Corporation also leases certain computer hardware and software with annual rentals amounting to \$23,556 and \$5,860 for 1984 and 1983, respectively.

NOTE C - EQUIPMENT OBLIGATIONS

The Corporation purchased several pieces of revenue equipment which were financed through Mack Financial Corporation. Also, office equipment was purchased from Xerox Corporation.

	<u>Monthly Payment</u>	<u>Current Portion</u>	<u>Long-term Portion</u>
Charles L. Hammel, Jr.	\$ 5,737.06	\$ 48,529	\$ 105,023
Xerox	199.58	2,195	None
Mack Financial	1,255.62	15,067	12,556
Mack Financial	6,564.29	78,772	59,079
Mack Financial	4,444.02	53,328	71,104
Mack Financial	2,746.04	32,952	38,445
Mack Financial	2,796.47	33,558	50,336
Mack Financial	1,424.22	17,091	25,636
	<u>\$ 25,167.30</u>	<u>\$ 281,492</u>	<u>\$ 362,179</u>

See Accountants' Review Report.

PITT-OHIO EXPRESS, INC.
NOTES TO FINANCIAL STATEMENTS - UNAUDITED
FOR THE YEARS ENDED DECEMBER 31, 1984 AND 1983

NOTE D - NOTES PAYABLE

The debt due is subject to interest at 12% for 1984 and 1983.

	<u>1984</u>		<u>1983</u>	
	<u>Current</u>	<u>Long-Term</u>	<u>Current</u>	<u>Long-Term</u>
Charles L. Hammel, Jr.	\$ None	\$ 45,450	\$ None	\$ None
Capp Express, Inc.	None	None	None	80,000
Shareholders	<u>None</u>	<u>149,114</u>	<u>None</u>	<u>None</u>
<u>Total</u>	<u>\$ None</u>	<u>\$ 194,564</u>	<u>\$ None</u>	<u>\$ 80,000</u>

The money owed to Capp Express, Inc. was distributed to Capp Express, Inc.'s shareholders as a part of a dissolution distribution at December 31, 1984.

NOTE E - AMORTIZATION OF ORGANIZATIONAL EXPENSES

Pursuant to regulation 1.248-1(c), the Corporation elects to amortize organizational expenses over a sixty-month period beginning with May 1, 1979. Organizational expenses amounted to \$1,173.

NOTE F - FRANCHISES

The Corporation is writing off the cost of the Interstate Commerce Commission operating rights resulting from the enactment of the Motor Carrier Act of 1980 and the deregulation of motor carriers. This is being done over a sixty-month period beginning with July 1, 1980.

NOTE G - LINE OF CREDIT

The Corporation has established a line of credit with Mellon Bank, N.A. consisting of \$200,000 for working capital and a \$500,000 equipment line of credit for new and used equipment dated August 23, 1984. Any loans will be subject to certain terms, conditions, security and aggregate balances in accordance with the agreements.

See Accountants' Review Report.

ORIGINAL

PILLAR AND MULROY, P.C.

ATTORNEYS-AT-LAW
1500 BANK TOWER
307 FOURTH AVENUE
PITTSBURGH, PA. 15222
—
TELEPHONE (412) 471-3300

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MAY 9 1985

SECRETARY'S OFFICE
Public Utility Commission

JOHN A. PILLAR
THOMAS M. MULROY
SALLY A. DAVOREN
KEVIN W. WALSH

May 8, 1985

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

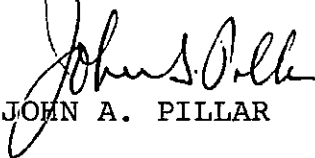
RE: Application of Pitt-Ohio Express, Inc.
Docket No. A-00102471, F.1, Am-F
File No. 481-21

Dear Mr. Rich:

Enclosed for filing are the original and nine copies of the Brief of Newcomer Trucking, Inc. in the above captioned application proceeding. Copies of this Brief have been served on the Administrative Law Judge and all parties of record in accordance with the Commission's Rules of Practice.

Please acknowledge receipt of the enclosures by returning the duplicate copy of this letter of transmittal in the stamped, self-addressed envelope provided for that purpose. Any questions or comments regarding this filing can be directed to the undersigned.

Very truly yours,


JOHN A. PILLAR

KWW/njm
Enclosures

cc: Honorable James Porterfield,
Administrative Law Judge (w/encl.)
William Lavelle, Esq. (w/encl.)
Samuel Brusceci (w/encl.)

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAY 9 1985

Application of
PITT-OHIO EXPRESS, INC.

SECRETARY'S OFFICE
Public Utility Commission

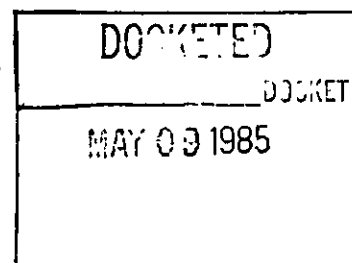
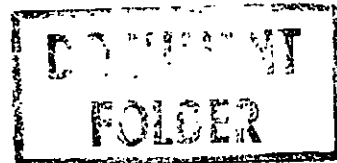
Docket No. A-00102471, F.1, Am-F

BRIEF FOR PROTESTANT
NEWCOMER TRUCKING, INC.

JOHN A. PILLAR, ESQ.
KEVIN W. WALSH, ESQ.,
Attorneys for
NEWCOMER TRUCKING, INC.,
Protestant

PILLAR AND MULROY, P.C.
1500 Bank Tower
307 Fourth Avenue
Pittsburgh, PA 15222
(412) 471-3300

Due Date: May 9, 1985



Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of
PITT-OHIO EXPRESS, INC.

Docket No. A-00102471, F.1, Am-F

BRIEF OF NEWCOMER TRUCKING, INC.

I. STATEMENT OF THE CASE

By this application, Pitt-Ohio Express, Inc. (hereinafter "Pitt-Ohio" or "applicant") seeks authority to operate as a common carrier, by motor vehicle, transporting:

Property, except commodities in bulk and household goods and office furniture in use, for G. C. Murphy Company between points in Pennsylvania.

This application was published in the Pennsylvania Bulletin on December 15, 1984. A protest to the application was filed by Newcomer Trucking, Inc. (hereinafter "Newcomer" or "protestant").

The application was set for hearing before Administrative Law Judge James Porterfield, and a hearing was held on March 25, 1985, in Pittsburgh, PA.

Testimony in support of the application was presented by Pitt-Ohio and a supporting witness from G. C. Murphy Company. Testimony in the opposition to the application was presented by

Newcomer. At the conclusion of the hearing, Administrative Law Judge Porterfield granted the parties an opportunity to submit briefs. Newcomer now files its main brief in opposition to this application.

II. STATEMENT OF THE QUESTIONS PRESENTED

A central question to be determined as enunciated in 66 Pa.C.S.A. § 1103(a) is whether the approval of this application is necessary or proper for the service, accommodation, convenience or safety of the public. To resolve this basic inquiry, the Commission must consider the underlying issues of whether Pitt-Ohio is fit, financially and otherwise, to provide the services proposed by this application, whether the testimony of the supporting shipper establishes that approval of the application would serve a useful public purpose, responsive to a public demand or need, and whether the testimony by Newcomer demonstrates that approval of this application would endanger or impair its operations to such an extent that the grant of authority would be contrary to the public interest.

III. SUMMARY OF THE EVIDENCE IN THE NATURE OF PROPOSED FINDINGS OF FACT

1. Applicant's Evidence

A. Pitt-Ohio Express, Inc.

1. The applicant is a Pennsylvania corporation which is related through common ownership and common management to Hammel's Express, Inc. (6-8; 44-45; 47-48)

2. Pitt-Ohio holds authority from this Commission at Docket No. A-102471. Its broadest grant of authority at F.1, Am-B, authorizes the transportation of property between points in the Counties of Allegheny, Armstrong, Beaver, Butler, Clarion, Crawford, Erie, Fayette, Greene, Indiana, Lawrence, Mercer, Venango, Washington and Westmoreland, which is restricted against service from points in Allegheny County to points in Armstrong, Butler, Clarion, Greene and Indiana Counties and vice versa. (Applicant's Exhibit 2; 10-11)

3. The applicant recently purchased a portion of the operating authority of Breman's Express, Inc., which authorizes operations from Allegheny County to various portions of Beaver and Butler Counties. (11-12; 53; 55; 57-60) Emergency temporary authority to operate the authority formerly held by Breman's Express was granted on August 13, 1984. (12)

4. The applicant presently leases twenty-six doors of a terminal and office space from Hammel's Express, Inc., a related company, situated at 26th and AVRR, Pittsburgh, Allegheny County, PA 15222, and has been at this location for six months. (5, 14-15) This facility is utilized as a breakdown and consolidation operation for less-than-truckload shipments. (15)

5. The applicant operates other terminals located at Cleveland, Ohio, Paulsboro, New Jersey, and Charleston, West Virginia, which are not connected with Pennsylvania intrastate operations. (17) The applicant has also recently purchased a

twenty door terminal facility located in Norristown, Pennsylvania, at a bankruptcy auction, but the present plan is to retain the Paulsboro, New Jersey, facility and the Norristown operation would be for shipments under the applicant's interstate authority only. (38, 75-76)

6. The Pittsburgh terminal facility is open five days per week, twenty-four hours per day, with holiday and weekend service available but normally not requested. (17) Approximately thirty-five vehicles are operated out of the Pittsburgh facility, and drivers maintain telephone contact with this terminal to report problems or to seek instructions for pick ups. (16-19)

7. The applicant presently employs seventy-five drivers, six salespeople, five mechanics and approximately twenty-five office and clerical personnel system wide. (19)

8. The applicant presently owns thirty-three tractors, twenty 20' straight trucks and twenty-two trailers and leases thirteen additional 21' straight trucks, one tractor and fifty-four main trailers for the use in system wide operations. (Applicant's Exhibit 3; 20-22) All of the leased equipment is leased from Matera, Inc., a family owned leasing company. (23) No additional equipment is on order. (77)

9. The applicant's operations for 1984 generated revenues of approximately \$6.75 million, almost a 100% increase from the \$3.5 million in revenues generated during 1983. (26,

65) However, only 10% of the applicant's revenues were generated from intrastate operations. (64)

10. Shipments originating at origin points in eastern Pennsylvania as far west as Harrisburg and destined for delivery to points in western Pennsylvania are handled out of the applicant's Paulsboro, New Jersey, facility on an interstate basis. (31, 78)

11. Hammel's Express, Inc. is still in business, operates under authority formerly held by Capp Express which was also controlled by the Hammel family and occasionally acts as a cartage agent for the applicant. (44-45, 48) The management of the applicant does make some day-to-day operational decisions for Hammel's Express. (47)

12. Hammel's Express, Inc. serves all of Allegheny County and parts of Fayette, Westmoreland, Washington, Beaver and Butler Counties and has served G. C. Murphy Company before the applicant came into existence. (48-49, 62)

13. Of the shipments transported for G. C. Murphy in February of 1985 under the applicant's Pennsylvania intrastate and interstate authority, no shipments within the scope of the applicant's present operating authority moved to G. C. Murphy locations in Greene, Butler or Jefferson Counties. A single shipment moving to Armstrong County and a single shipment moving to Indiana County. (76-77)

14. The freight charge on all of the shipments depicted on Applicant's Exhibit 4 were discounted up to 50% from a normal freight rate. (74-75)

15. All of the intrastate shipments were inbound to Murphy stores or the McKeesport warehouse from vendor locations and no store to warehouse or warehouse to store shipments were handled by the applicant. (Applicant's Exhibit 4; 73)

16. Hammel's Express, Inc. could handle all of the intrastate shipments depicted on Applicant's Exhibit 4 with the exception of a single shipment originating in Ellwood City, Pennsylvania, and destined to the McKeesport warehouse. (63)

17. The applicant has been the subject of two recent complaint proceedings initiated by Newcomer Trucking, Inc., the protestant in this proceeding, one of which is still pending. (82) The first complaint was dismissed by the Commission following a stipulated settlement agreement between the parties by which applicant agreed to cease and desist certain transportation in Newcomer's service area. The pending complaint at Docket No. A-102471C831 was incorporated by reference into the record. (83)

B. G. C. Murphy Company

18. G. C. Murphy Company is a retail variety store chain with three distribution centers and approximately 400 stores in 22 states. (86) A merchandise guide was presented as Applicant's Exhibit 7, and most of the items depicted thereon are sold in regular G. C. Murphy stores and so-called Murphy's Marts. (Applicant's Exhibit 7; 87-88)

19. McKeesport, Allegheny County, is the location of Murphy's only Pennsylvania based distribution center with

stores located in eastern Pennsylvania serviced by Murphy's Fredericksburg, Virginia, warehouse facility and some western Pennsylvania stores being serviced by Murphy's Columbus, Ohio, warehouse facility.

20. Applicant's Exhibit 8 depicts the location of the supporting shipper's stores in the Commonwealth, and Applicant's Exhibit 9 depicts the location of Pennsylvania based vendors who can ship to both store locations and the McKeesport distribution center. (92)

21. Movements between stores are minimal in number. (91)

22. Shipments are made once a week from the McKeesport distribution center to each store serviced by the McKeesport distribution center which are depicted on Applicant's Exhibit 10. (Applicant's Exhibit 10; 90, 96) However, all of the freight depicted on Applicant's Exhibit 10 moving from its McKeesport distribution center to its Pennsylvania based stores is transported by E. J. Lowry and Womeldorf, contract carriers who have been utilized for this service for approximately 45 to 50 years. (117, 119)

23. When the merchandise is returned from an individual store to the McKeesport distribution center it is generally handled by these contract carriers, United Parcel Service if it is a small return item, or by common carrier if the aforementioned alternatives are not available. (126)

24. The only distribution center to store location shipments which are not handled by E. J. Lowry or Womeldorf might be Bedford, Huntingdon and Punxsutawney. (118) Pitt-Ohio would only be utilized as a back up carrier on overflow for distribution to store movements, and Pitt-Ohio can already serve the vast majority of the stores on the vendor to distribution center and vendor to store shipments. Murphy controls the routing on 65% or 70% of the vendor to distribution center and vendor to store shipments, but unless there is a special problem the vendor generally selects the carrier to be utilized on those shipments. (139-140, 130) E. J. Lowry and Womeldorf are also utilized on vendor to distribution center movements. (135)

26. G. C. Murphy is supporting this application for the transportation of freight from Allegheny County based vendors to its stores. (122) This traffic is now being handled by Preston's, Lyons and the applicant, as well as Newcomer and Hall's. (130-132)

27. Freight would not be diverted from the regularly utilized vendor to store carriers to the applicant, and G. C. Murphy has relied on a multiple, less-than-truckload common carrier system for vendor to store movements for at least 22 years. (131-132)

28. The witness could not recollect the volume and frequency of shipments from Allegheny County based vendors to Pennsylvania based stores and could not recall what carriers

are presently listed on Murphy's routing guide for Allegheny County vendor to Pennsylvania based store shipments. (121)

29. The witness could not recollect a single store to vendor shipment and the only store to store shipment mentioned related to shipments mislabeled by another distribution center previously operated for Murphy by Helms. (127-129)

30. Murphy has been solicited by Newcomer once or twice, was given a copy of Newcomer's tariff, and it was determined that Newcomer's rates were competitive. (125-126) The 50% rate discount offered by the applicant is a factor in Murphy's support of this application. (134)

2. Protestant's Evidence

A. Newcomer Trucking, Inc.

1. Newcomer Trucking, Inc. operates from a twenty-two door trailer facility located at 1200 Island Avenue, McKees Rocks, Stowe Township, Pennsylvania 15136, employing four terminal personnel, fifteen drivers and two mechanics. (140-148)

2. Newcomer Trucking operates ten straight trucks, nine tractors and fifteen trailers consisting of 45' van trailers, pup van trailers for local deliveries, 42' van trailers, 40' van trailers, 45' open top trailers and two flatbed trailers. (Protestant's Exhibit 1; 150-151) Newcomer also utilizes ten to twelve trailers under an equipment arrangement with seven major carriers with whom it interlines and acts as a local cartage agent. (151, 141-142)

3. Protestant Newcomer holds authority from the Commission at Docket No. A-102265, pursuant to which it serves Allegheny County and the surrounding Counties of Armstrong, Beaver, Butler, Clarion, Forest, Fayette, Jefferson, Washington, Westmoreland and Greene. (142) From Allegheny County points, Newcomer can serve all of Allegheny, Armstrong, Butler, Clarion, Forest, Greene and Jefferson Counties, and vice versa. (143-144)

4. Newcomer's Class C authority authorizing service from Pittsburgh and points within ten miles to points within thirty miles by the usually traveled highways also permits service to Beaver, Fayette, Washington and Westmoreland Counties. (145)

5. Newcomer has five to six trucks which concentrate on Allegheny County pick ups for cross-dock segregation at its Stowe Township terminal facility for deliveries throughout its authorized territory. (149) Daily service is provided to Clarion, Butler, Armstrong, Greene, Washington and Westmoreland Counties. (153-154)

6. During the period from January 1, 1985 through March 19, 1985, Newcomer transported twenty-six shipments from Allegheny County based vendors to Murphy stores situated at Butler, Mt. Pleasant, Connellsville, Waynesburg, Greensburg, Pittsburgh, McMurray, North Huntingdon and Washington. Next day service was provided on the overwhelming majority of these vendor to store movements. (157-161)

7. Newcomer has not been tendered freight out of Murphy's McKeesport distribution center although its rates are competitive with the rates charged by the applicant, and there have been no complaints from Murphy regarding Newcomer's service on vendor to store shipments. (162, 165)

8. Ninety-nine percent of Newcomer's traffic is less-than-truckload shipments, and each less-than-truckload shipment is vital to Newcomer's continued operation as it is presently running vehicles at less than full capacity. (162-163) Newcomer cannot afford to lose the vendor to Murphy's store traffic which it can presently handle. (164)

9. Newcomer has solicited Murphy on at least two prior occasions, the latest being November 7, 1984, at which time the witness for Murphy informed the General Manager of Newcomer that he did not need any carriers but would check Newcomer's rates. (162, 172-173)

IV. STATEMENT OF THE APPLICABLE LAW

Section 1103(a) of the Public Utility Law, 66 Pa.C.S.A. § 1103(a), requires that an applicant for a Certificate of Public Convenience prove that the granting of such a Certificate is necessary or proper for the service, accommodation, convenience or safety of the public. The Commission has held that, even in an unprotested case, an applicant must meet the burden of proving that the public convenience requires the proposed service. Application of Gilchrist Trucking, Inc., Docket No.

A-00101128, F.1, Am-B, Order entered November 10, 1980 (unreported); B. B. Motor Carriers, Inc. v. Pennsylvania Public Utility Commission, 26 Pa.Cmwlth.Ct. 26, 389 A.2d 210 (1978).

Under the Commission's Transportation Regulatory Policy, expressed in its Order at Docket No. M-820319, entered November 22, 1982, "[a]n applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need." 52 Pa.Code § 41.14(a). The Commission's new policy does not, therefore, alter the applicant's burden of proof in this respect. Thus the Administrative Law Judge and the Commission must determine if the applicant has proven by substantial evidence that there exists a public need for the proposed additional competitive service. Purolator Courier Corp. v. Pennsylvania Public Utility Commission, 24 Pa.Cmwlth.Ct. 301, 355 A.2d 850 (1972); Matlack v. Pennsylvania Public Utility Commission 25 Pa.Cmwlth.Ct. 412, 359 A.2d 845 (1976); Byerly v. Pennsylvania Public Utility Commission, 400 Pa. 452, 270 A.2d 186 (1970). The mere introduction of shipper support testimony is not, standing alone, sufficient to establish that the proposed service would serve a useful public purpose, responsive to a public demand or need. Application of Richard L. Kinard, Inc., Docket No. A-00095829, F.1, Am-D, Order entered June 13, 1984.

It is also important to note that preference for the service of a particular carrier is not the equivalent of a

demonstration of a public need. The traditional test of whether the mere desire to use a certain carrier rises to the level of a public need within the meaning of the Public Utility Code has required a showing that the public convenience and necessity will be served as a result of the correction of an inadequacy in the existing service. Wiley v. Pennsylvania Public Utility Commission, 186 Pa.Superior Ct. 309, 142 A.2d 1163 (1958); Application of Chapman Johnson, Sr., t/a Johnson Trucking Company, 50 Pa.P.U.C. 696 (1977). An applicant may also meet this burden of proof by establishing that it will provide a different service from those services presently available. Gettysburg Tours, Inc. v. Pennsylvania Public Utility Commission, 42 Pa.Cmwlth.Ct. 399 (1979). However, mere desire alone to utilize a particular carrier is not the equivalent of public need or public benefit. Silver Line, Inc., 50 Pa.P.U.C. 500 (1979).

V. ARGUMENT

APPLICANT HAS UTTERLY FAILED TO PROVE NEED FOR THE PROPOSED SERVICE.

Applicant's approach to this application appears to be that it need only show that Murphy, the supporting shipper, has vendors and stores in Pennsylvania and that indeterminate traffic moves between their locations. The shipper witness could not specify the volume or frequency of movements between any two specific locations. The only evidence of actual

movements between vendors and stores was offered by applicant since the applicant already holds authority to serve Murphy from all points in fifteen counties in western Pennsylvania.

Applicant is not authorized to serve Murphy from Allegheny County to all points in Butler, Greene, Armstrong and Clarion Counties, and vice versa except for a portion of Butler County which applicant acquired by purchasing the rights of Breman's Express. This is the area of primary concern to Newcomer. The record in this case does not support a grant of authority to applicant to serve Murphy from Allegheny County to points in Butler, Greene, Clarion and Armstrong Counties. In addition, applicant is not authorized to serve Jefferson and Forest Counties, and there is no probative evidence that Murphy has any actual traffic moving to or from Jefferson and Forest Counties.

Applicant's Exhibits 8 and 9 show the location of Murphy stores and vendors, respectively. There is no indication as to what counties these points are in. The Administrative Law Judge would have to speculate as to whether these locations are in the counties mentioned above. The burden of proof is with the applicant to show that there is a need for service from Allegheny County to Butler, Clarion, Greene, Armstrong and Forest Counties, and vice versa. It would require mere speculation to make such a finding based on the evidence presented by Pitt-Ohio.

Since the witness for Murphy could not give any indication of any actual movements between any two locations, on Exhibits

8 and 9, there is no real proof of any need for service in this territory. In fact, the Administrative Law Judge would have to speculate as to whether there is need for Pitt-Ohio's service between any two points based on the manner in which the evidence was presented. In addition, there is no evidence that Murphy even controls the routing on vendor to store traffic that is beyond the area now served by applicant since Murphy only controls the routing on sixty-five to seventy percent of this traffic. In fact, the witness for Murphy admitted that the vendor generally selects the utilized carrier on these movements, except where a special problem arises.

Based on Newcomer's interest, the evidence warrants a finding that (1) Murphy did not show the volume or the frequency of traffic, if any, from Allegheny County to Butler, Clarion, Greene, Armstrong, Forest or Jefferson Counties, or vice versa; (2) Newcomer is presently authorized to serve this territory; and (3) Newcomer solicited Murphy for this traffic and was advised that Murphy had no need for Newcomer's service. Since Pitt-Ohio cannot serve this area, it must be concluded that Murphy has service available from other carriers in Newcomer's territory or that Murphy has no traffic in this area. To find that Murphy has a need in Newcomer's service area that requires Pitt-Ohio's service would require the Administrative Law Judge to engage in conjecture.

VI. PROPOSED CONCLUSIONS OF LAW

In addition, protestant Newcomer Trucking, Inc. requests that the Administrative Law Judge enter the following conclusions of law:

1. The Commission has jurisdiction of the subject matter and the parties under 66 Pa.C.S. Section 1101.

2. The application is properly before the Commission under 66 Pa.C.S. Section 1103.

3. The applicant has failed to meet its burden of demonstrating that the approval of its application is necessary and proper for the service, accommodation, convenience and safety of the public or will serve a useful public purpose, responsive to a public demand or need.

4. Applicant has not established by probative evidence that Murphy needs the service of any additional carrier from Allegheny County to points in Butler, Greene, Armstrong, Clarion, Jefferson and Forest Counties, and vice versa.

5. Protestant Newcomer Trucking, Inc. established that it solicited Murphy for traffic in its service area, and that Murphy advised Newcomer that it had no need for Newcomer's service.

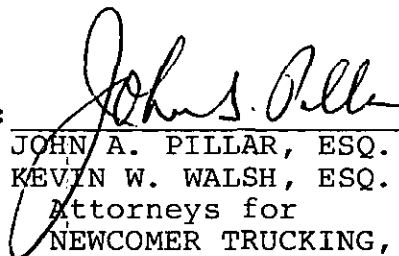
VII. CONCLUSION

For the foregoing reasons, protestant Newcomer Trucking, Inc. respectfully requests that the application of Pitt-Ohio Express, Inc. be denied in its entirety, or, in the alternative, that no authority be granted to provide service from Allegheny County to points in Butler, Greene, Clarion, Armstrong, Forest and Jefferson Counties, and vice versa.

Respectfully submitted,

PILLAR AND MULROY, P.C.

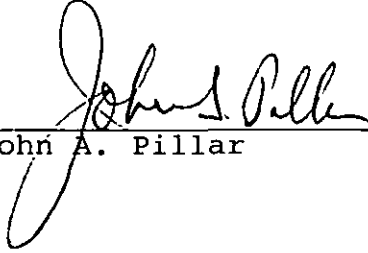
By:



JOHN A. PILLAR, ESQ.
KEVIN W. WALSH, ESQ.,
Attorneys for
NEWCOMER TRUCKING, INC.,
Protestant

CERTIFICATE OF SERVICE

I, John A. Pillar, hereby certify that I have served a copy of the foregoing Brief of Newcomer Trucking, Inc. upon all parties of record this 8th day of May, 1985, in accordance with the Commission's Rules of Practice and Procedure.



John A. Pillar

ORIGINAL

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May 8, 1985

Re: Pitt-Ohio Express, Inc.
Docket No. A. 00102471, F. 1, Am-F
Our File 2691-12

RECEIVED

MAY 9 1985

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Room B-18
North Office Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

SECRETARY'S OFFICE
Public Utility Commission

Dear Mr. Rich:

Am-F

We enclose for filing with the Commission the signed original and nine copies of the Brief of Pitt-Ohio Express, Inc. in support of the above application.

Copies of the Brief have been served on Administrative Law Judge James Porterfield and John A. Pillar, Esquire, the representative for the protestant.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to us in the self-addressed, stamped envelope provided for that purpose.

Sincerely yours,

VUONO, LAVELLE & GRAY

William J. Lavelle
William J. Lavelle

pa

cc: James Porterfield, Administrative Law Judge
John A. Pillar, Esquire
Pitt-Ohio Express, Inc.

**DOCUMENT
FOLDER**

RECEIVED

MAY 9 1985

BEFORE THE
Pennsylvania Public Utility Commission

SECRETARY'S OFFICE
Public Utility Commission

DOCKET NO. A. 00102471, FOLDER 1, AM-F

PITT-OHIO EXPRESS, INC.

BRIEF OF PITT-OHIO EXPRESS, INC.
IN SUPPORT OF THE APPLICATION

**DOCUMENT
FOLDER**

WILLIAM J. LAVELLE
Attorney for
PITT-OHIO EXPRESS, INC.
Applicant

DOCKETED

MAY 13 1985

Of Counsel:
VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, Pennsylvania 15219

Due Date: May 9, 1985

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A. 00102471, FOLDER 1, AM-F

PITT-OHIO EXPRESS, INC.

BRIEF OF PITT-OHIO EXPRESS, INC.
IN SUPPORT OF THE APPLICATION

I. STATEMENT OF THE CASE

By this application Pitt-Ohio Express, Inc. (Pitt-Ohio or Applicant) seeks authority to operate as a common carrier, by motor vehicle, as follows:

To transport, as a Class D carrier, property, except commodities in bulk and household goods and office furniture in use, for G. C. Murphy Company between points in Pennsylvania.

The application was published in the Pennsylvania Bulletin on December 15, 1984. Protests to the application were filed by Newcomer Trucking, Inc. (Newcomer) and Evans Delivery Company, Inc. (Evans), herein called Protestants. By letter to the Commission dated February 27, 1985 the Evans protest was withdrawn.

Testimony in support of the application was presented by the Applicant and G. C. Murphy Company. Testimony in

opposition to the application was presented by Newcomer. At the conclusion of the hearings the Administrative Law Judge granted the parties an opportunity to submit briefs. Applicant now files its Main Brief in support of the application.

II. STATEMENT OF THE QUESTIONS
INVOLVED AND THE POSITION OF APPLICANT

The questions presented for determination by the Commission are the following:

1. Does the testimony of the supporting shipper establish that approval of the application will serve a useful public purpose, responsive to a public demand or need?

2. Is the Applicant fit, financially and otherwise, to provide the proposed service?

3. Does the testimony demonstrate that approval of the application would endanger or impair the operations of existing carriers to such an extent that the granting of authority would be contrary to the public interest?

It is the position of Pitt-Ohio that it is fit, willing and able to provide the proposed service, and that such service is needed by the supporting shipper and will serve a useful public purpose. Furthermore, there is insufficient evidence to warrant a finding that approval of the application will unduly endanger or impair the operations of existing carriers such as Newcomer. Accordingly, it is the Applicant's position that the application should be granted in its entirety.

III. SUMMARY OF EVIDENCE AND
PROPOSED FINDINGS OF FACT

Applicant submits that the following findings of fact are supported by the evidence of record:

1. Pitt-Ohio Express, Inc. (Ex. A. 1-6) (5-85)* is a closely held Pennsylvania corporation. Its sole shareholders, officers and directors are three brothers who are also minority shareholders and directors in Hammel's Express, Inc., a motor common carrier which holds authority from this Commission.

(5-9)

2. Applicant holds authority from this Commission at Docket No. A. 102471 and various amendments thereto. At Folder 1, Am-B it is authorized to transport property, with certain exceptions not here pertinent, between points in 15 western Pennsylvania counties (Allegheny, Armstrong, Beaver, Butler, Clarion, Crawford, Erie, Fayette, Greene, Indiana, Lawrence, Mercer, Venango, Washington and Westmoreland), subject to a restriction which prohibits service from points in Allegheny County to points in Armstrong, Butler, Clarion, Greene and Indiana Counties, and vice versa. (Ex. A-2) (10-11, 49-50)

* Numbers in parentheses preceded by "Ex." refer to exhibits. All other numbers in parentheses refer to the transcript of testimony.

Among its other authorities are two grants which authorize service to and from all points in Pennsylvania in connection with base points, and one grant for H. J. Heinz Company, U.S.A. which authorizes service between all points in Pennsylvania. (Ex. A-2)

3. Applicant was granted emergency temporary authority on August 13, 1984 to lease a portion of the operating authority of Breman's Express Company pending approval of a transfer application. Under that authority Pitt-Ohio can operate between various points in the counties of Allegheny, Butler, Beaver and Lawrence. (11-12) The additional authority permits service from points in Allegheny County to and/or from most of the major cities and towns in Butler County. (53-60)

4. Applicant has pending an application before this Commission at Folder 1, Am-G to transport property for R. A. Hiller Company between points in Pennsylvania. (12-13)

5. Applicant does not seek any duplicating authority nor dual operating authority by means of this application. (13-14)

6. Pitt-Ohio holds authority from the Interstate Commerce Commission at Docket No. MC-30136, Sub-No. 2) to transport general commodities, with the usual exceptions, between all points in 18 states and the District of Columbia, including Pennsylvania. (Ex. A-1)(9-10)

7. Pitt-Ohio leases a 26 door terminal and office in Pittsburgh from Hammel's Express. (14) This terminal is used as a break-bulk facility for line-haul traffic, and as the hub

for pickup and delivery operations in western Pennsylvania, northern West Virginia and eastern Ohio. Thirty-five vehicles are presently assigned to the Pittsburgh terminal which is also the location of its central dispatch operations. (14-16, 20)

8. Applicant has three other operational terminals at Cleveland, Ohio, Charleston, West Virginia, and an owned facility at Paulsboro, New Jersey. (17, 75-76) The Paulsboro terminal serves eastern Pennsylvania as far north as Scranton and as far west as Harrisburg, and points in New Jersey and Delaware. (29-30, 78)

9. Pitt-Ohio recently purchased a 20 door terminal at Norristown in eastern Pennsylvania. The terminal will be renovated and will be operational during the summer of 1985. (38-40, 75)

10. Applicant maintains direct telephone lines between all terminals. (17-18) All drivers are instructed to check in periodically during each day in order to obtain instructions for new pickup orders, changes in itineraries, and other pertinent information. (18-19)

11. Pitt-Ohio employs 75 drivers, 25 administrative and clerical personnel, 5 mechanics all located in Pittsburgh and 6 salesmen. (19)

12. Applicant operates a total of 34 tractors, 33 straight trucks which are 21 feet in length, and 76 closed van trailers. The owned equipment consists of 33 tractors, 20

straight trucks, 10-45 foot vans, 6-48 foot vans and 6-25 foot pup trailers. The leased equipment consists of 1 tractor, 13 straight trucks, and 54 vans either 42 feet or 45 feet in length. (Ex. A-3) (20-22) All of the leased equipment is obtained from Martera, Inc., which is owned by other members of the Hammel family. None of this equipment is leased with drivers. (23-24)

13. Pitt-Ohio has a comprehensive equipment maintenance program. At the end of each day each driver turns in an equipment report describing any defects which are repaired during the evening. No truck is dispatched until the defect has been fully corrected. Every outbound trailer is checked by mechanics prior to departure for tires, lights, brakes, etc. Each vehicle also is subjected to more extensive maintenance on a regular mileage schedule. All vehicles are also inspected by outside contractors for state inspection purposes. (24-25)

14. Quarterly safety meetings are held with each driver in conjunction with the company's insurance carrier. Safety awards are given for accident-free driving as an incentive to safe driving. (25)

15. As a motor carrier of general property, Pitt-Ohio offers a full range of services. It provides scheduled pickup and scheduled delivery service. (28) Ordinarily deliveries are made within one or two days following pickup unless there are unusual circumstances or specific customer requirements

involved. (28) Service is normally available 5 days per week, 24 hours per day, with service available on weekends and holidays as needed. (16-17) All terminals are equipped to handle both less-than-truckload and truckload traffic. (16, 33) Split pickup and multiple stop-off delivery service are provided as needed. (33) In western Pennsylvania Pitt-Ohio operates 15-20 daily peddle runs from Pittsburgh to points beyond the city, and 10-12 daily peddle runs within the city of Pittsburgh. Shipments are currently handled on an interstate basis to and from points in Pennsylvania which are outside the Applicant's intrastate authority. (28-29)

16. In 1984 Pitt-Ohio had gross revenues of \$6,852,720 of which about 8-10% was derived from Pennsylvania intrastate operations. Its net income after taxes was \$434,860. It had retained earnings on December 31, 1984 of \$982,986. It had an operating ratio of approximately 86%. (Ex. A 5-6) (26, 63-64)

17. Pitt-Ohio has provided service for G. C. Murphy, the supporting shipper, for approximately six years. (62) This has included intrastate service in western Pennsylvania within the Applicant's present authority, and interstate traffic to and from various states including Pennsylvania. (27-28)

18. During February 1985 Pitt-Ohio transported 24 intrastate shipments from vendors to G. C. Murphy stores or warehouses in western Pennsylvania. A variety of commodities were transported and individual shipments ranged in weight from 96 pounds to 5,992 pounds. (Ex. A-4, p. 1) (34-35, 66)

19. During February 1985 Pitt-Ohio transported 52 interstate shipments from vendors to G. C. Murphy stores and warehouses, and one shipment from its McKeesport warehouse to a vendor in eastern Pennsylvania via the Paulsboro, New Jersey terminal. A variety of commodities were transported, with all shipments being of an LTL size. (Ex. A-4, p. 2-3) (35-37)

20. G. C. Murphy's warehouses, both private and public, require appointments prior to delivery. An appointment is required at its McKeesport warehouse and deliveries are made every two or three days after arranging the appointment.

(69-70, 72) In February 1985 the Helms Express ADSI warehouse at Irwin was being used by G. C. Murphy for distribution purposes in Pennsylvania. Before delivering inbound shipments to that warehouse, Pitt-Ohio was required to mail the shipping documents to Irwin and wait for them to be returned with specific delivery dates and times prior to making delivery. This procedure required that the shipments be held by the Applicant for several days. (70-72, 80-82) Due to the limited dock space at G. C. Murphy stores, some trucks cannot get into the store to make delivery the first day and must go back the following day to complete delivery. (68)

21. Pitt-Ohio is requesting this authority to serve G. C. Murphy for several reasons. It desires to eliminate the restrictions against the service it can provide for G. C. Murphy with respect to Allegheny, Armstrong, Butler, Clarion,

Greene and Indiana counties as set forth in its Folder 1, Am-B certificate. (40) It desires to broaden its western Pennsylvania authority for G. C. Murphy as well as expand its service statewide for G. C. Murphy so that its Pennsylvania intrastate and interstate service areas will be coextensive. (41) Pitt-Ohio would be able to combine the G. C. Murphy intrastate traffic with the interstate freight of Murphy and other shippers moving to and from points in Pennsylvania. (42) Applicant's service will be a replacement for the distribution operations of the Helms Express ADSI warehouse which have been discontinued. (80) Service between two points in western Pennsylvania will ordinarily be conducted by way of the Pittsburgh terminal, and service between two points in eastern Pennsylvania will normally be conducted by way of the new Norristown terminal. On freight moving between eastern and western Pennsylvania one or both of those terminals would normally be involved. (42-43)

22. G. C. Murphy Company (Ex. A. 7-10) (85-140) is a retail merchandiser with three distribution centers and 400 retail variety stores located in 22 states. (86) The stores are operated under the names G. C. Murphy Marts and G. C. Murphy. (87)

23. G. C. Murphy deals in hundreds of individual items which are sold through the following store departments (Ex. A-7) (87-88):

Health & Beauty Aids	Gift Wrap & Books
Hair Accessories	Notions
Jewelry	Fabrics
Stationery	Sweets & Eats
Cards	Smoke Shop
Toys	Sporting Goods
Hardware	Automotive
Home Improvements	Paint
Housewares	Season Goods
Pets	Irregulars & Closeouts
Electronics	Music & Cameras
Kitchen & Dinnerware	Curtains & Drapes
Home Furnishings	Novelties
Domestics	Apparel & Accessories
Hosiery	Men's Wear
Boy's Wear	Infants & Toddlers
Intimate Apparel	Accessories
Footwear	Pants, Skirts & Sportswear
Dresses, Coats & Jackets	Blouses, Sweaters & Coordinates
Girls' Fashions	

24. G. C. Murphy has one distribution center in Pennsylvania located in McKeesport. (Ex. A-9) (90-92) Prior to March 6, 1985, G. C. Murphy also used Helms Express ADSI warehouse at Irwin to receive inbound freight from vendors throughout the nation, segregate the incoming merchandise by store, and then

reship to 100-120 stores on a set schedule. (90-91) Due to a change in the operations of Helms Express, the use of the ADSI facility as well as the actual motor carrier transportation service of Helms was terminated. (98, 105-106, 113)

25. G. C. Murphy has 115-120 retail stores located in 91 cities across Pennsylvania. The larger cities such as Pittsburgh, Philadelphia and Harrisburg have more than one store each. (Ex. A-8) (88-89)

26. Merchandise is received by G. C. Murphy currently from vendors located at 161 Pennsylvania cities. The larger cities such as Pittsburgh and Philadelphia have many individual vendors. (Ex. A-9) (92) All vendors ship to all stores in the Murphy chain. (121)

27. The annual volume of traffic from Pennsylvania based vendors to the McKeesport distribution center is between 4,000,000 and 5,000,000 pounds. (95) The total annual volume of traffic from the Pennsylvania based vendors direct to Pennsylvania retail stores is between 3,000,000 and 4,000,000 pounds. (96)

28. In 1984 the total volume of traffic shipped from the McKeesport and Irwin distribution facilities to retail stores located in the western half of Pennsylvania amounted to 33,997,423 pounds. The volume of traffic that was shipped in 1984 from the distribution centers to 97 individual Pennsylvania stores is set forth in Applicant's Exhibit 10.

(Ex. A-10) (96-99, 100, 116, 119) The total volume is expected to be higher in 1985. (119)

29. Of the almost 34,000,000 pounds of freight shipped out-bound from the Pennsylvania distribution centers to Pennsylvania retail stores, between 4,000,000 and 5,000,000 pounds originated at vendors in Pennsylvania. The balance of about 29,000,000 pounds originated at points outside Pennsylvania.

(100) Of the traffic inbound from vendors located outside Pennsylvania, approximately 60% was destined to retail stores known at the time the interstate shipment originated, arguably making 17,400,000 pounds of that freight interstate in nature.

(101-104) The balance of 40%, or 11,600,000 pounds was consigned to the distribution center to replenish inventories and was later reshipped to individual stores as needed. (102, 104-105) This 11,600,000 pounds of freight from the distribution centers to Pennsylvania retail stores was intrastate traffic since there was a break in the movement.

30. G. C. Murphy would use the Applicant's service in a variety of situations. It would be heavily used on the major volume movements from vendors to stores and vendors to distribution center. (89-90, 110, 120) On this traffic G. C. Murphy selects the carrier and pays the freight on 65-70% of the traffic. (94, 96, 122, 139) It intends in the near future to publish a routing guide showing preferred carriers in each

traffic lane and expects the percentage of traffic it controls to increase above 70%. (94, 123)

31. On the heavy volume traffic moving from the distribution center to the retail stores, which is entirely controlled by G. C. Murphy, Applicant would be used as a backup carrier to several contract carriers presently used. (90, 95, 110, 119-120) The freight would consist of overflow traffic that would not fit on the contract carrier's vehicles and traffic moving to stores which for one reason or another did not have sufficient traffic to justify use of the contract carrier vehicle on an exclusive use basis. (110)

32. G. C. Murphy would use Pitt-Ohio service also on the following additional types of movements: retail store to retail store (91, 129); retail store to distribution center (91, 126); retail stores to vendors (99); and distribution center to vendors which occurs daily and is totally controlled by G. C. Murphy (91, 95, 99).

33. G. C. Murphy's individual shipments range from 50 pounds to 40,000 pounds. (92-93) On shipments moving from vendors direct to retail stores, G. C. Murphy looks for second day delivery service. (108-109) Since shipments into the distribution center are by appointment only, the time is generally extended by two or three days. (108) There are times when emergency service is required such as when a vendor gets behind in shipping merchandise. (107) There is a

scheduled day for delivery from the distribution center to each store and the merchandise must be delivered to this distribution center by the preceding day. (91, 109)

34. At one time Jones Motor was the primary common carrier used in Pennsylvania. When that company closed its Pittsburgh operations and discontinued handling LTL shipments, G. C. Murphy turned to Motor Freight Express as its primary intrastate carrier. (106) When Motor Freight Express went out of business, it turned to Helms Express as its primary intrastate carrier and successfully supported it for statewide service. (106) When the restructuring of the Ryder/P-I-E/Helms Express operations took place, and that company discontinued handling short-haul freight in Pennsylvania, G. C. Murphy turned to Pitt-Ohio based on its more than five years experience with the Applicant on intrastate and interstate traffic. (109-110) Applicant has provided good to excellent service, maintains competitive rates, and is a carrier with which G. C. Murphy is familiar. (110, 134)

35. G. C. Murphy has used several other carriers on intrastate traffic. However, Halls has financial problems (133), and Preston does not have competitive rates (133-134). Newcomer is not directly used by G. C. Murphy and in 1984 handled only three inbound shipments from vendors to the McKeesport distribution center. (112-113)

36. G. C. Murphy supports Pitt-Ohio for statewide operating authority since this would ease the task of routing intrastate shipments and would limit the number of carriers needed to make delivery at the retail stores which usually have only one dock for loading and unloading motor vehicles. (107, 132-133) In addition to tendering to the Applicant the above types of traffic, G. C. Murphy would also be able to coordinate through the Applicant inbound interstate shipments moving direct from vendors to retail stores and outbound intrastate shipments moving from the distribution center to the same retail stores. (112) It would also be able to coordinate through the Applicant inbound shipments to the McKeesport distribution center from several vendors located in the same geographical area. (135)

37. Newcomer Trucking, Inc. (Ex. N-1) (140-174) holds authority at Docket No. A. 102265 and Folders thereto. It is authorized to transport property from points in Allegheny County to all points in Armstrong, Butler, Clearfield, Forest, Greene and Jefferson counties, and vice versa; and between points within a 10 highway mile radius of the limits of the city of Pittsburgh. (143-144) It holds Class C authority to transport property from points within a 10 highway mile radius of the limits of Pittsburgh to points within a 30 highway mile radius of the limits of Pittsburgh which includes portions of Beaver, Fayette, Washington and Westmoreland counties.

(144-145) Newcomer has an application pending to convert the Class C authority to Class D authority to transport property outbound from the 10 mile radius of Pittsburgh to points within the 30 mile radius. (145-148) It also holds authority to transport property from points in Butler County to points in Armstrong, Beaver, Clarion, Greene, Fayette, Forest, Jefferson, Venango, Washington, Westmoreland and Butler counties, and vice versa. (166-167)

38. Newcomer holds authority from the Interstate Commerce Commission and serves as an interline carrier in its 11 county western Pennsylvania area. (142)

39. Newcomer maintains its terminal and office in McKees Rocks, Allegheny County. The terminal has 22 doors. The company has about 20 employees including 15 drivers. (148) Most shipments are picked up by one vehicle, taken back to the terminal for rehandling, and then delivered from a second vehicle. (149) There are five or six trucks operating daily in Allegheny County, and at least one truck operating daily to the other authorized western Pennsylvania counties. (149, 153-154)

40. Newcomer owns and operates 10 straight trucks, 9 tractors, 8 van trailers, 3 pup trailers 30 feet in length, 2 flatbed trailers and 2-45 foot open-top trailers. (Ex. N-1) (150-151)

41. Newcomer provides a scheduled pickup and scheduled delivery service as needed. (165) About 99% of all freight handled is LTL. (162)

42. Between January 1 and March 19, 1985, Newcomer transported 26 shipments from Crafton, Blawnox and Pittsburgh, all in Allegheny County, to G. C. Murphy stores in Butler, Westmoreland, Fayette, Greene and Allegheny Counties. All of the shipments were prepaid by the vendors which selected Newcomer as the carrier. (155-161)

43. Newcomer last solicited the business of G. C. Murphy on November 7, 1984. (162, 172-173)

IV. ARGUMENT

1. APPROVAL OF THE APPLICATION WILL SERVE A USEFUL PUBLIC PURPOSE, RESPONSIVE TO A PUBLIC DEMAND OR NEED.

A. A Public Need For The Proposed Service Has Clearly Been Established.

By this application, Pitt-Ohio is requesting the right to transport property limited to G. C. Murphy Company between points in Pennsylvania. The first question to be answered is whether or not the evidence of record shows that there is a need for the proposed transportation service. Inasmuch as service will be provided only for G. C. Murphy, it is the evidence presented by that supporting shipper which is determinative.

G. C. Murphy operates a major distribution center in McKeesport, Allegheny County. (Ex. A-9) (90-91) It has vendors of various types of merchandise at 161 Pennsylvania locations, with more than one vendor in the major cities such as Pittsburgh and Philadelphia. (Ex. A-9) (92) A review of Applicant's Exhibit 9 will show that those vendors are not concentrated in any one part of the state but rather are located throughout Pennsylvania.

G. C. Murphy currently operates 115-120 retail stores in 91 Pennsylvania cities and towns. The larger cities such as Pittsburgh, Philadelphia and Harrisburg have more than one store each. (Ex. A-8) (88-89)

The more than 161 Pennsylvania vendors each ship merchandise to the McKeesport distribution center and to each of the 115-120 retail stores in Pennsylvania. (89-90, 121) The collective volume of traffic from the vendors to the distribution center is between 4,000,000 and 5,000,000 pounds a year. (95) The collective volume of traffic from the 161 Pennsylvania vendors to the more than 115 Pennsylvania retail stores is between 3,000,000 and 4,000,000 pounds a year. (96) G. C. Murphy currently controls the motor carrier selection with respect to 65-70% of this traffic and expects to control an even greater percentage in the near future. (94, 96, 122-123, 139)

In addition, there is a very heavy volume of traffic moving from the McKeesport distribution center to the individual retail stores. The annual volume in 1984 was 33,997,423 pounds. (Ex. A-10) (96-99, 100, 116, 119) Of that amount, between 4,000,000 and 5,000,000 pounds originated with Pennsylvania vendors as indicated above. The balance of approximately 29,000,000 pounds originated at points outside Pennsylvania. About 40% of that traffic, or 11,600,000 pounds, was consigned to the McKeesport distribution center to replenish inventories. At a later date it was reshipped to individual retail stores in Pennsylvania. (100-105)

Under well-established law, freight transported for hire between points in two states is in interstate commerce and

subject to the jurisdiction of the Interstate Commerce Commission. However, if the freight is delivered to a warehouse facility in the second state and there is no fixed intention on the part of the shipper to move that traffic to any specific further destination, there is a break in the movement and any subsequent transportation from the warehouse facility constitutes a separate movement for regulatory purposes. In this instance, there was a break in the transportation service when the 11,600,000 pounds of freight was placed into the distribution center inventory at McKeesport. The subsequent movement of that freight to Pennsylvania retail stores was a separate movement in Pennsylvania intrastate commerce. As a consequence, in 1984 the total volume of intrastate freight shipped from the McKeesport distribution center to retail stores in Pennsylvania was approximately 16,000,000 pounds. G. C. Murphy controls the selection of the motor carrier on all of that traffic. (95)

In addition to the above, G. C. Murphy has freight moving between the following additional combinations of points: from one retail store to another retail store (91, 129); from the retail stores back to the distribution center (91, 126); from the retail stores back to the vendors (99); and from the distribution center back to the vendors (91, 95, 99).

From the above is clear that G. C. Murphy has in excess of 20,000,000 pounds of freight moving annually in Pennsylvania

intrastate commerce. That freight moves from 161 vendor locations to 91 retail store locations and 1 distribution center, and vice versa; from the distribution center to the 91 retail store locations and vice versa; and between the 91 retail store locations. (Ex. A-8, 9 and 10)

With respect to the commodities to be transported, the G. C. Murphy retail stores are divided into 38 separate departments and each department sells a wide range of items. Applicant's Exhibit 7 shows the several hundred generic categories of merchandise involved. This is not all inclusive. For example, the sporting goods department shows golf, football, baseball and basketball items. There are numerous individual items under each of these general categories. (Ex. A-7) (87-88)

Applicant submits that the evidence presented by G. C. Murphy clearly establishes that there is a need for motor carrier service throughout Pennsylvania on a wide variety of commodities. Approval of the application will therefore be responsive to a public demand or need, specifically the need of G. C. Murphy Company.

B. Approval Of The Application Will Serve A Useful Public Purpose.

In Application of Richard L. Kinard, Inc., Docket No. A. 00095829, Folder 1, Am-D (Order entered October 22, 1984), the Commission stated that the second aspect of an Applicant's

burden of proof is to show that approval of the application will serve a useful public purpose, in addition to responding to a public demand or need. The so-called alternatives to the inadequacy criteria are methods by which the useful public purpose criteria is met. Applicant has presented evidence with respect to a number of these alternatives.

Pitt-Ohio proposes to provide a different type of service than that available from the sole protestant, Newcomer. Newcomer's operating authority permits it to operate only from Allegheny County to all points in 6 western Pennsylvania counties, and to portions of 5 other counties including Allegheny. (143, 145) A portion of that authority is Class C in nature so that Newcomer can legally handle the freight of only one consignor at a time. It also holds limited authority between Butler County and points in 11 counties in western Pennsylvania. (166-167)

Applicant, on the other hand, is proposing to provide service, without restriction, between any two points in Pennsylvania for G. C. Murphy. In view of the fact that the shipper's transportation needs encompass the entire state, the service proposed by the Applicant is far superior to and different than Newcomer's service. In connection with this particular alternative, Administrative Law Judge Christianson in his Initial Decision in the Kinard case stated that "existing carriers might provide excellent service within the

scope of their certificates but the shipper needs a broader (different) service in territory or commodity description".

(p. 24)

The evidence also shows that the proposed service would be highly efficient and a significant benefit to both the Applicant and the supporting shipper. Pitt-Ohio is currently providing a limited amount of intrastate service for G. C. Murphy in western Pennsylvania. It is also handling interstate traffic for G. C. Murphy, and other shippers, to points throughout Pennsylvania. (27-29, 42) Approval of this application will make the Applicant's service more efficient and beneficial to this shipper in several ways.

First, the interstate shipments being handled by Pitt-Ohio from a non-Pennsylvania origin direct to a Pennsylvania retail store could be coordinated at Pittsburgh with freight which is moving from the McKeesport distribution center to the same retail stores. This would involve the co-loading of interstate and intrastate freight at Applicant's Pittsburgh terminal. Currently the Applicant is able to serve all of the retail stores in Pennsylvania under its interstate authority but it can only serve a limited number of those stores in western Pennsylvania under its intrastate authority. G. C. Murphy testified that it would not be difficult for it to coordinate its interstate and intrastate shipments in this manner. (112) The result would be that the Applicant could combine a larger

number of shipments for the shipper moving to its retail stores throughout the state. This would improve the efficient use of the Applicant's equipment. In addition, it would be beneficial to the shipper since most of its retail stores have only one unloading dock and cannot accommodate more than one vehicle at a time. (107, 132) Pitt-Ohio, by combining interstate and intrastate shipments for a given store, would reduce the number of vehicles necessary and relieve the congestion that can occur.

The second way in which the operations of the Applicant could be made more efficient to the benefit of the shipper is in connection with the more than 17,000,000 pounds of interstate freight that is annually received inbound at the McKeesport distribution center which is already consigned to a specific retail store. Under those circumstances, the traffic remains in interstate commerce even though the through movement is temporarily interrupted. G. C. Murphy testified that about 25% of the interstate traffic has a preconsigned store as the ultimate destination, and another 35%, while consigned to the distribution center, has a specific store destination.

(101-104)

Pitt-Ohio today can transport that 17,000,000 pounds of interstate freight from the McKeesport distribution center to any retail store in Pennsylvania. Approval of this application would enable it to combine that interstate traffic with the 16,000,000 pounds of intrastate traffic generated by the

distribution center. This again will result in better utilization of the Applicant's equipment and an efficient distribution service for G. C. Murphy.

The third aspect of achieving greater efficiency involves the interstate traffic being handled by the Applicant for shippers other than G. C. Murphy. That traffic is handled through the Pittsburgh terminal and moves to points throughout Pennsylvania. By being able to co-load G. C. Murphy's intra-state traffic with this other interstate traffic, Applicant's operations will be much more efficient. (28-29)

There is also evidence that the Applicant's service is required to meet the anticipated greater future needs of the shipper. G. C. Murphy shipped almost 34,000,000 pounds of freight in 1984 from the McKeesport distribution center to the Pennsylvania retail stores. After the distribution center is remodeled, it expects to divert certain traffic from Columbus, Ohio back to McKeesport which will result in a greater volume of traffic in 1985 and subsequent years. (118-119) In Judge Christianson's Initial Decision in the Kinard case, he specifically stated that "this alternative would be based on a projection that either shipper need will change (increasing volume of traffic or a new plant under construction are obvious examples) or existing carrier service will change". (p. 26) Applicant has presented evidence consistent with this alternative approach.

The applicant's service is also needed as a backup to the two contract carriers which are presently handling the bulk of the traffic from the distribution center to the retail stores. This would involve handling overflow traffic that would not fit on the contract carrier vehicle, or small shipments which did not justify use of the contract carrier at all. (110, 119-120)

Other alternatives include ICC authority and rectification of authority. The relationship of Applicant's ICC authority to more efficient operations has already been discussed above. Approval of this application would rectify to some extent Pitt-Ohio's present operating authority at Folder 1, Am-B which prohibits service from points in Allegheny County to points in Armstrong, Butler, Clarion, Greene and Indiana Counties, and vice versa. (Ex. A-2) (10-11, 49-50) G. C. Murphy has retail stores in all of those counties. Applicant cannot presently handle intrastate shipments from the distribution center at McKeesport or vendors in Allegheny County to stores in those outlying five counties. Approval of this application would eliminate that prohibition to the benefit of both the Applicant and G. C. Murphy.

Based on the evidence Applicant submits that it has proven that approval of the application will serve a useful public purpose.

2. PITT-OHIO IS FIT, WILLING AND ABLE TO PROVIDE THE PROPOSED SERVICE.

Under the Transportation Regulatory Policy, 52 Pa. Code §41.14(b), an applicant for motor common carrier authority also must demonstrate that it has the technical and financial ability to provide the proposed service and will operate safely and legally. Applicant has submitted evidence to show its total fitness to receive a grant of authority.

Pitt-Ohio is a financially strong motor common carrier. Its operating ratio in 1984 was approximately 86% on a gross revenue of \$6,852,720. Its net income after taxes in 1984 was \$434,860 and it has a net worth in excess of \$1,000,000. (Ex. A-5 and 6) (26, 63-64) Clearly Applicant is financially capable of undertaking the service being proposed for G. C. Murphy.

Applicant has a comprehensive safety and equipment maintenance program. Its equipment is kept in good operating condition by five mechanics. Independent inspections are also made of the equipment. (19, 24-25) There is no evidence that the Applicant does not operate in a safe manner.

There is no evidence of record to suggest that the Applicant lacks a propensity to operate legally. Newcomer has filed a complaint against the Applicant alleging improper operations but there have been no decisions in connection with that complaint. There are no complaints against the Applicant by the Commission. (82-83)

Insofar as Applicant's ability to provide the proposed service is concerned, there can be no question. Applicant is obviously a successful carrier since its total revenues almost doubled from 1983 to 1984. (Ex. A-6) It has six years of experience in serving the supporting shipper on both interstate and intrastate traffic. (62) It has a 26 door terminal in Pittsburgh and has just recently purchased a 20 door terminal in Norristown in eastern Pennsylvania. (14, 38-40, 75) These terminals will anchor local eastern and western Pennsylvania operations as well as long haul service between the two ends of the state.

Pitt-Ohio operates 34 tractors, 76 van trailers and 33 straight trucks, all of which are suitable for transporting the shipper's traffic. The van equipment includes 25 foot pup trailers and regular vans of 42, 45 and 48 foot lengths. (Ex. A-3) (20-22) The company employs 75 drivers. (19)

All of the service required by G. C. Murphy is available from Pitt-Ohio. It provides scheduled pickup and scheduled delivery service, split pickup and multiple stop-off delivery service, and handles both truckload and less-than-truckload traffic. (16, 28, 33) From its Pittsburgh terminal it operates between 25 and 37 daily peddle runs in western Pennsylvania. (28-29) It is familiar with the shipper's method of doing business and has been specifically selected by the shipper to replace the discontinued service of the Helms Express division of Ryder/P-I-E Nationwide. (109-110, 134)

Pitt-Ohio submits that it has demonstrated that it is fit, financially and otherwise, to provide the proposed service.

3. APPROVAL OF THE APPLICATION WILL NOT ENDANGER OR IMPAIR THE OPERATIONS OF NEWCOMER OR OTHER CARRIERS.

In the Kinard case, the Commission at page 4 specifically states that "protestants assumed the burden of establishing that the entry of a new carrier would impair the operations of existing common carriers, contrary to the public interest". At page 5 the Commission agreed with Judge Christianson's interpretation of §41.14(c) of the Transportation Regulatory Policy in that the burden on protestants is quite heavy and it is not satisfied merely by showing a possible diversion of traffic. Newcomer has failed to carry its burden of proof.

During the first 2 1/2 months of 1985, Newcomer transported only 26 shipments of G. C. Murphy traffic. The shipments originated at three vendor locations in Crafton, Blawnox and Pittsburgh, Allegheny County and were all destined for retail stores in Westmoreland, Fayette, Greene and Allegheny Counties. All of the shipments were prepaid by the vendors which selected Newcomer as the carrier. (155-161)

Consequently, approval of this application should not divert any of that traffic from Newcomer to the Applicant since it is controlled by the vendor. If Newcomer provides adequate service it should not lose the business. On the other hand, if its service becomes unsatisfactory the vendor should have an

alternative service available to it. It should also be noted that of the 26 shipments handled by Newcomer, Pitt-Ohio has authority currently to transport the 14 shipments that moved to points in Westmoreland, Fayette and Allegheny Counties. Newcomer actually has at stake only the 3 shipments which it handled to Butler and the 9 shipments it handled to Waynesburg, Greene County.

Newcomer's continued operations certainly do not depend on the 12 shipments that would theoretically be subject to diversion if this application were approved. It should also be noted that G. C. Murphy is supporting Pitt-Ohio as a replacement for the previous service provided by the Helms Express division of Ryder/P-I-E. The freight that Pitt-Ohio will receive is therefore not going to be at the expense of any existing carrier.


There is no evidence to support any finding that approval of this application will endanger or impair the operations of Newcomer or any other existing carrier contrary to the public interest.

V. PROPOSED CONCLUSIONS OF LAW

Applicant respectfully requests that the Administrative Law Judge make the following conclusions of law and grant the application in its entirety:

1. The Commission has jurisdiction over the subject matter and the parties.
2. Approval of the application is necessary or proper for the service, accommodation, convenience or safety of the public.
3. Approval of the application will serve a useful public purpose, responsive to a public demand or need.
4. Applicant is fit, financially and otherwise, to provide the proposed service.
5. Approval of the application will not endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest.

Respectfully submitted,

By: 

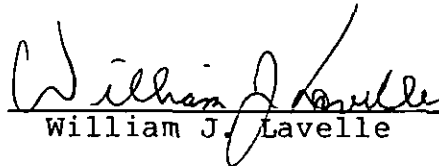
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing Brief of Pitt-Ohio Express, Inc. upon all parties of record in accordance with the Rules of Practice.

Dated at Pittsburgh, Pa. this 9th day of May, 1985.



William J. Lavelle