



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

November 28, 1989

IN REPLY PLEASE
REFER TO OUR FILE

DOCKETED

A-102471
F. 1, Am-AF

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

FEB 21 1990

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

To Whom It May Concern:

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

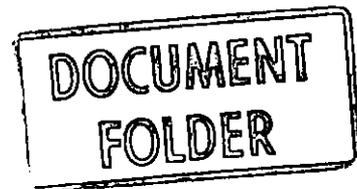
The applicant will not be permitted to operate or engage in
any transportation granted by the enclosed order until a tariff has been
prepared and filed in accordance with the enclosed instructions.

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 22, 1989 and dismiss the application
without further proceedings.

Very truly yours,

Jerry Rich
Secretary



lg

Enclosure

Certified Mail

Receipt Requested

Tariff Contact Person: Joseph Machulsky (717) 787-5521

cc:applicant

Pitt-Ohio Express, Inc.

26th & A.V.R.R.

Pittsburgh, PA 15222

4

PUC-77

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheets

1. <u>REPORT DATE:</u>	November 15, 1989	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u>	Transportation	:	NOV-89-T-1325*
4. <u>SECTION</u>	Technical Review	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>		:	November 22, 1989
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-AF	:	

10. (a) CAPTION (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, a corporation of the Commonwealth of Pennsylvania, for the transfer of a portion of the operating rights of Tose-Fowler under the certificate issued at A-00068623, F. 3, 5, Am-E and Am-F, and 15, subject to the same limitations and conditions.

(b) Transferor proposes to transfer a portion of its PUC operating authority for a total consideration of \$297,000; no tangible assets are involved in the sale. An application has been filed with the ICC for transfer of interstate and intrastate rights pursuant to 49 U.S.C. §11341(a).

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order approving the transfer application and that the certificate issued to the transferor be cancelled by supplemental order.

LK-F:11

DOCKETED

DOCKETED
JAN 26 1990

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

CONTENT OF MOTION: Staff recommendation adopted.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

DOCKETED

FEB 21 1990

Public Meeting held November 22, 1989

Commissioners Present:

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

Application of Pitt-Ohio Express, 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. 3, 5, Am-E and Am-F, and 15,
subject to the same limitations and conditions.

A-00102471
F. 1
Am-AF

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

**DOCUMENT
FOLDER**

BY THE COMMISSION:

This matter comes before the Commission on an application filed August 15, 1989. Public notice of the application was given in the Pennsylvania Bulletin of September 16, 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 \$297,000. No tangible assets are involved. The sales agreement requires the consideration to be paid as follows: ten percent 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 March 4, 1981, as amended, be further amended to include the following rights:

1. To transport, as a Class D carrier, property, between points in and east of the counties of Adams, Cumberland, Perry, Juniata, Mifflin, Union, Clinton and Tioga;

subject to the following conditions:

- (a) That no right, power or privilege is granted to transport garments, and materials, supplies and trimmings, incidental to the manufacture of said garments, between manufacturers, processors and contractors thereof.
- (b) That no right, power or privilege is granted to transport commodities in bulk, in dump or tank vehicles.
- (c) That no right, power or privilege is granted to transport commodities which, because of their size or weight, require the use of special equipment.
- (d) That no right, power or privilege is granted to transport iron and steel and iron and steel articles on flatbed trailers.
- (e) That no right, power or privilege is granted to transport household goods and office furnishings, in use, to or from points in the counties of Adams, Berks, Clinton, Cumberland, Dauphin, Juniata, Lancaster, Lebanon, Lycoming, Mifflin, Montour, Northumberland, Perry, Schuylkill, Snyder, Union, York and Lackawanna and between points in the borough of Duryea, Luzerne County and within eight miles by the usually travelled highways of the limits of said borough.
- (f) That no right, power or privilege is granted to transport limestone, limestone products and fertilizer from points in York County.
- (g) That no right, power or privilege is granted to transport such merchandise as is dealt in by wholesale, retail and chain grocery and food business houses, to or from points in the county of York and the township of Conawago, Adams County.
- (h) That no right, power or privilege is granted to transport property to or from the facilities of Sky Brothers of Lemoyne, Inc. in the city of Harrisburg, Dauphin County or to and from the facilities of Sky Brothers of Allentown and Allentown Public Storage in the

township of Hanover and the city of Allentown, Lehigh County.

- (i) That no right, power or privilege is granted to transport wood and wood products to or from the city of Lock Haven, Clinton County and points within thirty-five (35) statute miles of the limits of said city.
 - (j) That no right, power or privilege is granted to transport scrap metal and scrap paper for Hodes Industries, Inc. to or from its facilities in Lock Haven, Clinton County.
 - (k) That no right, power or privilege is granted to transport grain and grain products to or from points in Clinton County.
 - (l) That no right, power or privilege is granted to transport property to or from American Home Foods Division of American Home Products Corp., in the township of Turbot and the borough of Milton, Northumberland County.
 - (m) That no right, power or privilege is granted to permit service for Philadelphia Electric Company between points within forty (40) miles of the limits of the borough of Norristown, Montgomery County.
2. To transport, as a Class D carrier, property, between points in the borough of Moosic, Lackawanna County, and within an airline distance of fifty (50) statute miles of the limits thereof, and from points in the said area to points within an airline distance of one hundred twenty-five (125) statute miles of the limits of said borough, and vice versa;

subject to the following conditions:

- (a) That no right, power or privilege is granted to transport iron and steel and iron and steel articles from points in the city of Allentown, Lehigh County, and within an airline distance of thirty (30) statute miles of the limits of the said city, on flatbed trailers.
- (b) That no right, power or privilege is granted to transport garments and/or wearing apparel and materials, supplies and trimmings incidental to the manufacture of said garments and/or

wearing apparel, between manufacturers, processors and contractors thereof.

- (c) That no right, power or privilege is granted to transport property to points located in the counties of McKean, Cameron, Clearfield, Blair, Bedford and Indiana.
 - (d) That no right, power or privilege is granted to transport property which, by reason of size or weight, requires special equipment, special handling or rigging.
 - (e) That no right, power or privilege is granted to transport commodities in bulk in tank vehicles.
 - (f) That no right, power or privilege is granted to transport household goods in use.
- 3. To transport, as a Class B carrier, household goods, in use, between points in the city of Scranton, Lackawanna County, and within three (3) miles of the limits of said city.
 - 4. To transport, as a Class D carrier, household goods, in use, from points in the city of Scranton, Lackawanna County, and within three (3) miles of the limits of said city to other points in Pennsylvania, and vice versa.

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, \$297,000, 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



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

December 12, 1989

IN REPLY PLEASE
REFER TO OUR FILE

James W. Patterson, Esquire
Rubin, Quinn, Moss & Heaney
1800 Penn Mutual Tower
510 Walnut Street
Philadelphia, PA 19106-3619

In re: A-00100024, F. 1, Am-J - ATSL, Inc.
A-00102471, F. 1, Am-AF - Pitt-Ohio Express, Inc.
A-00108568, F. 2 - Atlantic Coast Carriers, Corp.
A-00108952 - Yellow Freight System, Inc.



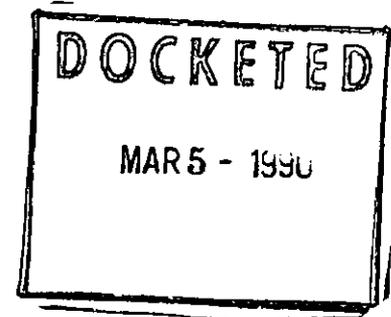
Dear Sir:

The orders issued in the above-captioned transfer applications incorrectly listed the counsel of record.

Please substitute the enclosed corrected pages for the pages you initially received. I apologize for any inconvenience these errors may have caused you or your client.

Very truly yours,

Jerry Rich
Secretary



Enclosures

Copy of Corrected Pages to:

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

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

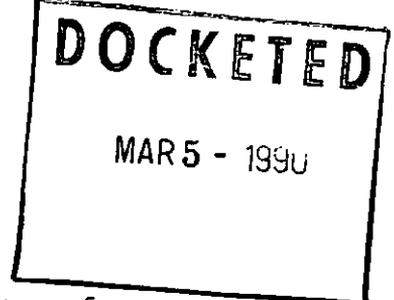
Public Meeting held November 22, 1989

Commissioners Present:

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

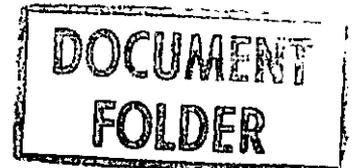
Application of Pitt-Ohio Express, Inc.,
a corporation of the Commonwealth of
Pennsylvania, for the transfer of a portion
of the operating rights of Tose-Fowler,
Inc., under the certificate issued at
A-00068623, F. 3, 5, Am-E and Am-F, and 15,
subject to the same limitations and conditions.

A-00102471
F. 1
Am-AF



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

O R D E R



BY THE COMMISSION:

This matter comes before the Commission on an application filed August 15, 1989. Public notice of the application was given in the Pennsylvania Bulletin of September 16, 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.