

PUC-77

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheets

1. <u>REPORT DATE:</u>	:	2. <u>BUREAU AGENDA NO.</u>
September 15, 1987	:	NOV-87-T-1298*
3. <u>BUREAU:</u>	:	
Transportation	:	
4. <u>SECTION</u>	:	5. <u>PUBLIC MEETING DATE:</u>
Technical Review	:	
6. <u>APPROVED BY:</u>	:	
	:	November 5, 1987
Director: Ernst 7-2154	:	
Supervisor: Bigelow/Marzolf 3-5945	:	
7. <u>MONITOR:</u>	:	
	:	
8. <u>PERSON IN CHARGE:</u>	:	
Keener-Farley 7-4386:	:	
9. <u>DOCKET NO.:</u>	:	
A-00102471, F. 1, Am-J	:	
10. (a) <u>CAPTION</u> (abbreviate if more than 4 lines)		
(b) Short summary of history & facts, documents & briefs		
(c) Recommendation		

(a) Application of Pitt-Ohio Express, Inc., Pittsburgh, Allegheny County, for approval of the transfer to it of part of the common carrier property authority held by Hammel's Express, Inc., at A-00088995, F. 2 and F. 4, subject to the same limitations and conditions.

(b) Transferor proposes to transfer part of its authority to the applicant for a total consideration of \$25,000; no tangible assets are involved in the sale. It is necessary to eliminate the transferor's right of interchange with other carriers so as to prevent duplicative rights being retained by the transferor.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order approving the application, as modified, and that the transferor's certificate be modified by supplemental order.

11. MOTION BY:	Commissioner Chm. Shane	Commissioner Taliaferro - Yes
		Commissioner Smith - Yes
SECONDED:	Commissioner Fischl	Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

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NOV 24 1987



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

November 9, 1987

IN REPLY PLEASE
REFER TO OUR FILE

A-00102471

F. 1, Am-J

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

Application of Pitt-Ohio Express, Inc., a corporation of the Commonwealth
of Pennsylvania

Dear Sir:

Enclosed is the compliance order issued by the Commission in
this proceeding.

The applicant will not be permitted to operate or engage in
any transportation granted by the enclosed order until a tariff has been
prepared and filed in accordance with the enclosed instructions.

Motor carriers operating without complying with the above
requirement will be subject to the penalty provisions of the Public
Utility Code.

Commission regulations require compliance with the above
requirement within sixty (60) days of the date of this letter. Failure
to comply within the sixty (60) day period will cause the Commission to
rescind the action of November 5, 1987, and dismiss the application
without further proceedings.

Very truly yours,

Jerry Rich
Secretary

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jr
Enclosure
Certified Mail
Receipt Requested
Tariff Contact Person: Joseph Machulsky (717) 787-5521
cc: Applicant, 26th & Railroad Sts., Pittsburgh, PA 15222

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held November 5, 1987

Commissioners Present:

Bill Shane, Chairman
Linda C. Taliaferro
Frank Fischl
William H. Smith

Application of Pitt-Ohio Express, Inc., a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate, which grants the right, inter alia, to transport, by motor vehicle, property for H. J. Heinz company, U.S.A. between points in Pennsylvania; subject to the following condition: That no right, power or privilege is granted to transport commodities in bulk: SO AS TO PERMIT the transportation of (1) property from points in that part of Pennsylvania on and west of U.S. Highway Route 219 (except points in Allegheny County) to points in that part of Pennsylvania on and east of U.S. Highway Route 15, and vice versa; with the right to interchange property with Class A, Class B and Class D carriers so authorized; (2) property from points in Allegheny County to points in the counties of Lebanon, Berks and Lancaster, and vice versa; with the right to interchange property with Class A, Class B and Class D carriers so authorized; with rights No. 1 and 2 subject to the following conditions: That no right, power or privilege is granted to transport household goods and office furniture in use, property in bulk, property which because of size or weight requires the use of special equipment, or commodities in vehicles equipped with mechanical refrigeration; and That no right, power or privilege is granted

A-00102471
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to transport (a) property to or from points in the boroughs of Exeter and West Pittston and the city of Wilkes-Barre, Luzerne County, (b) property to or from the facilities of American Home Foods Division of American Home Products Corporation located in the township of Turbot and the borough of Milton, Northumberland County, (c) such merchandise, as is dealt in by wholesale, retail and chain grocery and food business houses to or from points in York County, and (d) limestone, limestone products or fertilizer from points in York County; (3) glassware, from the borough of South Connellsville, Fayette County, to points within one hundred fifty (150) miles of the limits of the said borough, with the right to return damaged, refused or rejected merchandise; with right No. 3 subject to the following conditions: That no right, power or privilege is granted to transport glassware from the borough of South Connellsville, Fayette County, to the borough of Latrobe, Westmoreland County, to or the villages of Schenley and Aladdin, Armstrong County; and That no right, power or privilege is granted to transport glassware from the borough of South Connellsville, Fayette County, to points in Pennsylvania east of U.S. Highway Route 219, except to the city of Altoona, Blair County; which is to be a transfer of part of the rights authorized under the certificates issued at A-00088995, F. 2 and F. 4 to Hammel's Express, Inc., a corporation of the Commonwealth of Pennsylvania, subject to the same limitations and conditions.

Vuono, Lavelle & Gray, by John A. Vuono, for the applicant.
Arthur J. Diskin for the protestant, Pittsburgh-Johnstown-Altoona
Express, Inc.

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed November 22, 1985. Public notice of the application was given in the Pennsylvania Bulletin of December 14, 1985. One protest was filed and the applicant filed a motion to strike or dismiss the protest. Subsequently, the protestant withdrew its protest and the now unopposed

application is certified to the Commission for its decision without oral hearing.

The corresponding applications for emergency temporary authority and temporary authority were approved by orders adopted December 5, 1985 and February 13, 1986, respectively.

Pitt-Ohio Express, Inc. (Pitt-Ohio or applicant), is a Pennsylvania corporation, initially certificated in 1981; it presently operates under sixteen paragraphs of permanent authority. The applicant's main terminal is located in Pittsburgh, Allegheny County. Fifty-two tractors, twenty trailers, and forty-four straight trucks are owned by Pitt-Ohio; this fleet is supplemented by leased equipment, as needed. A comprehensive safety program for drivers and equipment is currently in operation. As evidence of its financial capacity to perform the proposed service, Pitt-Ohio reports assets of \$6,618,384, with liabilities of \$4,497,472, leaving a shareholders' equity of \$2,120,912, gross intrastate operating revenue was \$2,070,041 in 1986.

Charles L. Hammel, III, is president of Pitt-Ohio, Kenneth W. Hammel is vice president, and Robert F. Hammel is secretary-treasurer; the officers are also directors of the corporation and each owns one-third of the stock. Each of these Pitt-Ohio officers also own twelve percent of the outstanding stock of the transferor, although none is an officer or director of that corporation.

Hammel's Express, Inc. (Hammel's or transferor), is a Pennsylvania corporation, initially certificated in 1962. Gross intrastate operating revenue was \$2,764,333 in 1984, \$1,911,320 in 1985 and \$1,523,973 in 1986. Hammel's will continue to operate its remaining authority and will be responsible for its own business debts.

Total consideration for the transfer of the rights is twenty-five thousand dollars (\$25,000.00), payable within thirty days of the approval of this application, pursuant to a sales agreement executed November 15, 1985. No tangible assets are involved in the sale.

This transfer involves two rights. The second right (to transport glassware), currently held by Hammel's at A-00088995, Folder 4, right number eight, will be totally transferred to Pitt-Ohio. The other right, however, will be fractionalized into three parts; Pitt-Ohio will receive two of those paragraphs and Hammel's will retain one.

The right to be fractionalized is currently held by Hammel's at A-00088995, Folder 2, Amendment F, grants the authority to:

To transport, as a Class D carrier, property from points in that part of Pennsylvania on and west of U.S. Highway Route 219 to points in that part of Pennsylvania on and east of U.S. Highway Route 15, and vice versa; with the right to interchange property with

Class A, Class B and Class D carriers so authorized;

subject to various conditions, which will remain with each of the three parts of the fractionalization. Pitt-Ohio will receive the following rights:

To transport, as a Class D carrier, property from points in that part of Pennsylvania on and west of U.S. Highway Route 219 (except points in Allegheny County) to points in that part of Pennsylvania on and east of U.S. Highway Route 15, and vice versa; with the right to interchange property with Class A, Class B and Class D carriers so authorized;

To transport, as a Class D carrier, property from points in Allegheny County to points in the counties of Lebanon, Berks and Lancaster, and vice versa; with the right to interchange property with Class A, Class B and Class D carriers so authorized.

Hammel's wishes to retain the following right:

To transport, as a Class D carrier, property from points in Allegheny County to points in that part of Pennsylvania on and east of U.S. Highway Route 15 (except points in the counties of Lebanon, Berks and Lancaster), and vice versa; with the right to interchange property with Class A, Class B and Class D carriers so authorized.

The reasons for this transfer are rooted in the future business plans of the two parties. Pitt-Ohio is expanding its operation and hopes to become a major hauler between western and eastern Pennsylvania. Hammel's, however, seeks to center its operation on Allegheny County. The right has been fractionalized so that Hammel's will retain the right to transport from Allegheny County to points on and east of U.S. Route 15, thereby allowing the transferor to continue to serve its Allegheny County customers to points in eastern Pennsylvania, except Berks, Lancaster and Lebanon counties. Pitt-Ohio will receive the right to transport from Allegheny County to Berks, Lancaster and Lebanon counties; this right will dovetail with an existing right which prohibits transportation from Allegheny County to those three counties.

We cannot, however, allow Hammel's to retain its right to interchange with Class A, B and D carriers. It is basic Commission policy that a transferor cannot retain a right that duplicates a right that has been transferred to another carrier. Application of Rocket Transportation Company, 43 Pa. P.U.C. 90(1966). By retaining the right

to interchange with other carriers, Hammel's would be capable of participating in moves that originate or terminate in areas that it has transferred to Pitt-Ohio. For that reason, we will modify the authority retained by Hammel's so as to eliminate the interchange right. We believe that this modification conforms to Hammel's stated intention to concentrate its activities in Allegheny County.

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

The authority to be transferred has been recently 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 Pa. Super. Ct. 94 (1947). Since the record is void of any such evidence, the presumption of continuing public need applies to this transfer application.

We find:

1. That the applicant has the technical and financial ability to provide the proposed service.
2. That a continuing need exists for the transportation involved herein.
3. That approval of the application, as modified, is necessary for the accommodation and convenience of the public;
THEREFORE,

IT IS ORDERED: That the application, as modified, for the transfer of all of the rights held by Hammel's Express, Inc., at A-00088995, Folder 2, Amendment F, and Folder 4, right number 8, be and is hereby approved and that the certificate issued to the applicant, at A-00102471, Folder 1, as amended, be further amended to include the following rights:

1. To transport, as a Class D carrier, property from points in that part of Pennsylvania on and west of U.S. Highway Route 219 (except points in Allegheny County) to points in that part of Pennsylvania on and east of U.S. Highway Route 15, and vice versa; with the right to interchange property with Class A, Class B and Class D carriers so authorized;
2. To transport, as a Class D carrier, property from points in Allegheny County to points in the counties of Lebanon, Berks and Lancaster, and vice versa; with the right to interchange property with Class A, Class B and Class D carriers so authorized;

with rights number 1 and 2 subject to the following conditions:

- A. That no right, power or privilege is granted to transport household goods and office furniture in use, property in bulk, property which because of size or weight requires the use of special equipment, or commodities in vehicles equipped with mechanical refrigeration;
 - B. That no right, power or privilege is granted to transport (a) property to or from points in the boroughs of Exeter and West Pittston and the city of Wilkes-Barre, Luzerne County, (b) property to or from the facilities of American Home Foods Division of American Home Products Corporation located in the township of Turbot and the borough of Milton, Northumberland County, (c) such merchandise, as is dealt in by wholesale, retail and chain grocery and food business houses to or from points in York County, and (d) limestone, limestone products or fertilizer from points in York County;
3. To transport, as a Class D carrier, glassware, from the borough of South Connellsville, Fayette County, to points within one hundred fifty (150) miles of the limits of the said borough, with the right to return damaged, refused or rejected merchandise;

with right number 3 subject to the following conditions:

- A. That no right, power or privilege is granted to transport glassware from the borough of South Connellsville, Fayette County, to the borough of Latrobe, Westmoreland County, or to the villages of Schenley and Aladdin, Armstrong County.
- B. That no right, power or privilege is granted to transport glassware from the borough of South Connellsville, Fayette County, to points in Pennsylvania east of U.S. Highway Route 219, except to the city of Altoona, Blair County.

with all of the rights above 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 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, \$25,000, 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.
4. That the certificate holder shall comply with all of the provisions of the Public Utility Code as now existing or as may hereafter be amended, and 52 Pa. Code §31, as now existing or as may hereafter be amended, and any other rules and regulations as may hereafter be prescribed by the Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate.
5. 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.A. §1102(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 evidence of insurance and a tariff adoption supplement in accordance with 52 Pa. Code §23.13(c).


IT IS FURTHER ORDERED: 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.

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 compliance with this order, the rights granted the transferor, Hammel's Express, Inc., at A-00088995, Folder 2, Amendment F, and Folder 4, right number 8, be modified and its tariff amended as provided for in the attached supplemental order.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: November 5, 1987

ORDER ENTERED: NOV 09 1987