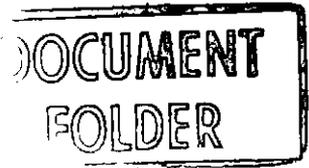


PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held November 22, 1989

Commissioners Present:

- Bill Shane, Chairman
- William H. Smith, Vice-Chairman
- Joseph Rhodes, Jr.
- Frank Fischl



Application of ATSL, Inc., a corporation of the Commonwealth of Pennsylvania, for the transfer of a portion of the operating rights of Tose-Fowler, Inc., under the certificate issued at A-00068623, F. 21, rights nos. 3 and 10, subject to the same limitations and conditions.

A-00100024
F. 1
Am-J

Vuono, Lavelle & Gray, by John A. Vuono, for the applicant.
Rubin, Quinn, Moss & Heaney, by James W. Patterson, for the protestant.

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed September 11, 1989. Public notice of the application was given in the Pennsylvania Bulletin of October 21, 1989. The unopposed application is certified to the Commission for its decision without oral hearing.

This application is one of a series of actions involving Tose-Fowler, Inc. (Tose-Fowler or transferor), which ultimately will result in it ceasing operations and going out of business. Four applications have been filed, by (1) ATSL, Inc., MC-F-19494, (2) Atlantic Contract Carriers Corp., MC-F-19419, (3) Pitt-Ohio Express, Inc., MC-F-19416, and (4) Yellow Freight System, Inc., MC-F-19418, with the Interstate Commerce Commission (ICC) pursuant to 49 U.S.C. §11341(a), for the transfer of portions of Tose-Fowler's interstate and intrastate operating authority. Additionally, Tose-Fowler has petitioned this Commission for cancellation of any portion of its intrastate authority not sold to one of the above-named purchasers/transferees.

While this Commission retains jurisdiction over the interpretation of intrastate operating authority, with regard to the meaning and scope of rights and matters relating to duplicative or overlapping rights, federal regulations specifically exempt the parties involved in such transfers from interference by the states in consolidation, merger, and acquisition of control transactions before the ICC, when the applications are approved by the ICC. The applicant is still required, however, to file a transfer application with this Commission, pursuant to 66 Pa. C.S. §1102(a)(3), even though we cannot raise questions concerning the ICC's action.

The ICC granted the temporary authority applications of the four purchasers to operate Tose-Fowler's authority. Public notice of the applications was given in the ICC Register. Pursuant to the notice, if no comments were received within thirty days, the parties could consummate the transactions sixty days after publication of the notice, without further action by the ICC. No comments were received and the parties have moved to complete the transfers.

The total consideration for the rights is \$24,000. No tangible assets are involved. The sales agreement requires the consideration to be paid as follows: \$12,500 at execution of the sales agreement and the balance at closing after approval of this transfer.

A review of the record before us indicates that the applicant possesses the requisite experience, equipment and financial capacity to provide the proposed service.

The authority to be transferred has been operated by the transferor, therefore, it is presumed that there is a continuing public need, which may be overcome only by evidence to the contrary. In re: Byerly, 440 Pa. 521 (1970); Hostetter v. Pa. P.U.C., 160 Super. Ct. 94 (1947). Since the record is void of any such evidence, this presumption of continuing public need applies in this transfer proceeding.

We find:

1. The applicant is fit, willing and able to provide the service proposed.
2. Transfer of the authority is in the public interest and is necessary for the continued accommodation and convenience of the public;
THEREFORE,

IT IS ORDERED: That the transfer application be and is hereby approved and that the certificate of public convenience issued on April 27, 1977, as amended, be further amended to include the following rights:

1. To transport, as a Class D carrier, property for the Philadelphia Electric Company between its stores and warehouses in Pennsylvania within forty (40) miles by the usually traveled highways of the limits of the borough

of Norristown, Montgomery County; also to transport appliances, equipment, materials and supplies of Philadelphia Electric Company from the factories and supply houses and places of business of independent manufacturers of equipment, materials and supplies for said Philadelphia Electric Company to the warehouses, salesrooms, depots, substations and supply houses of said company, also to transport any equipment, supplies and materials to construction sites of said Philadelphia Electric Company, provided, that in all rights covered by this paragraph, the Philadelphia Electric Company shall be the consignee.

2. To transport, as a Class D carrier, crated and uncrated household appliances for the Philadelphia Electric Company, from manufacturers, distributors and suppliers in the city and county of Philadelphia and the boroughs of Norristown and Bridgeport, Montgomery County, to the homes and stores of customers in the counties of Montgomery, Bucks, Chester and Delaware; with the right to transport on the return trip from the stores and homes of said customers, household appliances which may have been traded in or returned by said customers;

with right no. 2 subject to the following conditions:

- (a) That the rights, powers and privileges herein granted are limited and restricted to the transportation of household appliances which the certificate holder will place, connect, set up or assemble in the homes and stores of customers.
- (b) That the rights, powers and privileges herein granted with respect to the transportation of crated household appliances are limited and restricted to appliances which the certificate holder will uncrate in the course of such transportation.

subject to the following general conditions:

1. 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 property and 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.

2. 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.
3. That the applicant charge to Account 1550, Other Intangible Property, \$24,000, being the amount of the consideration payable by it for the rights and going concern value attributable thereto; less any amount recorded under condition 2 above; and subject to further adjustment due to any normal interim transactions to the date of actual transfer.
4. That the accounts of the transferee shall reflect the same book values as the records of the transferor at the effective date of the transfer, any previously recorded appreciation having been deleted therefrom; provided that the applicant shall not record in its utility accounts any amounts representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.
5. That the operating authority granted herein, or now held or subsequently granted to the applicant to the extent that it is duplicative shall not be construed as conferring more than one operating right.
6. 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 the Commission under 66 Pa. C.S. §1102(a)(3).

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it 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.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order,

complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon receipt of a final order from the Interstate Commerce Commission, the applicant will forward a copy to this Commission for inclusion in its file.

IT IS FURTHER ORDERED: That upon compliance with the conditions set forth in the orders at ATSL, Inc., at A-00100024, F. 1, Am-J; Atlantic Contract Carriers Corp., at A-00108568, F. 2; Pitt-Ohio Express, Inc., at A-00102471, F. 1, Am-AF; and Yellow Freight System, Inc., at A-00108952, all of the remaining rights granted the transferor, Tose-Fowler, Inc., at A-00068623, be cancelled by supplemental order and the record be marked closed.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: November 22, 1989

ORDER ENTERED: November 28, 1989