



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

March 24, 1986

John A. Vuono, Esquire
2310 Grant Building
Pittsburgh, PA 15219



IN REPLY PLEASE
REFER TO OUR FILE
A-00102471,
Folder 1,
Am-I

Application of Pitt-Ohio Express, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge John K. Clements.

If you do not agree with any part of this Decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120, within fifteen (15) days of the date of this letter. This exception period is fixed by statute. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must be served on each party of record and to the Administrative Law Judge whose address is Pennsylvania Public Utility Commission, Pittsburgh State Office Building, Room 1103, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40 page limit for exceptions and the 25 page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (Name of Party) - (protestant, complainant, staff, etc)".

If no exceptions are received within fifteen (15) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

cc: ALJ Clements/Office of ALJ/Bureau of Trans./Law Bureau/Chairman/Commissioners

OSA/Mr. Bramson

Very truly yours,

jr

Encls.

Certified Mail

Receipt Requested

Similar letters to: see attached list

William H. Smith

Chief Administrative Law Judge

Exhibitors Service Co., Inc.
85 Helen Street
McKees Rocks, PA 15136
(Transferor)

Sally A. Davoren, Esquire
1000 Standard Life Building
345 Fourth Avenue
Pittsburgh, PA 15222
(Newcomer Trucking, Inc.)

David T. Gutowski, Secy.
J & S, Inc.
P. O. Box 288
Indianaola, PA 15051

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pitt-Ohio Express, :
Inc., a corporation of the Common- :
wealth of Pennsylvania, for amend- :
ment to its common carrier Certifi- :
cate, which grants the right, inter :
alia, to transport property, between :
points in the counties of Allegheny, :
Armstrong, Beaver, Butler, Clarion, :
Crawford, Erie, Fayette, Greene, :
Indiana, Lawrence, Mercer, Venango, :
Washington and Westmoreland; subject :
to the following conditions: That :
no right, power or privilege is :
granted to transport commodities in :
bulk; That no right, power or privi- :
lege is granted to transport house- :
hold goods and office furniture in :
use; That no right, power or privi- :
lege is granted to transport commodi- :
ties which because of their size or :
weight require special handling or :
the use of special equipment; That :
no right, power or privilege is :
granted to transport iron and steel :
and iron and steel articles and :
refractories in single shipments :
weighing more than 24,000 pounds; :
That no right, power or privilege is :
granted to transport iron and steel :
and iron and steel articles and :
refractories, in single shipments :
weighing more than 10,000 pounds to, :
from or between points in Beaver :
County; That no right, power or :
privilege is granted to transport :
money, bullion, securities and other :
valuables, including checks in pro- :
cess and proof work; and That no :
right, power or privilege is granted :
to provide service from points in :
Allegheny County, to points in the :
counties of Armstrong, Butler, :
Clarion, Greene and Indiana, and :
vice versa: SO AS TO PERMIT the :

A-00102471,
F.1, Am-I

RECORDED
INDEXED
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RECORDED
INDEXED
MAR 25 1986

transportation of property, from :
points in the county of Allegheny to :
other points in Pennsylvania beyond :
the county of Allegheny, and vice :
versa; subject to the following con- :
ditions: (1) That no right, power :
or privilege is granted to transport :
household goods in use; (2) That no :
right, power or privilege is granted :
to transport commodities in bulk; :
(3) That no right, power or privilege :
is granted to transport shipments of :
iron and steel and iron and steel :
articles weighing in excess of 10,000 :
pounds; (4) That no right, power or :
privilege is granted to transport :
commodities which, because of size :
or weight, require the use of special :
equipment or special handling; (5) :
That no right, power or privilege is :
granted to transport property for :
Hershey Foods Corp. and its subsidi- :
aries, H. B. Reese Co., San Giorgio :
Macaroni, Inc., and Y & S Candies, :
Inc., from the township of Derry, :
Dauphin County, the city of Lebanon :
and the township of North Cornwall, :
Lebanon County, and the township of :
East Hempfield, Lancaster County, :
to points in Pennsylvania, and vice :
versa; (6) That no right, power or :
privilege is granted to transport :
property from points in Allegheny :
County to points within an airline :
distance of 25 miles of the City- :
County Building in the city of Pitts- :
burgh and vice versa; (7) That no :
right, power or privilege is granted :
to transport property from points in :
the county of Allegheny to points in :
the counties of Indiana, Clearfield, :
Cambria, Blair, Huntingdon, Somerset, :
Bedford, Lebanon, Berks, Lancaster, :
Beaver, Crawford, Erie, Fayette, :
Lawrence, Mercer, Venango, Washington :
and Westmoreland, and vice versa; :
(8) That no right, power or privilege :
is granted to transport limestone and :
limestone products for J. E. Baker :
Company, from its plant in the town- :
ship of West Manchester, York County, :

and for the Thomasville Stone and :
 Lime Company, from its plant in the :
 township of Jackson, York County; :
 (9) That no right, power or privilege :
 is granted to transport property, :
 from the facilities of American Home :
 Foods Division of American Home :
 Products Corp. located in the town- :
 ship of Turbot and the borough of :
 Milton, Northumberland County, to :
 points in Pennsylvania, and vice :
 versa; (10) That no right, power or :
 privilege is granted to transport :
 motion picture films and accessories, :
 dry ice, newspapers, magazines, and :
 meat, meat products, meat by-products, :
 dairy products, articles distributed :
 by meat packing houses and such com- :
 modities as are used by meat packers :
 in the conduct of their business; :
 (11) That no right, power or privi- :
 lege is granted to transport frozen :
 and perishable foods, fresh fruits :
 and vegetables, perishable non-food :
 commodities in temperature controlled :
 vehicles, from points in Allegheny :
 County to points within 150 miles of :
 the limits of Allegheny County; and :
 (12) That no right, power or privi- :
 lege is granted to provide service :
 (a) to or from the facilities of :
 Dauphin Distribution Services Company :
 in Cumberland County and Exhibitors :
 Service Company in Allegheny County; :
 (b) for Specialty Ladyfingers, Inc. :
 to or from Perry County; (c) for :
 Standard Brands, Inc., Armour and :
 Company, Swift and Company, The Best :
 Foods, Inc., Fairmont Creamery Com- :
 pany, Grennan Bakery Company, Seven :
 Baker Brothers Company, and Highway :
 Express Lines, Inc.; (d) for the :
 Commonwealth of Pennsylvania to or :
 from the Rockview Penitentiary in the :
 County of Centre; (e) for Sears, Roe- :
 buck & Company and Montgomery Ward :
 and Company in connection with the :
 transportation of catalogs from the :
 City of Pittsburgh; which is to be :
 a transfer of part of the rights :
 authorized under the certificate :

issued at A-00024261, Folder 23 to :
Exhibitors Service Company, a cor- :
poration of the Commonwealth of :
Pennsylvania, subject to the same :
limitations and conditions. :

INITIAL DECISION

Before John K. Clements
Administrative Law Judge

History of the Proceedings

By application filed with this Commission on May 28, 1985, Pitt-Ohio Express, Inc. (hereinafter referred to as Applicant or Pitt-Ohio) seeks authority to have transferred to it a part of the rights authorized under the certificate issued at Docket No. A-00024261, F.23 to Exhibitors Service Company, Inc. (hereinafter referred to as Exhibitors), which rights authorize the following service:

Property, from points in the county of Allegheny to other points in Pennsylvania beyond the county of Allegheny, and vice versa; subject to the following conditions: (1) That no right, power or privilege is granted to transport household goods in use; (2) That no right, power or privilege is granted to transport commodities in bulk; (3) That no right, power or privilege is granted to transport shipments of iron and steel and iron and steel articles weighing in excess of 10,000 pounds; (4) That no right, power or privilege is granted to transport commodities which, because of size or weight, require the use of special equipment or special handling; (5) That no right, power or privilege is granted to transport property for Hershey Foods Corp. and its subsidiaries, H. B. Reese Co., San Giorgio Macaroni, Inc., and Y & S Candies, Inc., from the township of Derry, Dauphin County, the city of Lebanon and the township of North Cornwall, Lebanon County, and the township of East Hempfield, Lancaster County, to points in Pennsylvania, and vice versa; (6) That no right, power or privilege is granted to transport property from

points in Allegheny County to points within an airline distance of 25 miles of the City-County Building in the city of Pittsburgh and vice versa; (7) That no right, power or privilege is granted to transport property from points in the county of Allegheny to points in the counties of Indiana, Clearfield, Cambria, Blair, Huntingdon, Somerset, Bedford, Lebanon, Berks, Lancaster, Beaver, Crawford, Erie, Fayette, Lawrence, Mercer, Venango, Washington and Westmoreland, and vice versa; (8) That no right, power or privilege is granted to transport limestone and limestone products for J. E. Baker Company, from its plant in the township of West Manchester, York County, and for the Thomasville Stone and Lime Company, from its plant in the township of Jackson, York County; (9) That no right, power or privilege is granted to transport property, from the facilities of American Home Foods Division of American Home Products Corp. located in the township of Turbot and the borough of Milton, Northumberland County, to points in Pennsylvania, and vice versa; (10) That no right, power or privilege is granted to transport motion picture films and accessories, dry ice, newspapers, magazines, and meat, meat products, meat by-products, dairy products, articles distributed by meat packing houses and such commodities as are used by meat packers in the conduct of their business; (11) That no right, power or privilege is granted to transport frozen and perishable foods, fresh fruits and vegetables, perishable non-food commodities in temperature controlled vehicles, from points in Allegheny County to points within 150 miles of the limits of Allegheny County; and (12) That no right, power or privilege is granted to provide service (a) to or from the facilities of Dauphin Distribution Services Company in Cumberland County and Exhibitors Service Company in Allegheny County; (b) for Specialty Ladyfingers, Inc. to or from Perry County; (c) for Standard Brands, Inc., Armour and Company, Swift and Company, The Best Foods, Inc., Fairmont Creamery Company, Grennan Bakery Company, Seven Baker Brothers Company, and Highway Express Lines, Inc.; (d) for the Commonwealth of Pennsylvania to or from the Rockview Penitentiary in the County of Centre; (e) for Sears, Roebuck & Company and Montgomery Ward and Company in connection with the transportation of catalogs from the City of Pittsburgh.

Applications for emergency temporary authority and temporary authority were filed simultaneously with the permanent application. By

Order entered June 13, 1985, the Commission granted emergency temporary authority to Pitt-Ohio to operate the rights sought by the permanent authority application pending disposition of the temporary or permanent application. No further action has been taken on the temporary authority application.

Notice of the temporary authority application and the permanent authority application was published in the Pennsylvania Bulletin on June 22, 1985. Timely protests were filed on behalf of Newcomer Trucking, Inc. and J & S, Inc.

By letter dated February 7, 1986, Sally A. Davoren, Esq. withdrew the protest of Newcomer Trucking, Inc. By letter dated February 13, 1986, John J. Ghaznavi, President of J & S, Inc., withdrew the protest of J & S, Inc.

A hearing on the application was held in Pittsburgh, Pennsylvania, on February 14, 1986. Witnesses testified on behalf of the applicant and on behalf of Exhibitors.

Summary of Testimony

Due to the fact that this application became unopposed prior to the hearing and that the hearing was relatively brief, there is no summary of testimony presented. Relevant portions of the testimony are referred to in the Findings of Fact and Discussion portions of this Decision.

Findings of Fact

1. The Applicant in this proceeding is Pitt-Ohio Express, Inc., a Pennsylvania corporation.

2. On May 24, 1985, Applicant and Exhibitors entered into an Agreement of Sale whereby Applicant agreed to purchase a part of the rights authorized under the certificate issued at Docket No. A-00024261, F.23 to Exhibitors, which rights are set forth on Appendix A to the Agreement of Sale. (Ex. A-1)

3. On May 28, 1985, Pitt-Ohio filed an application for permanent authority seeking to have transferred to it a part of the rights authorized under the certificate issued at Docket No. A-00024261, F.23 to Exhibitors.

4. On May 28, 1985, Pitt-Ohio also filed applications for emergency temporary authority and temporary authority to operate the rights sought to be transferred in the permanent authority application.

5. By Order entered June 13, 1985, the Commission granted emergency temporary authority for Pitt-Ohio to operate the rights sought to be transferred in the permanent authority application. (Ex. A-2)

6. The temporary authority application has not yet been acted upon by the Commission and is made moot by this Decision.

7. Applicant has authority from this Commission at Docket No. A-00102471 authorizing it to provide substantial transportation between various points in the Commonwealth of Pennsylvania. (Ex. A-3)

8. Applicant has authority from the Interstate Commerce Commission at Docket No. MC-30136 authorizing it to transport general commodities between points in a number of states, including Pennsylvania. (Ex. A-4)

9. Applicant has terminals in Pennsylvania located in Pittsburgh and Norristown.

10. Applicant owns and operates 32 straight trucks, 38 tractors and 24 trailers at the present time. In addition, Applicant leases on a permanent basis 18 straight trucks, 2 tractors and 71 trailers from Martera, Inc., a company owned by the same family that owns Applicant. (Ex. A-5)

11. Applicant has satisfactory safety and maintenance programs.

12. Applicant is in compliance with DOT and PUC regulations.

13. Applicant had operating revenues of \$6,771,639 for the nine months ending September 30, 1985 and earned net income during that period of \$679,326. (Ex. A-6)

14. Applicant's financial statements indicate that it has the ability to consummate this transaction and purchase the involved rights.

15. Exhibitors has provided service pursuant to authority granted by this Commission since 1933.

16. Exhibitors earned Pennsylvania intrastate revenues of \$304,567 in 1982; \$141,159 in 1983; \$37,522 in 1984; and \$16,150 in 1985.

17. Exhibitors earned total operating revenues of \$4,229,949 in 1981; \$3,838,346 in 1982; \$3,375,609 in 1983; and \$1,705,600 in 1984.

18. Exhibitors suffered operating losses of \$84,383 in 1981; \$49,075 in 1982; and \$74,689 in 1984. Exhibitors earned a profit of \$7,156 in 1983.

19. Exhibitors is transferring a part of its rights to Pitt-Ohio and a part of its rights to Hammel's Express, Inc. and is retaining the balance of its rights.

20. Exhibitors is continuing to operate the part of its rights that it is retaining and intends to continue operating those rights in the future.

21. Exhibitors has maintained its tariffs and insurance on file with the Commission and intends to continue to do so in the future.

22. Exhibitors has filed its Annual Reports and Assessment Reports and paid its assessments to the Commission and intends to continue to do so in the future.

23. Exhibitors has never at any time indicated to the Commission or to the public a desire to abandon its operating rights and, on the contrary, has conducted substantial operations under these rights, including the rights sought to be transferred by this application.

Discussion

This application involves the transfer of part of the operating rights of Exhibitors to Pitt-Ohio. The only issues involved are whether Applicant is fit to provide the proposed service, whether Exhibitors has abandoned the rights, and whether the granting of the authority to Pitt-Ohio is necessary or proper for the service, accommodation, convenience or safety of the public. 66 Pa. C.S. §1103(a)

In transfer cases, the principle has evolved that it is not necessary for the transferor or transferee to prove a public necessity for the involved service. It is presumed that the public necessity once found continues until the contrary is shown. In Re Byerly, 440 Pa. 521, 270 A.2d 186 (1970). There has been no evidence presented in this case to rebut the presumption of a continuance of necessity.

Exhibitors, the transferor in this case, is a long-established motor carrier, having provided service pursuant to rights granted by this Commission for more than 50 years. Exhibitors is continuing to operate the

rights which it is retaining and intends to continue to operate those rights in the future. Pitt-Ohio is operating the rights which are the subject of this application pursuant to a grant of emergency temporary authority. Clearly, Exhibitors has not abandoned its rights.

There can be no question but that Pitt-Ohio is fit to hold the authority to be transferred in this proceeding. The Applicant holds extensive authority from this Commission and from the Interstate Commerce Commission and has sufficient equipment, facilities, employees and financial resources to perform the service sought by this application.

Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.
2. The application is properly before the Commission.
3. The proposed service is necessary and proper for the service, accommodation, convenience and/or safety of the public.
4. The Applicant is fit to provide the proposed service.

ORDER

THEREFORE, IT IS ORDERED:

1. That the application of Pitt-Ohio Express, Inc. at Docket No. A-00102471, F.1, Am-I, for the transfer of a part of the rights held by Exhibitors Service Company, Inc. at Docket No. A-00024261, F.23, be and is hereby approved and the certificate issued to Pitt-Ohio Express, Inc. at A-102471, F.1, as amended, be further amended to include the following rights:

To transport, as a Class D carrier, property, from points in the county of Allegheny to other points in Pennsylvania beyond the county of Allegheny, and vice versa; subject to the following conditions: (1) That no right, power or privilege is granted to transport household goods in use; (2) That

no right, power or privilege is granted to transport commodities in bulk; (3) That no right, power or privilege is granted to transport shipments of iron and steel and iron and steel articles weighing in excess of 10,000 pounds; (4) That no right, power or privilege is granted to transport commodities which, because of size or weight, require the use of special equipment or special handling; (5) That no right, power or privilege is granted to transport property for Hershey Foods Corp. and its subsidiaries, H. B. Reese Co., San Giorgio Macaroni, Inc., and Y & S Candies, Inc., from the township of Derry, Dauphin County, the city of Lebanon and the township of North Cornwall, Lebanon County, and the township of East Hempfield, Lancaster County, to points in Pennsylvania, and vice versa; (6) That no right, power or privilege is granted to transport property from points in Allegheny County to points within an airline distance of 25 miles of the City-County Building in the city of Pittsburgh and vice versa; (7) That no right, power or privilege is granted to transport property from points in the county of Allegheny to points in the counties of Indiana, Clearfield, Cambria, Blair, Huntingdon, Somerset, Bedford, Lebanon, Berks, Lancaster, Beaver, Crawford, Erie, Fayette, Lawrence, Mercer, Venango, Washington and Westmoreland, and vice versa; (8) That no right, power or privilege is granted to transport limestone and limestone products for J. E. Baker Company, from its plant in the township of West Manchester, York County, and for the Thomasville Stone and Lime Company, from its plant in the township of Jackson, York County; (9) That no right, power or privilege is granted to transport property, from the facilities of American Home Foods Division of American Home Products Corp. located in the township of Turbot and the borough of Milton, Northumberland County, to points in Pennsylvania, and vice versa; (10) That no right, power or privilege is granted to transport motion picture films and accessories, dry ice, newspapers, magazines, and meat, meat products, meat by-products, dairy products, articles distributed by meat packing houses and such commodities as are used by meat packers in the conduct of their business; (11) That no right, power or privilege is granted to transport frozen and perishable foods, fresh fruits and vegetables, perishable non-food commodities in temperature controlled vehicles, from points in Allegheny County to points within 150 miles of the limits of Allegheny County; and (12) That no right, power or privilege is granted to provide service (a) to or from the facilities of Dauphin Distribution

Services Company in Cumberland County and Exhibitors Service Company in Allegheny County; (b) for Specialty Ladyfingers, Inc. to or from Perry County; (c) for Standard Brands, Inc., Armour and Company, Swift and Company, The Best Foods, Inc., Fairmont Creamery Company, Grennan Bakery Company, Seven Baker Brothers Company, and Highway Express Lines, Inc.; (d) for the Commonwealth of Pennsylvania to or from the Rockview Penitentiary in the County of Centre; (e) for Sears, Roebuck & Company and Montgomery Ward and Company in connection with the transportation of catalogs from the City of Pittsburgh.

2. That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on the rights to be acquired by Applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by Applicant, or to approve or prescribe rates sufficient to yield a return thereon.

3. That Applicant shall not record in its utility accounts any amount representing the rights herein granted, in excess of the actual cost of such rights to the original holder thereof.

4. That the Applicant charge to Account 1550, Other Intangible Property, \$65,000, being the amount of the consideration payable by it for the rights and going concern value attributable thereto; less any amount recorded under paragraph 3 above.

5. That the Applicant shall not operate or engage in any transportation under the above rights until the applicant has complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing and acceptance of a tariff establishing just and reasonable rates.

6. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the carrier, shall not be construed as conferring more than one operating right.

7. That the certificate holder shall not transfer, sell or in any way, convey any of its outstanding capital stock to any individual, partnership, corporation or any entity, without the prior filing of an application and approval thereof by this Commission under Section 1103(3) of the Public Utility Code, 66 C.S. §1102(3).

8. That in the event Applicant has not, on or before sixty (60) days from the date of service of this order, complied with the requirements set forth above, the application shall be dismissed without further proceedings.

9. That upon compliance with this order the rights granted the transferor Exhibitors Service Company, Inc. at A-00024261, F.23, be modified and amended to eliminate therefrom the rights granted herein to the transferee.

February 18, 1986



JOHN K. CLEMENTS
Administrative Law Judge

417

Case Identification: A-00102471, F. 1, Am-I; Application of Pitt-Ohio Express, Inc.

Initial Decision by: ALJ John K. Clements

Date Issued for Exceptions: March 24, 1986

ALJ Recommendation: That the transfer application is approved.

DOCKETED
APR 7 - 1986

* * * *

I want full Commission review of this decision.

Commissioner

DATE
FOLDER

I do not want full Commission review of this decision.

Bill Sharps /sw
Commissioner

4-4-86
DATE

ACT 294

Case Identification: A-00102471, F. 1, Am-I; Application of Pitt-Ohio Express, Inc.

Initial Decision by: ALJ John K. Clements

Date Issued for Exceptions: March 24, 1986

ALJ Recommendation: That the transfer application is approved.

* * * *

I want full Commission review of this decision.

Commissioner

DATE

I do not want full Commission review of this decision.

Liinda P. Salofers

Commissioner

4-3-86

DATE

ACT 294

Case Identification: A-00102471, F. 1, Am-I; Application of
Pitt-Ohio Express, Inc.

Initial Decision by: ALJ John K. Clements

Date Issued for Exceptions: March 24, 1986

ALJ Recommendation: That the transfer application is approved.

* * * *

I want full Commission review of this decision.

Commissioner

DATE

I do not want full Commission review of this decision.

Frank Smith

Commissioner

4-3-86

DATE