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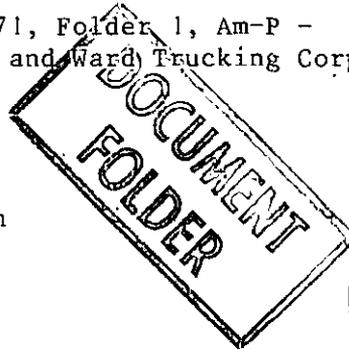
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October 20, 1989
Files: 20.703
378.47

RE: PITT-OHIO EXPRESS, INC., A. 102471, Folder 1, Am-P -
Protests of W. C. McQuaide, Inc. and Ward Trucking Corp.

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

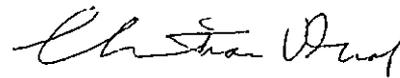


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SECRETARY'S OFFICE
Public Utility Commission

Dear Mr. Rich:

Pursuant to Judge Porterfield's letter of September 27, 1989, directing the filing of Briefs in the above matter, we enclose herewith the original and 9 copies of "Brief on Behalf of W. C. McQuaide, Inc. and Ward Trucking Corp., Protestants." As stated on the Certificate of service, 3 copies have been sent to the attorney for applicant and one each to Judge Porterfield, W. C. McQuaide, Inc. and Ward Trucking Corp.

Very truly yours,


Christian V. Graf

CVG:tcr
Enclosure

cc: James Porterfield, ALJ
Pennsylvania Public Utility Commission
11th Floor, Pittsburgh State Office Bldg.
300 Liberty Avenue
Pittsburgh, PA 15222

William J. Lavelle, Esquire
2310 Grant Building
Pittsburgh, PA 15219

Mr. William F. McQuaide
W. C. McQuaide, Inc.
153 Macridge Avenue
Johnstown, PA 15904

Gerald J. Sandusky, Vice-President
Ward Trucking Corp.
Ward Tower Building
P.O. Box 1553
Altoona, PA 16603-1553

David H. Radcliff, Esquire

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

In Re: APPLICATION OF PITT-OHIO EXPRESS, INC.,
A. 00102471, Folder 1, Amendment P

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SECRETARY'S OFFICE
Public Utility Commission

BRIEF ON BEHALF OF
W. C. McQUAIDE, INC. and WARD TRUCKING CORP.,
PROTESTANTS

DOCUMENT
FOLDER

DOCKETED
OCT 24 1989

GRAF, ANDREWS & RADCLIFF, P.C.
Christian V. Graf, Esquire
David H. Radcliff, Esquire
407 North Front Street
Harrisburg, Pennsylvania 17101

DUE DATE: October 27, 1989

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

In Re: APPLICATION OF PITT-OHIO EXPRESS, INC.,
A. 00102471, Folder 1, Amendment P

BRIEF ON BEHALF OF
W. C. McQUAIDE, INC. and WARD TRUCKING CORP.,
PROTESTANTS

I.

STATEMENT OF THE CASE

The instant application as published in the Pennsylvania Bulletin of August 30, 1986 at page 3260 sought the following additional authority:

"SO AS TO PERMIT the transportation of 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 219, and vice versa; with the right to interchange property with Class A, Class B and Class D carriers so authorized; subject to the following condition: That no right, power or privilege is granted to transport household goods and office furniture in use, property in bulk, or property which, because of size or weight, requires the use of special equipment."

As finally amended, the scope of the application now before the Commission for determination reads as follows:

"(1) To transport, as a Class D carrier, property from points in Allegheny County to points in the counties of Blair, Huntingdon and Bedford, and those points in the counties of Clearfield, Cambria and Somerset which are located on and east of U.S. Highway Route 219, 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 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 located on and east of U.S. Highway Route 219 and west 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 the following conditions:

FIRST: 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 malt beverages, malt beverage containers and pallets.

SECOND: That no right, power or privilege is granted to transport 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.

THIRD: 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 York County.

FOURTH: That no right, power or privilege is granted to transport limestone, limestone products or fertilizer from points in York County.

FIFTH: That no right, power or privilege is granted to transport such commodities as are dealt in by wholesale, retail and general grocery business houses for Dauphin Distribution Services Co. from points in the townships of Hampden and Silver Spring, Cumberland County.

SIXTH: That no right, power or privilege is granted to transport finished and unfinished products, materials and supplies, armaments and munitions to or from the Standard Steel Works Division of Baldwin Locomotive Works in the borough of Burnham, Mifflin County.

SEVENTH: That no right, power or privilege is granted to transport property from the facilities of C. H. Masland and Sons in the borough of Carlisle, Cumberland County, and in the township of Granville, Mifflin County, to the facilities of Volkswagen Manufacturing Corp. of America in the township of East Huntingdon, Westmoreland County, or vice versa.

"EIGHTH: That no right, power or privilege is granted to transport property to or from the facilities of Carlisle Tire & Rubber Co. and Carlisle Syntec Systems in the county of Cumberland.

NINTH: That no right, power or privilege is granted to transport glass and glass products from the facilities of Chromalloy American Corporation in the township of Granville, Mifflin County, or glass and property used in the manufacture, processing and production of glass and glass products to the facilities of Chromalloy American Corporation in the township of Granville, Mifflin County.

TENTH: That no right, power or privilege is granted to transport property for Owens Corning Fiberglas Co.

ELEVENTH: 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 an airline distance of thirty-five (35) statute miles of the limits of said city.

TWELFTH: That no right, power or privilege is granted to transport property to or from the facilities of International Paper Co. in Kelly Township, Union County.

THIRTEENTH: That no right, power or privilege is granted to transport property on flatbed trailers."

The only remaining active protestants throughout these hearings were W. C. McQuaide, Inc.; Ward Trucking Corp. and Evans Delivery Company. The latter company was sold and Evans no longer is to be construed as a party.

Evidentiary hearings, all at Pittsburgh, were held before Administrative Law Judge James Porterfield on January 17, March 7 and 8, June 9 and August 24, 1989. All of the hearings except the last one were for the presentation of Applicant's testimony and the final hearing was for Protestants' presentation.

At the initial hearing Robert F. Hammel appeared as the sole witness and presented Exhibits 4 through 21 and, during the cross-examination, Protestants submitted Exhibits P-1 through P-17. At the March hearings Applicant presented the testimony of John Stuver of Tuscarora Plastics, Incorporated; James K. Sines of Highway Equipment Company; James Feucht of Pittsburgh Mack Sales and Service; John R. Rihn of Neville Chemical Company; Douglas Field of Lincoln Aluminum Distributing Company (March 7); William T. Murphy of Alling & Cory; Robert McAfee of J. A. Williams Company; Daniel McKenna of Cardell Sales; Bill Carlin of A. R. Chambers; Kenneth Lamison of Okonite Company; Richard Spitler of Allegheny Distributing, Incorporated; Daniel Burda of Pitt-Penn Oil Company and Patrick J. Gallagher of Steel City Products (March 8).

On June 17 the Applicant presented as public witnesses Raymond D. DiPasquale, Allegheny Bindery Corporation; Steven R. Stofko of Aristech Chemical Corporation; James W. Bell of Henry Miller Spring & Manufacturing Company; Donald Beckett of Watson-Standard Paint Company; Robert Mackay of Weyerhaeuser. In addition, Mr. Hammel reappeared and identified additional Exhibits 22, 23 and 24 and Exhibits P-6-A, P-8-A, P-8-B, P-9-A, P-10-A, P-10-B, P-11-A, P-12-A, P-13-A, P-14-A, P-15-A, P-15-B, P-16-A, P-17-A and P-17-B.

At the August 24 session Daniel J. MacFarland appeared on behalf of Ward Trucking Corp. and William F. McQuaide appeared on behalf of W. C. McQuaide, Inc. These protestants identified Exhibits P-18 through P-31, with Exhibits P-18 through P-25 being those of Ward Trucking Corp. and Exhibits P-26 through P-31 being those of W. C. McQuaide, Inc. Exhibits P-32 and P-33 were reserved for the Evans Delivery Company authority which had been transferred to its successor, Arrow Carrier Corporation, and Exhibit P-33, the Interstate Commerce Commission Order pursuant to Sec. 11343(e) of the Interstate Commerce Act. These exhibits were subsequently withdrawn from consideration on September 25, 1989.

By letter dated September 27, 1989, a briefing schedule was set by Judge Porterfield, the main Briefs due October 27, 1989 and Reply Briefs, if any, to be filed November 12, 1989.

II.

STATEMENT OF QUESTIONS INVOLVED

- A. Considering all circumstances, is there a need for approval of this application?
- B. Are the protestants ready, willing and able to meet whatever need there may be?

The first question should be answered in the negative and the second in the affirmative.

III.

OUTLINE OF ARGUMENT

- A. IN THE CIRCUMSTANCES SURROUNDING THIS CASE, THERE IS NO NEED FOR APPROVAL OF THIS APPLICATION.
- B. PROTESTANTS ARE READY, WILLING AND ABLE TO SERVE.
- C. CONCLUSION.

IV.

ABSTRACT OF EVIDENCE

- A. THE ABSTRACT OF COMPANY WITNESS.
- B. THE ABSTRACT OF SHIPPER WITNESSES.
- C. ABSTRACT OF PROTESTANTS' TESTIMONY.

A.

ABSTRACT OF COMPANY WITNESS

Applicant's testimony was presented by Robert F. Hammel, Secretary-Treasurer of Applicant (N.T. 7, 8). In the course of his testimony he identified the following exhibits, all of which were ultimately received in evidence:

- Exhibit 4, a 17-page prepared statement;
- Exhibit 5, the revised scope of the application;
- Exhibit 6, the map which was utilized during the course of the hearing and shown to most, if not all, of the supporting witnesses;
- Exhibit 7, a summary of Pitt-Ohio's then-current intrastate operating authority;
- Exhibit 8, a list of pending applications;
- Exhibit 9, the Interstate Commerce Certificate at MC-30136, Sub 2;
- Exhibit 10, the West Virginia intrastate authority;
- Exhibit 11, terminal list;
- Exhibit 12, equipment summary;
- Exhibit 13, balance sheet as at December 31, 1987;
- Exhibit 14, income statement for the year ended December 31, 1987;
- Exhibit 15, a 3-digit zip code map of Pennsylvania;
- Exhibits 16, 17, 18, 19 and 20, a summary of shipments transported to and from the central Pennsylvania portion of this application.

(N.T. 10).

With respect to Exhibits 16, 17, 18, 19 and 20, it is evident from the cross-examination that all that is shown on these exhibits is a point location and from the exhibit it cannot be ascertained what destinations were involved; whether interstate or intrastate or within or without the scope of the application (N.T. 44, 45); the nature of the commodity or whether the shipments were truckload or LTL (N.T. 45, 46).

During the examination of Mr. Hammel, it was disclosed that from Allegheny County service cannot be rendered under authority of this Commission to points in Indiana County (N.T. 38). It was also disclosed that the pending applications as reflected on Exhibit 8 will not impact upon this application (N.T. 41).

With respect to the equipment identified on Exhibit 12, all of the equipment is owned by two equipment companies known as FEL and Martera (N.T. 42), and none of it is company-owned by Pitt-Ohio Express (N.T. 43).

Also on cross-examination certain protestants' exhibits were identified and ultimately received in evidence, basically as follows:

Exhibit P-1, a forwarding letter dated January 11, 1987 (N.T. 47), later admitted to have been January 11, 1988 due to a typographical error (N.T. 67);

Exhibit P-2, a Pitt-Ohio brochure which was forwarded by the transmittal letter (Exhibit P-1; N.T. 68), and which exhibit has been superseded by a new brochure received in evidence as Exhibit 21 (N.T. 11).

Also on cross-examination, shipping documents, all of which were identified as belonging to Pitt-Ohio Express, Inc. and reflecting traffic between two Pennsylvania points, none of which could be served under Pitt-Ohio's existing Pennsylvania authority, were identified and received in evidence as follows:

Exhibit P-3, traffic from Pittsburgh to Hollidaysburg (N.T. 49);

Exhibit P-4, traffic from Pittsburgh to Duncansville (N.T. 50);

Exhibit P-5, traffic from Lawrence, Washington County, to Altoona (N.T. 51);

Exhibit P-6, showing traffic from Allegheny County to Centre County, which applicant now possesses subsequent to the grant of Amendment I (N.T. 52), and which exhibit may be disregarded.

Exhibit P-8 reflecting traffic from Pittsburgh to Indiana (N.T. 53, 54), which could not be handled from Allegheny County to Indiana County on a direct basis (N.T. 54). However, Exhibit P-7 reveals a 50 percent discount as published in an ICC tariff (N.T. 54).

Exhibit P-9 which reflects traffic from Pittsburgh to Carrolltown, Cambria County (N.T. 55).

Exhibit P-10 which reflects 2 shipments from Carnegie, Allegheny County, to Altoona (N.T. 56) and reflects a discount for which no Pennsylvania tariff is on file (N.T. 56).

Mr. Hammel indicated that the PUC would not permit the publishing of discount tariffs but do permit the referral to discounts on the bill and offered to bring in the information (N.T. 56, 57). When Mr. Hammel returned, however, for further direct examination, he indicated he was unable to produce a letter relating to discounts (N.T. 529, 530).

Exhibit P-11 reflected a shipment from Pittsburgh to Altoona, and Exhibit P-12 reflecting a shipment from Leetsdale to Altoona (N.T. 59).

Exhibit P-13 reflecting a shipment from Carnegie to Altoona (N.T. 60).

Exhibit P-14 representing a shipment from Bridgeville to Duncansville and from Pittsburgh to Duncansville (N.T. 60, 61).

Exhibit P-15 representing a shipment from Pittsburgh to Duncansville and McKees Rocks to Duncansville (N.T. 61, 62).

Exhibit P-16 representing a shipment from Pittsburgh to Altoona and from Bethel Park to Altoona (N.T. 62, 63). Mr. Hammel testified that this was an interstate shipment because it had been brought in by private carriage directly to the terminal of the applicant (N.T. 63).

Exhibit P-17 reflecting 2 shipments from Pittsburgh to Duncansville (N.T.64).

As stated, all of these shipments were not for specific authorized shippers, nor were they handled under PUC authority (See N.T. 49-64).

When asked to bring in the manifests showing that these shipments moved via Cumberland, Maryland, Mr. Hammel produced Exhibits P-6-A, P-8-A, P-8-B, P-9-A, P-10A and B, P-11-A, P-12-A, P-13-A, P-14-A, P-15-A, P-15-B, P-16-A, P-16-B and P-17-A and P-17-B. On some of these shipments logs were attached, but the logs were significantly omitted as drivers' logs on P-8-B and the driver's duty status was omitted on P-9-A. The entire log was also omitted on P-10-A and B; P-14-A, P-15-A, P-15-B, P-16-A, P-16-B and P-17-A and comparable exhibits were not present for the balance of the traffic reflected on the other "P" exhibits.

Mr. Hammel also introduced the authority granted by the Interstate Commerce Commission temporarily to operate Tose-Fowler ICC Permit at that carrier's Sub 20 and a portion of the Tose-Fowler PUC authority (Exhibits P-22, P-23, P-24). Significantly, however, Mr. Hammel admitted that the territory so far as the intrastate authority of Tose-Fowler is in the eastern half of Pennsylvania (N.T. 507, 508). On recross, Mr. Hammel had produced the leases of the Cumberland terminal and the first lease with Charlton Brothers specified that the lease was to be effective as of October 1, 1987 (N.T. 509) and the second lease with Central Transport, Inc. which superseded the first, was dated November 30, 1988.

B.

ABSTRACT OF SHIPPER WITNESSES

1. John Stuver, Manager of Fabricating for Tuscarora Plastics, Inc. of New Brighton, Beaver County (N.T. 108, 109) ships polystyrene, a foam plastic used basically in packaging, which material is boxed, and shipments are 95 percent LTL, weighing up to 1,000 pounds (N.T. 110, 111). As here pertinent shipments move to the Bedford, Somerset and Huntingdon areas (N.T. 111, 112), averaging once per month or 12 shipments per year (N.T. 112).

Pitt-Ohio is used to New Jersey and Virginia and to eastern Pennsylvania as well as to the area in western Pennsylvania (N.T. 112, 113). Service is desired overnight (N.T. 113) and Ward Trucking is used on customer request (N.T. 115). As to past shipments, customer pickup is involved at Somerset and Huntingdon and Bedford is an interline service (N.T. 116). The witness was aware that he could use Ward or McQuaide, whose services he has been familiar with for several years (N.T. 117).

2. James K. Sines, an expediter for Highway Equipment Company of Zelienople, Butler County, ships heavy equipment parts from DuBois, Somerset, McKean in Erie County, and also from Zelienople (N.T. 121). The shipments range from 100 pounds to 15,000 to 18,000 pounds and move prepaid (N.T. 123). There are interplant shipments (N.T. 123).

Shipments move from Zelienople to DuBois approximately 220 times a year on an LTL basis (N.T. 124) and from McKean three times per month (N.T. 125) with the shipments from Zelienople moved in the corporate fleet, with McKean shipments being by McQuaide (N.T. 125). From Somerset shipments move three times a week to DuBois via company truck (N.T. 127, 128). From DuBois to Somerset the same company truck is used and from DuBois to McKean two shipments a month move by McQuaide (N.T. 129).

From Zelienople customer shipments move to State College, Bedford and Camp Hill (N.T. 129-131), as well as Williamsport (N.T. 131). The Bedford area shipments move three or four times per week. The State College area shipments move three times per month (N.T. 134). There are apparently also customers in Clearfield County and in Philipsburg, Centre County, to which shipments move four or five times per month (N.T. 137).

Shipments to the same customers sometimes move from Somerset, depending on availability of commodity (N.T. 140), and Somerset ships to Bedford County three times per week on average (N.T. 141), and to Camp Hill once every three months. Shipments go to Hollidaysburg, Berlin, Altoona and State College (N.T. 141). From the DuBois plant shipments move to Clearfield, Philipsburg, Bellefonte two or three times per week (N.T. 153) and to Westmoreland County serving the mining industry (N.T. 154).

During the discussion it developed that the DuBois plant is not in DuBois, but actually is three miles north thereof and on the east side of 219. The Camp Hill customer mentioned was in Camp Hill, but it could not be determined whether he was east or west of Route 15 and, accordingly, this testimony is subject to being inapplicable (See N.T. 144, 131).

Carriers utilized from Zelienople are this applicant, PJAX, McQuaide and Ward (N.T. 157). Customer pickup is also involved at times (N.T. 158). Pitt-Ohio is also used interstate (N.T. 159, 160).

On cross-examination the witness indicated that from the Zelienople plant State College is served by Pitt-Ohio now and Pitt-Ohio also serves Bedford County at times, as does McQuaide (N.T. 166). Camp Hill is served by both Pitt-Ohio and McQuaide and Williamsport is served by McQuaide (N.T. 166, 167). The Clearfield County area is served by both Pitt-Ohio and McQuaide, as is Philipsburg and Centre County (N.T. 167), as well as Ward (N.T. 168). From Somerset McQuaide serves Bedford County, Camp Hill, Hollidaysburg and Berlin; and Ward serves Altoona, McQuaide also serving Meyersdale (N.T. 168). Ward serves the State College area and from DuBois serves Clearfield County (N.T. 169) along with McQuaide (N.T. 169). From DuBois Ward and McQuaide serve Philipsburg and customer vehicles are used for Westmoreland County (N.T. 169, 170). There are no customer pickups from McKean plant to the area of this application (N.T. 170). In this connection both Ward and McQuaide have been used over the years (N.T. 171); and both carriers have given this witness copies of their tariffs and have also served in interstate commerce (N.T. 171) as well as providing jobsite deliveries (N.T. 172).

3. Jim Feucht appeared for Pittsburgh Mack Sales and Service as the owner (N.T. 172, 173). This company services Mack and Nissan trucks with parts and also has used truck parts. Some parts come in to Pittsburgh from Bedford and Altoona (N.T. 174, 175) three to five times per month (N.T. 175, 176). The shipments are LTL and move in van equipment (N.T. 176). Outbound shipments move predominantly to the State College area, Bedford area, and some shipments move to Clearfield County (N.T. 178, 179). The shipments are handled by Pitt-Ohio, Overnite and PJAX on inbound, with the same carriers used outbound (N.T. 179, 180). Upon approval traffic now moved by PJAX or Overnite would go to Pitt-Ohio (N.T. 187). He has never used Ward or McQuaide (N.T. 181) or Evans (N.T. 182). The use of Pitt-Ohio has been for six years and from Bedford and Altoona and to Bedford and Clearfield at least for three years (N.T. 183, 184).

4. John R. Rihn, Corporate Traffic Manager of Neville Chemical Company, Neville Island, Allegheny County (N.T. 186), testified concerning synthetic resins and anti-oxidants as well as solvents which are shipped out packaged and bulk and the witness supported Pitt-Ohio for the packaged and drum shipments (N.T. 187, 188). The shipments range from 500 pounds to full truckload, with LTL ranging up to 80 percent of the shipments (N.T. 188). Representative customers in the area are at Bedford, Somerset, Johnstown, Ebensburg and in the aggregate total 100 to 130 shipments per year or two to three per week (N.T. 189, 190). The traffic is now moving in private carriage (N.T. 190).

The witness desires overnight service and uses McQuaide only when it does not use its own fleet for shipments to Bedford routed by customer request (N.T. 192). Ward is also used on LTL traffic on customer request (N.T. 193). Evans is used to New Jersey points and to the Philadelphia and Lancaster area (N.T. 194).

The witness supports this application because Pitt-Ohio is a prime carrier for other areas which it has served in excellent fashion and is on the leading edge of price and service innovations and in the event the private fleet is curtailed or discontinued they want Pitt-Ohio poised to pick up the slack (N.T. 194).

On cross-examination the witness revealed that the private fleet has been in existence for 15 years (N.T. 196). He also admitted that customer requests are honored, particularly where the customer pays the freight charges (N.T. 197). The witness also admitted that shipments to Bedford, Somerset and Johnstown within the last year had all moved private carriage (N.T. 198, 199). He was not aware that McQuaide can handle between all points in Pennsylvania but was aware that Ward had that authority (N.T. 199). On sample traffic UPS is used (N.T. 105), as is Federal Express (N.T. 205).

5. Douglas R. Field, responsible for inside sales, an estimator and an occasional orderer of truck service for Aluminum Distributing Company of Jeannette, (N.T. 207) testified his company was a distributor of aluminum products called tubalite and ships out extrusions and prefabricated window and door frames as well as doors. These move to points in Pennsylvania, Ohio, West Virginia and Maryland to glass shops which install the products (N.T. 208). All traffic is LTL (N.T. 210). Shipments move to Altoona, Clearfield, Bedford, DuBois, St. Mary's, State College and Waynesboro. Altoona is served twice per month; Clearfield once per month; DuBois twice per month; St. Mary's twice per month and State College two or three times per month (N.T. 212-214). Waynesboro is served once per month (N.T. 214), as is Bedford (N.T. 214). The service is being performed by Pitt-Ohio, but formerly was handled by Ward (N.T. 215). The witness desires overnight service (N.T. 217). McQuaide has solicited the traffic (N.T. 218).

On cross-examination the witness admitted that all of the traffic moves collect and none is paid by his company (N.T. 219). A year ago all shipments moved by Pitt-Ohio and Ward until Ward was dropped (N.T. 220, 221). The witness admitted that if Ward could serve all of the points both in and beyond Pennsylvania he would then have through them a single carrier (N.T. 222, 224) and if Ward could do the same thing he would also have it available as a single carrier (N.T. 223). On re-cross the witness reiterated that he knew that Ward could give him overnight service and if they could serve the areas to which he ships and give that overnight service they could be the single carrier which he is here seeking (N.T. 228).

6. William T. Murphy, Customer Service Manager for Alling & Cory of Pittsburgh, a wholesale distributor of papers of all kinds, ships outbound from a warehouse in Pittsburgh (N.T. 235, 237), utilizing anywhere from a minimum shipment to 15,000 pounds (N.T. 238) to destination points involved in this application: to Somerset twice per day (N.T. 240); to Bedford area once per day; to Ebensburg daily (N.T. 241); to Altoona two or three shipments per day (N.T. 242, 242); to Huntingdon to serve customers once or twice per week and to Clearfield County points every other day (N.T. 242). He wants overnight service (N.T. 243). In addition there are shipments from manufacturers in Erie which is Hammermill Paper Company directly to customers where Alling & Cory pays the freight (N.T. 245, 246). Such shipments have moved to Clearfield, Altoona, Bedford, Huntingdon, Ebensburg and Somerset, with volumes ranging from 10,000 to 20,000 pounds per year (N.T. 251, 252). All of the freight discussed by the witness moves by Pitt-Ohio and PJAX under consolidated rates (N.T. 253) with Pitt-Ohio being used every day to these areas (N.T. 254). Hammermill has sometimes used Lyons (N.T. 258). The witness admitted that McQuaide and Ward had authority to serve all of the points mentioned by him (N.T. 259).

7. Robert McAfee, Operations Manager of J. A. Williams Company of Pittsburgh (N.T. 260, 261), a wholesale distributor of consumer goods such as electronics, televisions, VCR's, refrigerators, airconditioners, freezers, washers, dryers and parts thereof (N.T. 261) ships to Pennsylvania points (N.T. 261). He appeared here on inbound shipments from Bedford (N.T. 264, 265) to Pittsburgh; and outbound shipments to this dealer on parts on a daily basis (N.T. 266). The full units are received by the Bedford dealer from Baltimore, Maryland, and when those shipments are refused or reconsigned the dealer at Bedford sends them back to Pittsburgh (N.T. 267). He also stated that there were other dealers who might have overstocks which go back to Pittsburgh, in which case J. A. Williams pays the freight (N.T. 269). This company has used Pitt-Ohio for other traffic (N.T. 271, 272) on a daily basis (N.T. 273) and is the only carrier being used by J. A. Williams (N.T. 273). He has not been solicited by McQuaide or Evans (N.T. 275). He was unable to tell us how many dealers he had in Bedford County, somewhere between two and six (N.T. 276),

and had no indication of where they are located, and the same applied to all other specific locations in other counties as well as a number of dealers in those counties (N.T. 277), and he was unable to tell us from how many dealers, if any, parts had been received from his Pittsburgh warehouse or how many of the dealers, wherever located, ever had the necessity of sending merchandise they received from Baltimore back to Pittsburgh (N.T. 277, 278). The only specific information he has was that 35 to 45 days ago High Point Electric, wherever they were, had a shipment returned to Pittsburgh by Pitt-Ohio (N.T. 278).

8. David McKenna of Cardale Sales of Pittsburgh is a manufacturers' representative in the electrical industry selling for up to 18 different manufacturers such commodities as wire, conduit, fixtures, fittings and base-board heating (N.T. 279, 280). This company has two warehouses in Pittsburgh (N.T. 280) and makes shipments from these warehouses in its own truck on a two-week shipping schedule (N.T. 281). The customers are called four days before the private carrier truck leaves and solicits business for three days before and bills the order and, on the assigned day, the truck will hit those customers in that area (N.T. 281). There are occasions, however, when common carrier must be used between the schedules of the private carriage. This represents approximately 60 percent of the traffic by private company and 40 percent by common carrier (N.T. 282, 283). There are two customers in Somerset who receive three or four times in between the private carrier movements, aggregating 5,000 pounds every two weeks; one customer in Bedford receives up to 10,000 pounds every two weeks, but that account is a dying customer (N.T. 284); there are several customers in Clearfield and DuBois who receive approximately 15,000 pounds per month (N.T. 284) by both regulated carriers and private carriage and if Pitt-Ohio received the authority the private carriage would be discontinued (N.T. 285), as would the traffic to Somerset and Bedford Counties unless its volume increased (N.T. 285). There are customers in Philipsburg, Centre County, Windber, Somerset County, with Windber receiving up to 60,000 pounds per month, some of which would be diverted to Pitt-Ohio (N.T. 286, 287).

The Hite Company in Altoona is a customer which does not like the private carriage service and that requires common carrier shipments of up to 35,000 pounds at a time twice per week. There are sporadic shipments to Huntingdon County which are handled by regulated carriers (N.T. 289, 290). All of the regulated traffic goes by Pitt-Ohio (N.T. 290). Some traffic moves to jobsites (N.T. 291).

McQuaide is the house carrier for Westinghouse and handles their traffic by specification of Westinghouse (N.T. 291, 292). He contended that he couldn't reach McQuaide on the phone (N.T. 292). He used Ward 7 or 8 years ago but they haven't called on him for 6 or 7 years. Though solicited by Evans he has not used them for the last two or three years (N.T. 293).

His traffic is increasing at the rate of 20 percent per year (N.T. 294) with his two dealers, Hite and Bird, heading the list (N.T. 294).

On cross-examination he indicated that his use of Pitt-Ohio in this area has been 60 to 70 percent for years and recently increased to 95 to 98 percent (N.T. 295). His testimony on the extent of use of Pitt-Ohio in 1987 and 1988 was most confusing and it is impossible to tell when traffic to this area began to move via that carrier (See N.T. 297 to 299).

9. Bill Carlin, Purchasing Manager for A. R. Chambers of Pittsburgh, stated his company is a wholesaler for construction materials and packaging supplies, shipping same from its warehouse in LTL shipments having a maximum weight of 9,000 pounds (N.T. 902, 903, 905). The company has no major customers in the counties involved and does not ship on a steady basis in that area (N.T. 306), but does make shipments to jobsites to Trumble Corporation and to its subsidiary, P. J. Dick Company in Clearfield County. In a good season 50 to 60 shipments would go to this area (N.T. 308). The traffic is seasonal between April and October (N.T. 310). Occasionally vendor shipments go directly to the customer (N.T. 310) and his company pays the freight charges. He receives these from Erie or New Castle for shipment to the 6-county area (N.T. 312). He has never been solicited by Ward, McQuaide or Evans and has not used them but is using Pitt-Ohio Express (N.T. 317, 318) and he will give 100 percent of his traffic to that company (N.T. 318, 319).

On cross-examination he admitted using Pitt-Ohio since February of 1988 for this traffic (N.T. 323). He admitted that as of 1989 he has no contracts but has bids out which he then changed to indicate that he had a contract for Bedford for a company known as Canondale (N.T. 324). Concerning his Clearfield County movements, there is nothing present in that area (N.T. 326). With respect to Blair County, he had no knowledge of where there was any current work, but he later stated he did have a job in Altoona but there is no major job (N.T. 328). He had no direct knowledge about any jobs in Huntingdon, Cambria or Somerset County (N.T. 329), nor could he tell of any jobs from his vendors except one to Standard Register in Bedford (N.T. 330) and Pitt-Ohio is handling that. Concerning traffic from Pittsburgh to the 6-county area he could give no specific instances of any jobs for major contractors (N.T. 332). As of today he knew of none (N.T. 332). Concerning vendor movements to Clinton County he had none as of his testimony or to Cumberland, Franklin, Potter and Cambria County (N.T. 333).

10. Kenneth Lamison, Service Center Manager for Okonite Company of Pittsburgh, which owns a wire and cable warehouse which takes material it receives, cuts it to length and reships. This material comes from New Jersey, California and Kentucky (N.T. 342, 343). Shipments range from 71 pounds to 20,000 pounds (N.T. 343) and 90 to 95 percent are LTL (N.T. 344). He ships to Altoona, Ebensburg and Windber as well as DuBois, which he believes has some Pennelec locations (N.T. 345, 346, 347). Annual shipments to Altoona range at 40,000 pounds; DuBois 20,000 to 30,000 pounds (N.T. 347) and Ebensburg is hit and miss (N.T. 348). He wants same-day service (N.T. 350). He receives lead pipe from Altoona and a tape from Bedford, with the lead pipe amounting to 40,000 pounds and the tape amounting to the same amount (N.T. 352). The Bedford shipments are routed by Westinghouse and delivered by McQuaide (N.T. 353). The Altoona shipments are being handled by Ward (N.T. 354) but neither Ward nor McQuaide are used outbound (N.T. 355). He has used Pitt-Ohio in the last two years (N.T. 361) and prior to that used PJAX (N.T. 361). On cross-examination he admitted that his corporate traffic office in Ramsey, New Jersey, sets up the programming for him to use and to the central Pennsylvania area he uses Pittsburgh-Johnstown-Altoona Express, Pitt-Ohio and Hammel's (N.T. 363, 364).

11. Richard Bitler, President and half-owner of Allegheny Distributing, Inc. of Pittsburgh, handles lawn and garden equipment and snow blowers (N.T. 370). Its Pittsburgh warehouse, which is equipped with two trucks which provides for loading difficulties (N.T. 371), is the shipping point for these commodities which move specifically to Clearfield, DuBois (N.T. 375), Johnstown, Windber, Bedford (N.T. 376), Altoona, Hollidaysburg, Roaring Springs, Bellwood and Belleville (N.T. 377), the latter point being out of the area of this application (N.T. 378). Pitt-Ohio is the principal carrier to these points and PJAX is the other (N.T. 379). He has never used Ward because he wants to stage traffic to this area with interstate traffic and use a single carrier (N.T. 380). He has not used McQuaide for two years because of difficulty in settling a damage claim (N.T. 380) and their drivers were sometimes late.

On cross-examination, though advised that Ward had interstate authority which he could use to combine West Virginia or other interstate points with central Pennsylvania, he said it might meet his needs, but there would be no advantage to do that (N.T. 381). The two docks he complained about had been in existence for 10 years (N.T. 381). Concerning the McQuaide damage complaint, the claim was paid (N.T. 382). Regardless of the availability of McQuaide to handle all his traffic, he is not interested in making any switch (N.T. 384).

12. Daniel Burda of Pitt-Penn Oil Company at Creighton, Allegheny County, indicated his company deals in petroleum products, 75 percent of which move in package form (N.T. 387-389), and 25 percent of which are less than truckload. He has shipments to all of the 6 counties involved (N.T. 389, 390). In Bedford County he ships to Bedford, Everett and Woodbury (N.T. 290); and in Blair County to Altoona and Claysburg (N.T. 392). He also ships to Mount Union, Huntingdon County, and Clearfield, Clearfield County and Somerset to gas stations along the Turnpike (N.T. 393). His less-than-truckload shipments are handled by Pitt-Penn Distribution, which also handles his truckloads (N.T. 393). He wants equipment spotted so he could make up combined loads for Johnstown, Altoona and other points (N.T. 395). He has not used McQuaide, Ward or Evans to this area (N.T. 397). Pitt-Penn Distribution is the company which is now handling all the traffic, is a contract carrier and subsidiary of the shipper with authority to serve his company (N.T. 398, 399).

13. Patrick J. Gallagher of Steel City Products with a warehouse location at Blawnox, is a wholesale distributor of automotive parts (N.T. 401), 95 percent of which are truckload (N.T. 406). He has three accounts in Altoona and accounts at Huntingdon, Clearfield and three accounts in DuBois. The shipments ranged in weight for a 4-month period from 675 pounds to 48,101 pounds (N.T. 404-405). This traffic has all moved PJAX (N.T. 412). He wants overnight service (N.T. 406), Saturday deliveries and complained about a congestion factor (N.T. 416), but admitted that he has 4 inbound docks and 4 outbound docks (N.T. 414). He has used McQuaide (N.T. 412) on inbound freight from an unspecified origin and outbound by order of one of the customers in Altoona. He has not used Ward or Evans (N.T. 410) in recent years. Some of his commodities, principally polishes, are freezable (N.T. 407, 408), but he has had no problem delivering these freezables even over a weekend so long as the carrier would have portable heaters in the trailers (N.T. 413).

14. Raymond D. DiPasquale, Traffic Manager for Allegheny Bindery Corporation of Pittsburgh (N.T. 420, 421) stated his company binds various things such as annual reports, books and the like (N.T. 421) which are received from printers and then, after binding, returned to the same printer (N.T. 422). As to the points they are both origins and destinations and involve Johnstown, Holsopple, Altoona and Clearfield, all LTL, (N.T. 429, 430), which points are served two or three times per month as to Clearfield (N.T. 430); three or four times per month for Altoona (N.T. 431) with Hollidaysburg and Johnstown receiving and shipping once every quarter (N.T. 431, 432). Overnight service is required because it is dated material (N.T. 433) and the traffic is now being handled by Pitt-Ohio and PJAX (N.T. 434). McQuaide has solicited within the last week, but there has been no solicitation by Ward or Evans (N.T. 434, 435). Pitt-Ohio has been providing service to Johnstown for a month or so; then to Altoona for the last two weeks; Clearfield for several months (N.T. 438, 439), though the witness was unable to answer when this transportation commenced (N.T. 441).

15. Steve R. Stofko, the Traffic Manager for Aristech Chemical Corporation of Pittsburgh, indicated his company ships out of two locations in Neville Island; one in Coraopolis and a research center in Monroeville (N.T. 443), all in Allegheny County (N.T. 444). One of the Neville Island points is a maker of

polyester resins and the other plasticizer and anhydrites (N.T. 444). The Coraopolis plant packages plasticizer in drums which are received from Neville Island at Coraopolis and then shipped outbound (N.T. 444) and van equipment is required (N.T. 445). The locations in the area are Altoona, Johnstown and Clearfield (N.T.446). Shipments range 5,000 to 6,000 pounds for these points, all LTL (N.T. 446) except that plasticizers from Neville Island go only to Altoona and Johnstown (N.T. 447). Shipments are weekly (N.T. 447). Coraopolis shipments move to Altoona and Johnstown (N.T. 448).

The Monroeville facility is a research lab shipping out samples (N.T. 449) in 5-gallon drums. Some of these shipments may move to Altoona (N.T. 450) as well as Johnstown and Clearfield (N.T. 450). Pitt-Ohio is the primary carrier (N.T. 455). The secondary carrier is PJAX (N.T. 458). On cross-examination the witness admitted that he had used McQuaide for Pennsylvania traffic and knew that both Ward and McQuaide had statewide authority (N.T. 459), but was unaware that McQuaide now has a terminal location in Neville Island (N.T. 460, 461).

16. James W. Bell, Traffic Manager for Henry Miller Spring Manufacturing Company of Sharpsburg, Allegheny County, ships springs (N.T. 461, 462), which location has only one dock (N.T. 464). Customer locations are at Bedford, Juniata, Altoona, Hollidaysburg, Johnstown and Windber (N.T. 466), with Johnstown, Altoona and Hollidaysburg being the most frequent points with the others served infrequently (N.T. 468). The collective volume is between one million and two million pounds of freight per year, averaging in weight from 200 pounds to 20,000 pounds (N.T. 468). Next-day service is required on this LTL and he desires a company which can pick up all of his shipments at the same time (N.T. 469, 470). McQuaide is being used to Johnstown and Altoona but Ward is used to other areas, as is Evans (N.T. 471). It is not this company's intention to eliminate carriers now serving him (N.T. 472). The witness was aware that McQuaide can serve him anywhere in Pennsylvania, but was less certain about Ward, but did know that McQuaide also had interstate authority (N.T. 473, 474). The company has been at Sharpsburg since 1947 and has had only one dock for all of that time, during which time its business has grown (N.T. 475, 476).

17. Donald Beckett, Plant Superintendent and Traffic Manager for Watson-Standard Paint Company, a manufacturer of chemical coatings, finishes, primers, enamels, mostly for business and commercial use (N.T. 477, 478), also has a shipping point at Harwick, Allegheny County (N.T. 479), which commodities are shipped in containers (N.T. 481). There is a customer location in Bedford (N.T. 482, 483) who receives traffic twice per month, LTL, on which he would like to have same-day service (N.T. 483). He has had little experience with Ward, Evans and McQuaide (N.T. 488) and has used Ward to some extent (N.T. 489). When asked whether he had ever called on McQuaide for service, his answer was "I don't really need to call McQuaide." He has not called Ward for service (N.T. 490). He knew McQuaide could handle all of Pennsylvania but was unaware of their interstate authority and was unaware of Ward's ability to serve in Pennsylvania (N.T. 491).

18. Robert Mackay, Service Manager of Weyerhaeuser, stated his company has a facility in Murraysville, Westmoreland County (N.T. 492) from which there is wholesale distribution of building materials and products such as lumber, plywood, nails, roofing, shingles (N.T. 493). The company operates 7 tractor trailer units and one straight job which it uses throughout its service area (N.T. 494) and where shipments are not actually feasible for its private fleet the traffic is given to common carrier (N.T. 495). Most shipments go to lumber centers (N.T. 496). Common carrier traffic in the area here involved consists of 7 shipments a year to Altoona; 12-15 shipments per year to Johnstown; 4 shipments per year to Bedford; 5 shipments to Salisbury; 3 to Meyersville; 3 to Kane; 4 to Huntingdon and 2 to DuBois and 2 to Martinsburg (N.T. 497, 498). These shipments have all been taken by McQuaide in the past (N.T. 499), which makes its pickups. The delivery schedules have never been checked by this witness (N.T. 500). He prefers one carrier to take all his shipments (N.T. 500). There has been no complaint about McQuaide's service (N.T. 502) and the witness was unaware that McQuaide could serve him anywhere in Pennsylvania, West Virginia and Ohio, but he has never requested such service from McQuaide (N.T. 503).

C.

ABSTRACT OF PROTESTANTS' TESTIMONY

Daniel J. McFarland, Traffic Manager of Ward Trucking Corp., identified as Exhibit P-18 his authority which covers all points in Pennsylvania by virtue of Folder 5, Am-N and Folder 5, Am-P (N.T. 540). The interstate authority at Sub 21 permits general commodities with the usual exceptions between all points in the U.S. (N.T. 540) and the actual authority was presented as late-filed Exhibit P-19.

From the equipment standpoint Ward operates 22 straight trucks, 265 tractors, 4 40-foot opentop trailers; 8 27-foot, 264 28-foot and one 30-foot single axle trailers, for a total of 273 and 29 40-foot, 242 45-foot and 41 48-foot van trailers for a total of 316 tandem vans plus 118 converter dollies (Exhibit P-20). Within the area of this application Ward has a terminal at Altoona and DuBois in the central Pennsylvania area and has terminals at other points in the state, including Pittsburgh, Grove City, Erie, Johnstown in the western portion of this application (Exhibit P-21).

Ward possesses a satisfactory safety rating from the U.S. Department of Transportation (Exhibit P-22), and employs 345 Pennsylvania citizens at its Pennsylvania terminals and 143 other employees working in the garage maintenance facilities and general office, for a total of 488 Pennsylvania employees out of a total of 640 (N.T. 543). From the insurance standpoint it has million-dollar, across-the-board coverage with a \$10 million excess and has an effective safety program (N.T. 544).

Ward offers same-day pickup, overnight service 5 days per week, with the availability of Saturday, Sunday and holiday service in the handling of collect or prepaid freight, order notify shipments C.O.D. shipments and offers jobsite deliveries, the spotting of trailers and heater service for perishables (N.T. 545). It handles both truckload and less-than-truckload freight (N.T. 546). Ward has provided service for some of the supporting shippers consisting of Henry Miller Spring Manufacturing; Tuscarora Plastics, Neville Chemical Company, Lincoln Aluminum Distributors and Watson Standard, with the first two being served only in interstate commerce, the third in both Pennsylvania and New Jersey traffic and the last two exclusively in Pennsylvania traffic (Exhibit P-23).

Ward also presented an exhibit showing a single day's traffic on July 31, 1989, for shippers who did not support this application. This represented 38 shipments weighing in excess of 41,000 pounds and producing revenues of \$3,265.56.

On this exhibit, however, 5 shipments were not applicable to the scope of this application (Exhibit P-24). With reference to this latter exhibit, the traffic in a 5-month period of 20 working days per month would equate to the neighborhood of \$324,000 over and above the traffic handled for the supporting shippers as reflected on Exhibit P-23 (N.T. 548). Ward did bid on the traffic of Aristech Corporation pursuant to an offer to bid received in evidence as Exhibit P-25, but it did not secure the business since its bid was not accepted.

In direct opposition to the testimony of Mr. Hammel, Ward does publish discount tariffs applicable to Pennsylvania traffic in Middle Atlantic Conference Tariff MAC 105 and previously had its own discount tariff on file which has been withdrawn (N.T. 550).

Mr. McFarland is opposing this application because, as stated, if they are already servicing the area through Cumberland, Maryland, he fails to understand why they need this authority (N.T. 551).

William F. McQuaide, Executive Vice-President of W. C. McQuaide, Inc., identified as Exhibit P-26 its authority at A. 84290, Folder 7, Am-RR (N.T. 576) which grants statewide authority except for household goods and office furniture in use, bulk commodities, mobile homes, heavy hauling and use of mechanically-refrigerated equipment (N.T. 577). The interstate authority of McQuaide permitting service in interstate commerce was received as Exhibit P-27 which permits nationwide service between all points in the continental United States (Exhibit P-27). Thus McQuaide can serve any shipper in both inter- and intrastate commerce. It maintains terminals at Johnstown and Bethel and has equipment points at Pittsburgh area, Williamsport, Scranton and Philadelphia (N.T. 578, 579). From Exhibit P-28 it is evident that both terminals have two-way radio base station, WATS lines and a total of 150 doors. These terminals are situated on 40 and 21 acres respectively. The Johnstown terminal has a total of 367 employees and the Bethel terminal 72, for a total employee complement of 439 full-time employees, plus an additional 37 part-time employees in the aggregate (Exhibit P-28).

From the equipment standpoint McQuaide owns and operates 69 straight trucks and 26 service vehicles and 32 converter dollies. In addition, it owns 125 tractors and leases 75, for a total of 200; and owns 341 trailers and leases an additional 54 for a total of 395 trailers. Of the trailers 23 are flatbeds, 7 are opentops, 302 are vans, 2 are expandables, 3 are carryalls, one is dump and 3 are tank. In addition, it leases 38 flatbeds and 16 vans (Exhibit P-29).

From the safety standpoint McQuaide carries a one-million dollar, across-the-board coverage, with an excess coverage; has an effective safety program marked by safety awards and company awards (N.T. 580); and is not under safety investigation or suspension (N.T. 481). By its two-way base radio station and via owned and leased towers, in one simultaneous broadcast a dispatcher can reach any vehicle anywhere in Pennsylvania and it also has cellular telephones available in a number of cities.

McQuaide also had a discount tariff on file which the Commission directed cancelled and which will be replaced by joining Middle Atlantic Conference's discount tariff (N.T. 582).

McQuaide holds out to provide same-day pickup; overnight delivery and, where possible, same-day service. It handles truckload and less-than-truckload traffic, accepts C.O.D.'s, order notify shipments, government bills of lading and offers scheduled pickup, scheduled deliveries, multiple pickups, multiple deliveries, temperature-controlled vehicles and offers jobsite deliveries on both inbound and outbound traffic (N.T. 582, 583). In addition, it can combine interstate and intrastate traffic and does that on a daily basis for others (N.T. 583). For the supporting shippers McQuaide has provided service in 1988 for Tuscarora Plastics, Highway Equipment Company, Pittsburgh Mack Sales, Neville Chemical Co., Lincoln Aluminum Distributing Co., Alling & Cory, J. A. Williams and A. R. Chambers. The same companies were also served in 1989. The 1988 recap reveals a total of 50 shipments, weighing a total of 26,816 pounds and the 1989 summary reflects 37 shipments weighing in excess of 29,000 pounds (Exhibits P-30, P-31).

Mr. McQuaide stated that if the application were limited to the supporting shippers he wouldn't protest it, but since his company has been in business for 54 years and has millions of dollars in equipment and terminal facilities involved, and experiences significant competition, he opposes the application, particularly since the applicant serves this territory from Pennsylvania points via an interstate terminal, he sees no reason why they should be granted the additional direct authority (N.T. 586). He also fears diversion of traffic on a total gross revenue of \$24 million, 50 percent of which is Pennsylvania traffic (N.T. 586).

V.

ARGUMENT

A. IN THE CIRCUMSTANCES SURROUNDING THIS CASE,
THERE IS NO NEED FOR APPROVAL OF THE APPLICATION.

The instant application as filed originally was published in the Pennsylvania Bulletin on August 30, 1986. It was variously amended, with the last amendment being set forth on Applicant's Exhibit No. 5. Essentially what it seeks may be expressed in two simple thoughts:

1. The first phase consists of transportation from Allegheny County to points in the counties of Clearfield, Cambria, Blair, Huntingdon, Bedford and Somerset and vice versa; as applicable in the case of Clearfield, Cambria and Somerset to those points on and east of U.S. Highway 219.

2. The transportation between points in those counties on and west of U.S. Highway 219 except Allegheny to points in the area on and west of U.S. Highway 15 and on and east of U.S. Highway 219.

During the course of the hearings it was established that the applicant had been providing service from the areas on and west of U.S. Highway 219 to the central part of the state and vice versa via an operation in Cumberland, Maryland. (Exhibits P-3 through P-17; N.T. 49-56; N.T. 59-64; Exhibits P-6-A, P-8-A, P-8-B, P-9-A, P-10-A and B, P-11-A, P-12-A, P-13-A, P-14-A, P-15-A, P-15-B, P-16-A, P-16-B, P-17-A, P-17-B). In this connection the terminal at Cumberland, Maryland, was initially leased on October 1, 1987 (N.T. 509) and a second lease superseding the first, dated November 30, 1988; the first such lease having been executed a year after this application was filed; and the second over two years after the application was filed (N.T. 509).

On January 11, 1988, a brochure was mailed to the Pittsburgh area customers by letter (Exhibit P-1; N.T. 47, 67), which indicated that Pitt-Ohio was now in a position to provide service to all points in Pennsylvania from Allegheny County which would, of course, include the area in central Pennsylvania for which authority here is sought.

The supporting shippers to this application confirmed that this applicant was providing service to and from the central Pennsylvania area involved (See, for example, N.T. 112, 113, 157, 166, 167; N.T. 179, 180; N.T. 215; N.T. 253; N.T. 273; N.T. 290; N.T. 317, 318; N.T. 323; N.T. 363, 364; N.T. 379; N.T. 434; N.T. 455).

It is interesting to observe that the ICC authority on which this operation depends is a non-radial Certificate involving between points in a number of states, specifically including Pennsylvania and Maryland and docketed at MC-30136, Sub 2, which has been in effect since 1982 (Applicant's Exhibit 9); yet of equal significance is that it was not until over a year after this application was first filed that a terminal was established in Cumberland and over a year until the service was actually implemented and widely advertised as, for example, to the area involved in this application. Equally startling is the fact that discounts are available by virtue of filing made in ICC tariffs filed by Pitt-Ohio Express, Inc., of which Exhibit P-7 is an illustration. Along this line there are no Pennsylvania discount tariffs filed by the Applicant (N.T. 56, 57; N.T. 529, 530).

Those public witnesses who did not specifically indicate with clarity that their traffic was being handled by this applicant specified that it was being handled in private carriage (N.T. 190; N.T. 393) and by private carriage for

60 percent of the traffic and by Applicant for a portion of the remainder, with McQuaide serving by customer designation (N.T. 290-292); and where customer routing is observed by McQuaide (N.T. 353) and Ward; or has all moved by PJAX (N.T. 412); either as a sole carrier or as a secondary carrier (N.T. 458). Henry Miller Spring Manufacturing Company uses both McQuaide and Ward (N.T. 471) and this witness indicated he would not eliminate any carriers now serving him (N.T. 472). Weyerhaeuser has used McQuaide in the past (N.T. 499) and had no complaints concerning that service (N.T. 502), the witness being aware that McQuaide could serve him anywhere in Pennsylvania, West Virginia and Ohio, but has never requested the combination of interstate service from that company (N.T. 503).

The witnesses complained about lack of dock space and an example thereof is Allegheny Distributing, Inc. of Pittsburgh which has only two docks, but it developed that these have been in existence for 10 years (N.T. 381). Similarly, Henry Miller Spring Manufacturing Company of Sharpsburg has only one dock, but that one dock has been in use since 1947 during which time its business has increased (N.T. 475, 476).

Several witnesses wanted a single carrier to handle their interstate and intrastate traffic wherever it was going. In this connection Highway Equipment Company has used both Ward and McQuaide over the years (N.T. 177); have supplied the witness with copy of their tariffs and have also served in interstate commerce (N.T. 171) as well as providing jobsite deliveries (N.T. 172). Neville Chemical Company wanted a carrier able to serve all points in Pennsylvania and was aware that Ward had that authority, but was unaware of McQuaide's ability to serve all points in Pennsylvania (N.T. 199). Aluminum

Distributing Company of Jeannette, which does not pay for the freight on any of its shipments (N.T. 219), also was a shipper admitting that Ward could serve all points both in and beyond Pennsylvania and that if he wanted a single carrier he could use that company (N.T. 222, 223). He further admitted that Ward could give him overnight service (N.T. 228). Alling & Cory of Pittsburgh admitted through its witness that both McQuaide and Ward have authority to serve all points mentioned by him (N.T. 259). The witness for Aristech Chemical Corporation of Pittsburgh admitted that he knew that both Ward and McQuaide had statewide authority (N.T. 459), but was unaware that McQuaide has a location in Neville Island which could serve him (N.T. 460, 461). Henry Miller Spring Manufacturing Company was aware that McQuaide could serve him anywhere in Pennsylvania as well as in interstate commerce (N.T. 473, 474). While the witness for Watson Standard Paint Company knew McQuaide could handle all of Pennsylvania (N.T. 491), the most damaging part of his testimony was his statement, "I don't really need to call McQuaide" (N.T. 490).

The fact that McQuaide and Ward have the broad authority is evident from their testimony as well. That Ward has direct between points in Pennsylvania authority may be found from Exhibit P-18 and from Exhibit P-19 as to its ability to serve all points in the continental United States. McQuaide's statewide authority may be found in Exhibit P-26 and its interstate nationwide authority as Exhibit P-27.

As to attributes of service Ward offers same-day pickup and overnight service; will handle collect, prepaid, order notify shipments, C.O.D. and jobsite deliveries plus spotting of trailers, heater service for freezables (N.T. 545), as well as truckload and less-than-truckload freight (N.T. 546).

It has served in some fashion Henry Miller Spring Manufacturing, Tuscarora Plastics, Neville Chemical Company, Lincoln Aluminum Distributors and Watson Standard (Exhibit P-23). Under its authority, of course, it can handle all of the shippers to all Pennsylvania points mentioned (See Exhibit P-18).

As to W. C. McQuaide, Inc. it can serve any of these shippers in both inter- and intrastate commerce by virtue of its authority (Exhibits P-26, P-27) and has an equipment point in Pittsburgh (N.T. 578, 579). McQuaide holds out to provide same-day pickup, overnight delivery and, where possible, same-day service in the movement of either truckload or less-than-truckload traffic, ship C.O.D.'s, order notify shipment, government bills of lading and offers scheduled pickup, scheduled delivery, multiple pickup, multiple delivery, temperature-controlled deliveries and makes available jobsite deliveries (N.T. 582, 583). It has provided service for Tuscarora Plastics, Highway Equipment Company, Pittsburgh Mack Sales, Neville Chemical Company, Lincoln Aluminum Distributing Company, Alling & Cory, J. A. Williams and A. R. Chambers (See Exhibits P-30, P-31).

We submit that there is a significant difference between a desire for a service and the need for service. If there is truly a need and if there is service available within the entire area of this application and, indeed, between all points in Pennsylvania, and the service has either been used satisfactorily or has not even been tried, there is a serious question in our mind as to whether there is a genuine need.

In this case where the witnesses wish to combine inter- and intrastate traffic they have that service now available not only from McQuaide, but also from Ward. Where they wish to combine traffic to the considered area they have that service now available by both McQuaide and Ward where other points in Pennsylvania are also involved.

Where the witnesses wish to utilize a single carrier due to limited dock space they can choose either McQuaide or Ward. Where the witnesses want overnight service, as most of them do, they have that available by either McQuaide or Ward; yet only limited use is made of these carriers and while some of them indicated that they had not used Ward or McQuaide, the traffic exhibits presented by these carriers make it evident that they, in fact, have.

Accordingly, we submit that the Applicant did not present substantial evidence of a need for service throughout the area of this application consistent with Modern Transfer Co., Inc., etal v. PaPUC, 182 Pa. Sup. 110 (1956); Zurcher v. PaPUC, 173 Pa. Sup. 343 (1953); Kulp v. PaPUC, 153 Pa. Sup. 379, 33 A.2d 724.

To the extent that Applicant relies on the new Transportation Policy and the Kinard case, (52 Pa. Code 41.14; Application of Richard L. Kinard, Inc., A.00095829, Folder 1, Am-D), it also comes up short.

The Kinard case, supra, in eliminating the necessity to show inadequacy of existing services, established 9 criteria as a substitute therefor; namely, different service, efficiency, lower rates, future need, backup service, shipper competition, ICC authority, certification of authority and benefit to applicant. Obviously every application granted is of potential benefit to applicant, which need not be accorded very much weight. As to the different type of service, we have already shown that Ward and McQuaide can both provide what these shippers contend they require. As to efficiency, where Ward and McQuaide have been used, there were indications that their service was satisfactory (See, for example, N.T. 500; N.T. 170-172; N.T. 228). As to lower rates, the discounts now available

through Pitt-Ohio are available under interstate tariffs only, there being no Pennsylvania discount tariff on file, and this certainly does not establish the rate aspect mentioned in Kinard (See N.T. 56, 57). As to a backup service, two backup services are now available; namely, Ward and McQuaide. As to shipper competition it does not require this applicant's certification to compete with other shippers of like commodities, particularly since both McQuaide and Ward are now available. From the standpoint of ICC authority, both McQuaide and Ward have nationwide ICC authority far in excess of that presented on this record by Pitt-Ohio Express through Applicant's Exhibit No. 9, which is less than nationwide. As to certification of authority, there really is no need to rectify or certify this central Pennsylvania area to Pitt-Ohio since it is now serving it in interstate commerce via Cumberland, Maryland.

Measured by the new Transportation Policy or the Kinard case, supra, Applicant has not met that burden, either.

While we firmly believe the application should be denied in its entirety, we would point out that the Decision of this Commission in Samuel J. Lansberry, Inc., A. 99642, Folder 1, Am-P, entered October 3, 1989, provides a partial remedy as suggested by Mr. McQuaide in his testimony at N.T. 586, wherein he stated that if the application were limited to the supporting witnesses' companies he would have no objection to it and, in fact, would not have continued his protest. This is precisely what the Commission did in the Lansberry case; namely, limited the grant to the supporting witnesses. This is the maximum that should be done in this proceeding.

B. PROTESTANTS ARE READY, WILLING AND ABLE TO SERVE

We have already alluded to the fact that both McQuaide and Ward possess statewide intrastate Pennsylvania operating authority and authority from the Interstate Commerce Commission to serve between all points in the continental United States. We have already alluded to the fact that they offer same-day pickup, overnight service with the capability of providing same-day service where conditions permit. We have alluded to the fact that they make available C.O.D. service, handle order notify shipments, handle truckload and less-than-truckload freight, offer the combination of interstate and intrastate traffic, scheduled pickups and scheduled deliveries, and make available the protection of freezables.

What we have not alluded to is the equipment which these protestants have available to serve these and other witnesses. In the case of Ward, it has available 22 straight trucks, 265 tractors, 273 tandem axle trailers consisting of vans and 316 tandem axle trailers consisting of 4 opentops and the balance vans ranging in size from 40 to 48 feet, plus 118 converter dollies (Exhibit P-20). McQuaide has equipment available consisting of 69 owned straight trucks, 200 tractors of which 125 are company-owned, 26 service vehicles, 395 trailers of which 341 are owned and 32 owned converter dollies. Of its 395 trailers they can make available flatbeds, opentops, vans, expandables, carryalls, dump and tank vehicles (Exhibit P-29).

From the terminal standpoint, Ward has Pennsylvania terminals within the area of this application at Altoona, DuBois, Erie, Grove City, Johnstown and Pittsburgh; and McQuaide has terminals at Johnstown and Bethel with maintenance facilities, fuel facilities, two-way radio base station and WATS lines available.

From the personnel standpoint Ward has 488 Pennsylvania employees out of a total of 640 employees and McQuaide has a total complement of 439 Pennsylvania employees on a full-time basis and 37 part-time employees.

Both of these carriers have served some of the supporting witnesses (Exhibits P-30, P-31, P-23).

It must be concluded that the desire to have Pitt-Ohio serve is merely that; but if they really need services McQuaide and Ward are both ready, willing and able to provide it.

C. CONCLUSION

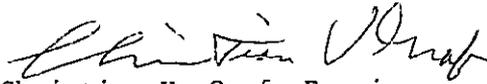
There is no doubt that at least since January 1, 1988, Pitt-Ohio has been consistently serving the supporting witnesses and others, as we have already pointed out, via its Cumberland, Maryland terminal which was established by virtue of the lease in October 1987, superseded by a lease in November 1988. It is obvious that interstate operations of this type where the ICC Certificate on its face authorizes the transportation, are proper (See Pittsburgh-Johnstown-Altoona Express, Inc. v. Pennsylvania Public Utility Commission, No. 1885, C.D. 1988, decided January 31, 1989).

However, this poses a double-edged sword. If what is being done is proper, and apparently satisfactory to those using it, then there appears to be no reason to change that operation. Stated somewhat differently, whatever need the shippers who supported this application may have, it is now being fulfilled by this Applicant via Cumberland. This in itself militates against a grant.

We really believe that this application should be denied in its entirety for the reasons set forth above.

However, should the Commission desire to grant the application to some extent, it should follow the precedent set forth in the Lansberry case, supra, and limit the grant to those shippers supporting the application.

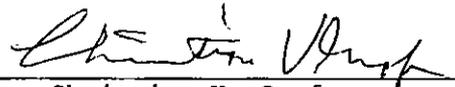
Respectfully submitted,


Christian V. Graf, Esquire

CERTIFICATE OF SERVICE

I hereby certify that I have this day served three (3) copies of the foregoing "Brief on Behalf of W. C. McQuaide, Inc. and Ward Trucking Corp., Protestants" upon counsel of record; and a single copy is being forwarded to Administrative Law Judge James Porterfield and to the protestants on whose behalf this Brief is filed, by U.S. First Class Mail, postage prepaid, at the addresses shown below.

Dated at Harrisburg, Pennsylvania, this 20 day of October 1989.


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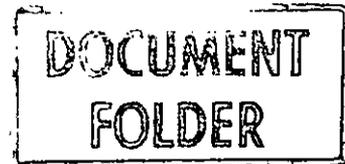
OCT 27 1989

SECRETARY'S OFFICE
Public Utility Commission

Re: Pitt-Ohio Express, Inc.
Docket No. A-00102471, F. 1, Am-P
Our File 2691-27

MAILED WITH U.S. POSTAL SERVICE
CERTIFICATE OF MAILING FORM 3817

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



Dear Mr. Rich:

We enclose for filing with the Commission the original and nine copies of Main Brief of Pitt-Ohio Express, Inc.

In view of the length of the transcript, number of exhibits presented by the parties, and the number of issues involved in this proceeding, we request waiver of 52 Pa. Code §5.501(e) which would limit the length of this Brief to 60 pages.

Copies of the Brief have been served on all parties of record.

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

pz

Enclosures

cc: Honorable James D. Porterfield,
Administrative Law Judge (w/Postal Certificate)
Christian V. Graf, Esquire (w/Postal Certificate)
Pitt-Ohio Express, Inc.

BEFORE THE
Pennsylvania Public Utility Commission

DOCKET NO. A-00102471, F. 1, Am-P

PITT-OHIO EXPRESS, INC.

RECEIVED

OCT 27 1989

SECRETARY'S OFFICE
Public Utility Commission

MAIN BRIEF OF PITT-OHIO EXPRESS, INC.

**DOCUMENT
FOLDER**

WILLIAM J. LAVELLE, ESQ.
Attorney for Applicant

DOCKETED
NOV - 2 1989

Of Counsel:
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Pittsburgh, Pennsylvania 15219

Due Date: October 27, 1989

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00102471, F. 1, Am-P

PITT-OHIO EXPRESS, INC.

MAIN BRIEF OF PITT-OHIO EXPRESS, INC.

I. STATEMENT OF THE CASE

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

- (1) To transport, as a Class D carrier, property from points in Allegheny County to points in the counties of Blair, Huntingdon and Bedford, and those points in the counties of Clearfield, Cambria and Somerset which are located on and east of U.S. Highway Route 219, 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 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 located on and east of U.S. Highway Route 219 and west 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 the following conditions:

FIRST: 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 malt beverages, malt beverage containers and pallets.

SECOND: That no right, power or privilege is granted to transport 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.

THIRD: 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 York County.

FOURTH: That no right, power or privilege is granted to transport limestone, limestone products or fertilizer from points in York County.

FIFTH: That no right, power or privilege is granted to transport such commodities as are dealt in by wholesale, retail and general grocery business houses for Dauphin Distribution Services Co. from points in the townships of Hampden and Silver Spring, Cumberland County.

SIXTH: That no right, power or privilege is granted to transport finished and unfinished products, materials and supplies, armaments and munitions to or from the Standard Steel Works Division of Baldwin Locomotive Works in the borough of Burnham, Mifflin County.

SEVENTH: That no right, power or privilege is granted to transport property from the facilities of C. H. Masland and Sons in the borough of Carlisle, Cumberland County, and in the township of Granville, Mifflin County, to the facilities of Volkswagen Manufacturing Corp. of America in the township of East Huntingdon, Westmoreland County, or vice versa.

EIGHTH: That no right, power or privilege is granted to transport property to or from the facilities of Carlisle Tire & Rubber Co. and Carlisle Syntec Systems in the county of Cumberland.

NINTH: That no right, power or privilege is granted to transport glass and glass products from the facilities of Chromalloy American Corporation

in the township of Granville, Mifflin County, or glass and property used in the manufacture, processing and production of glass and glass products to the facilities of Chromalloy American Corporation in the township of Granville, Mifflin County.

TENTH: That no right, power or privilege is granted to transport property for Owens Corning Fiberglas Co.

ELEVENTH: 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 an airline distance of thirty-five (35) statute miles of the limits of said city.

TWELFTH: That no right, power privilege is granted to transport property to or from the facilities of International Paper Co. in Kelly Township, Union County.

THIRTEENTH: That no right, power or privilege is granted to transport property on flatbed trailers.

Notice of the application was published in the Pennsylvania Bulletin on August 30, 1986. Protests to the application were filed by 16 motor carriers. As a result of several amendments made to the application, 13 of the protests have been withdrawn. The operating authority of another protestant, Evans Delivery Company, has since been transferred to Arrow Carrier Corporation which did not participate actively in the proceeding nor present evidence, although its protest was never officially withdrawn. The application is now actively opposed only by W. C. McQuaide, Inc. (McQuaide) and Ward Trucking Corp. (Ward), herein jointly referred to as Protestants.

The application was assigned to Administrative Law Judge James D. Porterfield for hearing and disposition. A pre-hearing conference was held on September 22, 1987 in Pittsburgh, PA.

Hearings were held in Pittsburgh on January 17, March 7 and 8, June 19 and August 24, 1989.

Testimony in support of the application was presented by the Applicant and 18 supporting shipper witnesses. Testimony in opposition to the application was presented by McQuaide and Ward.

At the conclusion of the hearing, Judge Porterfield granted the parties an opportunity to submit briefs. In view of the extensive record developed in this proceeding and in an attempt to avoid undue repetition, the Abstract of Testimony has been separately prepared and attached to the Brief as Appendix 1. Part A of Appendix 1 contains the abstract of the Applicant's operating evidence; Part B contains the abstract of the shippers' evidence; and Part C contains the abstract of the Protestants' evidence. The main body of the Brief will discuss the specific evidence only to the extent necessary to clarify the discussion.¹

1. Numbers in parentheses preceded by "A" and those followed by "A" and "B" refer to exhibits presented by the Applicant. Numbers in parentheses preceded by "P" refer to exhibits presented by the Protestants. Numbers in parentheses preceded by "p." refer to pages of the exhibits. All other numbers in parentheses refer to pages of the transcript of testimony.

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

The basic question to be determined is whether or not approval of the application is necessary or proper for the service, accommodation, convenience, or safety of the public. (66 Pa. C.S. §1103(a))

In deciding this basis question, the Commission must consider the following subsidiary issues (52 Pa.Code §41.14):

1. Does the record demonstrate that the Applicant is financially and technically capable of providing the proposed service?
2. Does the record demonstrate that approval of the application will be responsive to a public demand or need?
3. Does the record demonstrate that approval of the application will serve a useful public purpose?
4. Does the record demonstrate that approval of the application will endanger or impair the operations of Protestants to such an extent that the granting of authority would be contrary to the public interest?
5. Does the record demonstrate that the Applicant lacks a propensity to operate safely and legally?

It is the position of the Applicant that based upon the evidence of record the first three issues set forth above should be answered in the affirmative and that the last two issues set forth above should be answered in the negative. Applicant through its supporting shipper witnesses has established that there is a public need for the proposed service and that approval

of the application will serve a useful public purpose. Applicant's operating evidence demonstrates clearly that it is financially and technically capable of providing the proposed service without any difficulty whatsoever. For their part, Protestants have fallen far short of proving that their operations will in any way be endangered or impaired by the granting of this application or that the public interest would in any way be adversely affected by the granting of this requested authority. Finally, there is no evidence which would support a finding that the Applicant lacks a propensity to operate safely and legally.

In reaching these conclusions, Pitt-Ohio submits that the following subsidiary findings are justified by the evidence: (1) the supporting shippers and receivers have established that a present and future need exists for the Applicant's proposed service; (2) the volume of traffic and frequency of shipments to and from a wide range of points in the application territory establishes a need for the geographical authority sought by the Applicant; (3) the supporting shippers have shown that a need for the Applicant's service exists with respect to a broad range of commodities; (4) Protestants and other authorized carriers have been unable to meet the reasonable transportation requirements of the shipping public; (5) the supporting shippers have shown that approval of the application will serve a useful public purpose; (6) Protestants have failed to show that approval of the application will result in a diversion of any significant amount of traffic from them; (7) Protestants have failed to show that

approval of the application will have any material adverse effect on their operations or revenues, or that the granting of the application will in any way be contrary to the public interest; and (8) Applicant is fit, financially and otherwise, to provide the proposed service.

For all of these reasons, Pitt-Ohio submits that the application should be granted in its entirety, as amended.

III. ARGUMENT

1. THE APPLICATION IS GOVERNED BY THE STANDARDS SET FORTH IN THE TRANSPORTATION REGULATORY POLICY.

This application is governed by the relaxed entry standards set forth in the Transportation Regulatory Policy, 52 Pa. Code §41.14. Those entry standards are as follows:

§41.14 Evidentiary criteria used to decide motor common carrier applications.

(a) An 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.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would 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.

In adopting the Transportation Regulatory Policy, the Commission stated in pertinent part:

In determining whether to adopt the proposed policy, the Commission's purpose is to further the public interest. Section 1103 of the Public Utility Code, 66 Pa. C.S. §1103, refers to the "service, accommodation, convenience, or safety of the public" (emphasis supplied). While the Commission has in the past sought to further the public interest by protecting the regulated carriers, it must be remembered that this protection was only a means to an end. The public convenience is paramount.

Subsequently, in Application of Richard L. Kinard, Inc. at Docket No. A-00095829, F. l, Am-D, Administrative Law Judge Christianson in his Initial Decision dated January 5, 1984 and issued on January 19, 1984 considered in detail the effect of the Transportation Regulatory Policy on the traditional burden of proof in motor carrier application proceedings. By Opinion and Order entered October 22, 1984, the full Commission adopted Judge Christianson's Initial Decision as the definitive interpretation of the new policy. Essentially, the interpretation recognizes that there are certain alternatives to the previous inadequacy of existing service criteria, and that the burden on protestants to establish an adverse impact from approval of the application is "quite heavy" and is not met merely by alleging that there may be a diversion of traffic.

There are certain other well-established legal principles which also must be observed. First, it has been consistently held that an applicant need not show that there is an absolute necessity for the proposed services in the sense that the service must be indispensable before the application can be granted. John Benkart & Sons Co. v. Pa. P.U.C., 137 Pa.Super. 5, 7 A.2d 584, 586 (1939); Horn's Motor Exp. v. Pa. P.U.C., 148 Pa.Super. 485, 26 A.2d 346, 349 (1942); Alko Exp. Lines v. Pa. P.U.C., 152 Pa.Super. 27, 30 A.2d 440, 443 (1943); Highway Express Lines v. Pa. P.U.C., 161 Pa.Super. 98, 54 A.2d 10, 111 (1947); Zurcher v. Pa. P.U.C., 173 Pa.Super. 343, 98 A.2d 218, 221 (1953); Motor Freight Express v. Pa. P.U.C., 180 Pa.Super. 622, 121 A.2d 617,

621 (1956); Modern Transfer Co. v. Pa. P.U.C., 182 Pa.Super. 110, 125 A.2d 463, 466 (1956); Pennsylvania Railroad Co. v. Pa. P.U.C., 199 Pa.Super. 158, 184 A.2d 111, 116 (1962); Commonwealth Pa. P.U.C. v. Purolator Corp., 24 Pa. Cmwlt. 301, 355 A.2d 850, 852 (1976); Application of Ward Trucking Corp., 43 Pa. P.U.C. 689, 700, (1968); Re: S.T.S. Motor Freight, Inc., Pa. P.U.C. 465 469, (1975); and Re: Ray A. Walker, 50 Pa. P.U.C. 531, 533, 534 (1977).

Second, it is also a well-established principle that the extent to which there should be competition in the intrastate transportation of freight is an administrative question left to the discretion of the Commission. Benkart, supra at 586; Modern Transfer Co. v. Pa. P.U.C., 139 Pa.Super. 197, 12 A.2d 458, 461 (1940); Hall's Motor Transit Co. v. Pa. P.U.C., 150 Pa.Super. 60, 27 A.2d 428, 429-430 (1942); Alko, supra at 553; G. G. & C. Bus Co., Inc. v. Pa. P.U.C., 400 A.2d 941, 944 (1979); and Ward, supra at 700.

In determining the extent to which competition shall be authorized, the Superior Court of Pennsylvania very early held in Modern Transfer Co. v. Pa. P.U.C., 139 Pa.Super. 197, 12 A.2d 458, 461 (1940) that:

The basis of the action of the Commission is the interest of the public as distinguished from the interest of the corporation or individual making the application . . . to which we may add, or the interest of the competing carriers. The question is not whether the granting of the application will be for the convenience and accommodation of some of the public, but whether it will be for the convenience, accommodation and advantage of the public generally as a whole.

As a corollary to this last principle, the Superior Court held in Highway Express, supra at 111 that:

It is not necessary that the proposed service be absolutely indispensable, and the fact that certificated carriers are equipped to render the same service in the territory does not necessarily require the refusal of the application: John Benkart & Sons Co., et al. v. Pennsylvania Public Utility Commission, 137 Pa.Super. 5, 7 A.2d 584.

The Commission has followed this same approach and in Ward, supra, at 708 stated:

It is our duty to reconcile conflicting evidence and conflicting interest and to determine what adjustments are necessary so that efficient service will be available to the public. It is our duty to determine which carriers shall serve a given area. See Lancaster Transportation Co. v. Pa. P.U.C., 191 Pa. Superior Ct. 129, 137 (1956). Although there are other certificated carriers equipped to render such service in the territory involved, we may still certificate a new carrier, if, in our discretion, there is some benefit to the public by having an additional carrier. See John Benkart & Sons Co. v. Pa. P.U.C., 137 Pa. Superior Ct. 5, 9-10 (1939).

Third, the Commission has held that an applicant does not have to establish a present demand for the service in every square mile of territory certificated. Proof of necessity within the area generally is sufficient. Zurcher, supra at 221; Motor Freight, supra at 617; Reeder v. Pennsylvania Public Utility Comm., 192 Pa.Super. 298, 162 A.2d 231 (1960); Purolator, supra at 852; Walker, supra at 533; and Ward, supra at 700.

Fourth, it is a reasonable inference that the advantages of the applicant's proposed service referred to by the supporting witnesses are also applicable to other shippers in the application territory, particularly where the evidence discloses that

the business of the various supporting shippers is representative of other industries and businesses similarly situated. Kulp v. Pa. P.U.C., 153 Pa.Super. 379, 383 (1943); Sayre v. Pa. P.U.C., 161 Pa.Super. 182, 185 (1947); and Ward, supra at 703.

Fifth, the Courts and the Commission have also recognized for years that no existing carrier has an absolute right to be free from competition. Pennsylvania Railroad, supra at 117; Purolator, supra at 850; and Noerr Motor Freight, Inc. v. Pa. P.U.C., 181 Pa.Super. 332, 338, 124 A.2d 393 (1956). In this latter connection, the Commission in Application of Eazor Express, Inc., A-00093965, F. 1, Am-A, adopted July 29, 1989 and entered July 30, 1979 stated:

This Commission, and other Commissions including the Interstate Commerce Commission, have recently been in the process of reexamining the motor carrier industry and reevaluating policies concerning motor carrier application proceedings. We are placing increasing emphasis on economic analysis and Commission discretion over the level of competition which appears to best serve the public interest. At the same time we are placing less emphasis on the protection of existing carriers from additional competition.

The above summarizes the important principles developed through the years by this Commission and the Courts with respect to motor carrier application proceedings. Proper application of those principles, in conjunction with the Transportation Regulatory Policy, leads to the conclusion that the evidence presented in this proceeding amply demonstrates that the proposed service of Pitt-Ohio is necessary and proper for the service, accommodation, convenience, and safety of the public, and that as a result the application should be granted in its entirety, as amended.

2. THROUGH THE TESTIMONY OF THE SHIPPER WITNESSES, A NEED FOR
THE PROPOSED SERVICE HAS BEEN DEMONSTRATED.

A. A Wide Range of Commodities Are Shipped and Received.

The supporting shippers, representing a broad cross-section of the shipping and receiving public, have occasion to ship and/or receive a wide variety of commodities. Generically, the commodities include chemicals, paper and paper products, lawn and garden equipment, household appliances, electronic equipment, automotive accessories and parts, building construction materials, metal products, petroleum products, wood products and paint and related products.

The commodities which are shipped and received by each of the supporting shippers are identified in the abstracts of the shippers' evidence which is set forth in Part B of Appendix 1. Those commodities have been further abstracted and are collectively set forth in greater detail in Appendix 2.

It is submitted that the evidence submitted by the supporting shippers demonstrates a need for the transportation of a wide range of commodities which justifies a grant of authority to transport property rather than any more restrictive or limited commodity description.

B. The Supporting Shippers Ship Freight To and Receive
Freight From a Substantial Number of Points in the
Application Territory.

The supporting shippers identified the locations of their places of business and representative origins and destinations to

and from which they ship or receive freight within the application territory. In evaluating the breadth of the shippers' testimony, it is important to maintain a proper perspective with respect to the purpose and scope of the amended application.

As a result of several acquisitions of authority by Pitt-Ohio since the application was filed, the extent of the proposed service has been significantly reduced. Currently, Pitt-Ohio holds authority to transport property from points in Allegheny County to all points in Pennsylvania, and vice versa, with the exception of points in the seven counties of Somerset, Bedford, Cambria, Blair, Huntingdon, Clearfield, and Indiana. Part (1) of the amended application focuses on Allegheny County and seeks to obtain authority to and from all points in Bedford, Blair and Huntingdon Counties, most of Clearfield County, and approximately the eastern half of Cambria and Somerset Counties. (A-5 and A-6) In short, as to Allegheny County authority is being requested only in connection with six central Pennsylvania counties.

The absence of that authority results in somewhat inefficient operations and an inability to provide the public with a full service to and from Allegheny County. For example, Pitt-Ohio can handle truckload shipments direct from Allegheny County to all points in 59 counties, and vice versa. But it cannot serve this seven county area which causes some dissatisfaction and misunderstandings with its customers.

Insofar as less-than-truckload shipments are concerned, Pitt-Ohio can provide statewide coverage with respect to

Allegheny County but it can only do so on a direct basis as to 59 counties. For reasons which will be explained in greater detail in a subsequent section of this Brief, it can handle the LTL shipments by way of its Cumberland, MD terminal but this is not necessarily the most efficient or economical way to serve portions of this six county area, particularly Clearfield County and the northern portions of Cambria, Blair and Huntingdon Counties. Although initially Pitt-Ohio would not establish any new terminals in Pennsylvania if this application is approved, it is apparent from a cursory look at a Pennsylvania map, Exhibit P-6, and the description pertaining to Pitt-Ohio's proposed method of operation should the application be approved (24-30), that with the development of sufficient freight it would be operationally more efficient to have a terminal in the Clearfield-Centre County area in order to serve the central portion of the state direct.

The second part of the application, as amended, requests authority from points on and west of U.S. Highway 219 (except Allegheny County) to points in the central third of Pennsylvania, and vice versa. Pitt-Ohio now has authority to provide service from that entire western Pennsylvania area to all points in Pennsylvania on and east of U.S. Highway 15, and vice versa. The addition of the central third of Pennsylvania to its operating territory is a natural expansion and again would be economically and operationally feasible.

The specific origin and destination points referred to by each shipper witness are set forth in the abstracts of the ship-

pers' evidence. In order to more readily identify the representative shipping and receiving points, there is attached hereto as Appendix 3 a cumulative list of the origins and destinations referred to by each of the supporting shippers. While some of the shippers may have what at first appears to be modest requirements, collectively they establish a need for service within the entire application territory. Several of the shippers have a need for two-way service which accounts for the multiple reference to several of the shippers.

Insofar as the application territory is concerned, the supporting shippers have identified origins and destinations in the following counties: Beaver, Butler, Erie, Clearfield, Somerset, Bedford, Blair, Allegheny, Westmoreland, Lawrence, Huntingdon, Cumberland, Lycoming, Centre, Elk, Franklin, Clinton, Potter, Cameron and McKean.

This is clearly a representative showing of need throughout this territory, particularly in light of the sparsely populated nature of many of the involved counties. As shown in the first section of the Brief, in an application proceeding of this type the courts and the Commission have long held that it is not necessary for the applicant and shippers to establish a specific need for service to and from every point within the application territory. Rather, it is sufficient if a representative number of origins and destinations are identified which are located throughout the territory so as to show a relatively broad based need for the proposed service.

Pitt-Ohio submits that there is ample evidence to justify, on a territorial basis, approval of the amended application.

C. The Supporting Shippers Ship and Receive a Substantial Volume of Traffic Between Points Involved in the Application Territory.

The 18 supporting witnesses identified with some precision the volume of traffic and frequency of shipments which they have between specific origins and destinations. Applicant and the shippers consciously avoided the current trend of merely having the witnesses testify that they have shipments moving to and from points "throughout the entire application territory" in the hope that such general testimony will be considered broad enough to support the request. Instead, to the extent possible, each shipper was asked to specify its shipping and receiving points. That evidence again is summarized in the shippers' abstract of evidence, Appendix 1.

With few exceptions, the shippers indicated the annual volume of traffic moving to and from definite combinations of origins and destinations, the frequency of shipments between such points, and the approximate size of individual shipments. The testimony presented by the witnesses for Alling & Cory (Witness 6), Cardell Sales (Witness 8), Okonite Company (Witness 10) and Steel City Products (Witness 13) is typical.

It would be unnecessarily repetitious to reiterate all of the volume and traffic information in the body of this Brief inasmuch as it is summarized in easily identifiable form in the

abstracts of testimony. Suffice it to say that Pitt-Ohio believes that sufficient traffic is involved between various points in the application territory to justify approval of the application.

D. A Need for Service Has Been Shown Which Cannot Be Met By
Limitation of Any Grant of Authority to Service for the
Supporting Shippers Only.

It is anticipated that the protestants may argue that the application, if granted at all, should be limited to service for the supporting shippers. In support of that position, protestants may refer to the Opinion and Order of the Commission entered on October 3, 1989 in Application of Samuel J. Lansberry, Inc., Docket No. A-99642, F. 1, Am-P wherein authority was granted to transport property, in bulk, between points in Pennsylvania, for some 42 named shippers.

Applicant submits that the Lansberry case is distinguishable from the instant case and is therefore not a precedent. The most obvious distinguishing factor is that bulk commodities typically move in truckload quantities from one origin to one destination. It is therefore operationally feasible for a bulk commodity carrier such as Lansberry to effectively utilize such authority even though it is limited to service for named shippers.

Pitt-Ohio, on the other hand, is a general freight carrier which, while transporting both truckload and less-than-truckload traffic, specializes in the handling of LTL shipments. In order to conduct a less-than-truckload motor carrier business, a

carrier must be able to pick up and deliver shipments for the entire shipping public in a cohesive geographical area. An LTL service cannot be efficiently or economically provided if the carrier can only serve a relatively few members of the public which might require it to run 20 miles in order to pick up two 100 pound shipments. It is not necessary to belabor this distinction since Applicant believes that it is obvious to anyone knowledgeable about the trucking industry that a less-than-truckload service simply cannot be conducted only for a limited number of named shippers.

Furthermore, the Commission has already considered and rejected this argument insofar as it relates to a general property motor carrier. By Opinion and Order of the Commission adopted on February 15, 1985 in Application of Hammel's Express, Inc. at Docket No. A-00088995, F. 2, Am-F, the Commission specifically reversed an Initial Decision by the late Administrative Law Judge John K. Clements in which he recommended approval of a similar type of application limited to ten named shippers. In reversing, the Commission stated (page 5):

we cannot agree with ALJ Clements' narrow and unprecedented conclusion that any authority which we ultimately grant must be limited to the supporting shipper witnesses that have testified and convincingly demonstrated a need for the proposed service. Under such a restrictive approach, an applicant would inevitably be confined by the number of supporting shipper witnesses that testify and convincingly demonstrate a need for the proposed service.

The Commission went on to find that the testimony in the Hammel's case was representative of a general need throughout the

territory. In footnote 7 it stated "It should be noted, generally, it is in situations where the requested service is unique and/or particularly tailored for a specific shipper that we have limited the authority to named shippers".

Applicant submits that with respect to this type of application the Commission's decision in the Hammel's case rather than the Lansberry case is applicable and controlling.

3. APPROVAL OF THE APPLICATION WILL SERVE A USEFUL PUBLIC PURPOSE.

In Kinard, supra, the Commission determined that in addition to establishing a public need or demand for the proposed service, an applicant would either have to show that existing service is inadequate or show by some alternative method that approval of the application will serve a useful public purpose. A non-exhaustive list of nine such alternatives was set forth in Kinard. Pitt-Ohio and its supporting shipper witnesses have clearly met that burden.

A number of the witnesses expressed dissatisfaction with the service of McQuaide, Ward or Evans. Neville Chemical has had difficulties in obtaining scheduled pickup service from Ward which it felt had also been non-competitive from the standpoint of price. (193) In addition, Neville Chemical found Ward and Evans unable to make pickups late in the afternoon and still provide an overnight delivery service to its customers.

(195-196) Lincoln Aluminum had unsatisfactory experiences with Ward when it either was late for pickups or totally missed them

without any notification to the shipper. (216) Cardell Sales uses McQuaide only on customer request since for a considerable time it was unable to reach McQuaide in a timely manner to obtain service. (292) Okonite does not use Ward because its service takes two days for delivery. (354) Allegheny Distributing discontinued McQuaide's service due to late pickups and excessive damage to its freight. (380-381, 386-387) Pitt Penn Oil discontinued its service with Evans after it received poor service from that company. (397) Steel City Products no longer uses Ward because of past difficulties experienced with the company. (410)

In addition to showing inadequate service on the part of the protesting carriers, the witnesses established a number of other reasons why approval of the application would serve a useful public purpose. In Judge Christianson's Initial Decision in the Kinard case, he stated that "If Pennsylvania points and shippers are served under ICC authority, perhaps corresponding Pennsylvania authority would be appropriate to grant under §41.14". Here, all 18 supporting shippers have interstate, as well as intrastate shipments. With only one or two exceptions, those shippers are using Pitt-Ohio to handle both types of freight under its present authority. They uniformly expressed the need to have Pitt-Ohio in a position to pick up all of their interstate and intrastate shipments and to handle them to destination. They do not want to be in the position of having to tender Pitt-Ohio only interstate shipments or only those Pennsylvania shipments within the company's present authority and having to

withhold other shipments which might be ready for transportation at the same time.

Viewed from the Applicant's perspective, the same factor bears on the elements of efficiency and benefit to the Applicant. If it is able to pick up all available shipments with its pickup unit, whether they be intrastate or interstate shipments, it has the potential of maximizing the use of the Applicant's equipment capacity and thereby making its service more economical and efficient. That conceivably can result in more stable, if not lower rates, which is another factor to be considered under the Kinard criteria.

At least two of the shippers, Alling & Cory and Allegheny Distributing, were concerned about their relative positions with respect to competitive shippers. Alling & Cory testified that its competitors have available to them an overnight service and if it does not have the same type of capability its competitive situation is adversely affected since its customers carry little, if any inventory and will turn to a competitor for their paper products. (243) Allegheny Distributing was concerned with the fact that its competitors frequently operate their own trucks and can therefore guarantee themselves an overnight service. If Allegheny Distributing does not have a regulated carrier service available from the same basis capable of providing the same overnight service, it is put at a competitive disadvantage. (374)

The future need for additional motor carrier service is another factor to be considered under the Kinard guidelines. In

that connection, Cardell Sales estimated that its business is growing at a rate of 20% a year which will obviously create a need for additional motor carrier service. (294) A. R. Chambers' volume of business was greater in 1988 than in 1987, and it expects to be awarded a number of bids for 1989 work creating a future need for service. (339) Okonite has experienced an increase in its business in the eastern part of Pennsylvania and attributes that directly to the ability of Pitt-Ohio to provide a timely transportation service to its customers. The same caliber of service may well increase this company's business in the central part of Pennsylvania. (359)

A useful public purpose would be served by approval of the application for a number of other reasons. Most of the shippers are in a situation where either they themselves or their customers do not maintain large inventories of products. As a result, it is not unusual for them to be faced with a call for their product on very short notice. Almost without exception they need an overnight delivery service and in some cases the same day delivery service in order to meet their customers' needs. Several referred to the "just in time" concept whereby shipments arrive for almost immediate use by the customer. The evidence pertaining to this specialized type of service is summarized in the abstracts of the shippers' testimony and may be found at the following pages of the transcript: 115-116, 158, 177, 192, 195-196, 217, 243, 255, 271, 288, 291, 309, 349, 374, 396, 406, 433, 434, 468 and 482.

A number of the shippers also have very serious congestion problems at their facilities and as a result are forced to reduce the number of carriers they use. This congestion problem in some cases relates to a very limited number of docks for loading motor vehicles. In several instances, the loading facility is in a very difficult area with traffic congestion and vehicles must be scheduled in at precise times in order to alleviate the problem. By reducing the number of carriers called upon, the congestion situation is relieved. There is specific evidence pertaining to this service problem at the following pages of the transcript: 209-210, 216, 217, 315, 316, 355, 356, 363, 372, 411, 425, 427, 452, 454, 464-465 and 469-470.

Finally, at least *four* of the shippers are looking forward to substituting Pitt-Ohio's service to and from the application territory for their present private carriage operations. Those shippers are Highway Equipment (160), Neville Chemical (194), Cardell Sales (285, 294), and Pitt Penn Oil (396-397).

Pitt-Ohio submits that the above testimony demonstrates beyond any question that approval of this application will serve a useful public purpose and will be responsive to a public demand or need. On these points, Applicant has clearly carried its burden of proof under the statute, the Commission's regulations, and governing court and Commission decisions.

4. APPLICANT IS FINANCIALLY AND TECHNICALLY CAPABLE OF PROVIDING THE PROPOSED SERVICE.

Pitt-Ohio is a financially strong motor carrier with terminal facilities, motor vehicle equipment, experienced personnel and operational plans which will enable it to provide the proposed service without difficulty. Part A of Appendix 1 summarizes the testimony of the operating witness for the Applicant and it shows that it is in a position to meet all of the transportation requirements of the supporting shippers. Moreover, the shippers that have used Pitt-Ohio's service have nothing but praise for the carrier and its willingness to go the extra mile to accommodate them. This has meant picking up shipments on as little as 30 minutes notice, making pickups late into the evening for early morning delivery, providing same day delivery service in extreme emergency situations and generally providing a very responsive service to the shipping public.

Applicant has motor vehicles operating throughout the central part of Pennsylvania on a daily basis and is handling thousands of shipments every year to and from that territory. Approval of this application will not strain Pitt-Ohio's ability to serve the area. On the contrary, it will most likely enhance the service already being provided and after the volume of traffic is developed, it may well result in the positioning of a new terminal in central Pennsylvania so that the Applicant can provide an even more responsive service.

5. THERE IS NO EVIDENCE TO SUGGEST THAT APPROVAL OF THIS APPLICATION WILL ENDANGER OR IMPAIR THE OPERATIONS OF PROTESTANTS OR BE CONTRARY TO THE PUBLIC INTEREST.

The Commission's regulations and decisions in numerous cases have clearly established that protestants have a heavy burden of proof and cannot carry that burden merely by alleging that approval of an application will result in diversion of traffic from them. Here, Protestants cannot even begin to make that discredited argument.

Ward presented a traffic exhibit covering an eight month period of time and was able to show that it handled only one shipment for any of the supporting shippers between points pertinent to this application. (P-23) A one-day traffic exhibit for non-supporting shippers showed a very modest amount of traffic moving within the application territory. In any event, there is no evidence to show that approval of the application will result in the diversion of a significant amount of business from Ward or that the public will in any way be adversely affected.

McQuaide likewise presented several traffic exhibits but included interstate shipments, intrastate shipments moving to or from points outside the application territory and shipments the relevancy of which could not be determined. Because of the deficiencies in the traffic exhibits it was stipulated that they basically show nothing more than the fact that McQuaide has had occasion to serve some of the supporting shippers in one way or another. The exhibits cannot be used in any way to establish

that even one pound of freight or one dollar of revenue may be lost as a result of approval of the application. (P-30 and P-31)

Finally, McQuaide is realizing gross revenues of approximately \$24 million a year. Absent any substantial evidence, it cannot be concluded that McQuaide will be adversely affected in any material way by approval of this application.

6. APPLICANT'S OPERATIONS VIA ITS CUMBERLAND, MD TERMINAL ARE UNDENIABLY LAWFUL.

Considerable time was spent during the course of the hearings developing the manner in which Pitt-Ohio has been handling less-than-truckload shipments between two points in Pennsylvania by way of its Cumberland, MD terminal. It is a matter which in fact has no legal significance in this proceeding.

By Order dated January 31, 1989, the Commonwealth Court of Pennsylvania in Pittsburgh-Johnstown-Altoona Express, Inc. v. Pennsylvania Public Utility Commission, No. 1885 C.D. 1988, held that if a carrier possesses operating authority from the Interstate Commerce Commission that facially covers the involved transportation, and where the shipments actually traverse a second state, and where the carrier has asserted a business justification for its method of operation that conceivably could be sustained, then any challenge to the lawfulness of the operations is a matter which is within the jurisdiction of the Interstate Commerce Commission rather than the state commission.

It has been shown that Pitt-Ohio has interstate authority from the ICC to transport shipments on a non-radial basis between

points in some 18 states including Pennsylvania, Maryland, West Virginia and Ohio. It has also been established that to the extent Pitt-Ohio has transported LTL shipments between two points in Pennsylvania to and from the application territory, it has done so by moving the traffic through its Cumberland, MD terminal. The operations of the Cumberland terminal have been explained and it is clear that that terminal is a break-bulk and consolidation facility where interstate shipments moving to and from a number of different areas are staged. Consequently, there is a legitimate business reason for handling the Pennsylvania LTL shipments by way of that terminal.

Those operations, in view of the recent Commonwealth Court decision, which in turn was based on a U.S. Supreme Court decision, cannot in any way be considered unlawful or as showing any propensity whatsoever by the Applicant to operate in an improper manner.

IV. CONCLUSION

For all of the reasons set forth above, it is respectfully requested that the Administrative Law Judge make findings in accordance with the position of the Applicant as set forth in Section II of this Brief, as more fully explained and supported in the Argument, and thereafter grant the application, as amended, in its entirety.

Respectfully submitted,

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Due Date: October 27, 1989

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Main Brief of Pitt-Ohio Express, Inc. on all parties of record by first class mail, postage prepaid, with U.S. Postal Service Certificate of Mailing Form 3817.

Dated at Pittsburgh, PA this 27th day of October, 1989.

William J. Lavelle
William J. Lavelle

APPENDIX 1

A. ABSTRACT OF APPLICANT'S EVIDENCE

1. PITT-OHIO EXPRESS, INC. (ROBERT F. HAMMEL)
(A-4 to A-24, and P-6A to P-17B) (7-102, 504-532)

Pitt-Ohio is a Pennsylvania corporation which has its principal place of business at 26th and A.V.R.R., Pittsburgh, PA 15222. (A-1, p.1-2)

Pitt-Ohio is a motor common carrier of property which holds authority from the PUC at Docket No. A-00102471 and various amendments thereto. Subject to certain limited restrictions, and apart from a number of grants to provide service for specific shippers, Applicant operates (a) between points in 15 counties located west of U.S. Highway 219; (b) from points in Allegheny County to all points in Pennsylvania except Clearfield, Cambria, Blair, Huntingdon, Somerset, Bedford and Indiana Counties, and vice versa; and (c) from points in that part of Pennsylvania on and west of U.S. Highway 219 to points in that part of Pennsylvania on and east of U.S. Highway 15, and vice versa. (A-4, p. 5-6; A-7) It had several applications pending at the time of hearing. (A-4, p. 6; A-8)

By decision served June 7, 1989 pursuant to the federal preemption powers of the Interstate Commerce Commission, Pitt-Ohio was authorized to temporarily lease certain operating authority of Tose-Fowler, Inc. including the intrastate Pennsylvania authority to transport property, subject to certain restrictions, (a) between points in and east of the counties of

Adams, Cumberland, Perry, Juniata, Mifflin, Union, Clinton and Tioga; and (b) between points in the borough of Moosic, Lackawanna County and within an airline distance of 50 statute miles of the limits thereof, and from points in that area to points within an airline distance of 125 statute miles of the limits of the borough of Moosic, and vice versa. (A-22 and A-24) (505-508)

Pitt-Ohio holds authority from the Interstate Commerce Commission at Docket No. MC-30136 (Sub-2) to transport general commodities, except Classes A and B explosives, household goods, and commodities in bulk, between points in 18 eastern states and the District of Columbia including non-radial authority between points in Pennsylvania, Ohio, West Virginia and Maryland. (A-4, p. 6-7; A-9) Pitt-Ohio also holds motor common carrier authority from the Public Service Commission of West Virginia at Certification No. F-6388 to transport general commodities, with certain exceptions, between points in 30 West Virginia counties, and from points in those counties to other points in West Virginia, and vice versa. (A-4, p. 7; A-10)

Pitt-Ohio has its main administrative office, terminal, central dispatch and maintenance facilities in Pittsburgh. The Pittsburgh terminal is a 34-door cross-dock general freight terminal and is the hub for pickup and delivery operations in western Pennsylvania, northern West Virginia and eastern Ohio. It has assigned to it approximately 40 tractors and 41 straight trucks. (A-4, p. 8; A-11)

Pitt-Ohio operates seven other terminals including ones at Allentown, Harrisburg and Oaks (Philadelphia), PA, Cleveland,

OH and Cumberland, MD. Harrisburg is a 14-door, cross-dock facility assigned eight tractors and eight straight trucks. Oaks is a 24-door, cross-dock terminal assigned 12 tractors and 13 straight trucks. Allentown is a 12-door terminal assigned eight tractors and nine straight trucks. The straight trucks and some tractors are used in local pickup and delivery work. Trailers and other tractor equipment move throughout the system. (A-4, p. 8-9; A-11)

Pitt-Ohio has 375 employees including 264 drivers and dockmen, 24 supervisory personnel, 67 administrative and clerical personnel, 14 salesmen and four mechanics. (A-4; p. 10) Shippers and drivers have toll-free telephone numbers in order to contact the Pittsburgh terminal to obtain service, receive instructions, change itineraries, etc. (A-4, p. 9)

Pitt-Ohio will serve the central Pennsylvania area by extending the pickup and delivery runs now operated from the Pittsburgh and Harrisburg terminals, as well as using line-haul units currently transporting interstate and intrastate shipments to and from that part of the state. (A-4, p. 10) As business develops, Pitt-Ohio will establish another terminal in the central Pennsylvania area at a location to be determined after analysis of various factors including traffic flow, traffic volume and operational needs. (A-4, p.10)

Applicant leases its equipment from two affiliated equipment leasing companies. The equipment consists of 94 straight trucks, 207 closed van trailers ranging up to 48 feet

in length, 89 tractors and five dollie trailers which are used to connect two smaller pup trailers. Pup trailers are closed vans 28 feet in length which can be used for pickup and delivery work in the city and for over the highway use as part of a double trailer. Applicant also leases approximately 6-8 tractors and flatbed trailers from independent owner-operators. (A-4, p. 10-11; A-12) (17-18)

Applicant has a comprehensive safety and preventive maintenance program which is conducted in full compliance with all federal and state regulations. (A-4, p. 11-12)

Applicant as of December 31, 1987, had shareholder's equity in excess of \$1,864,000 and a net income for the year after taxes of \$572,162 on gross revenues of \$16,850,000. Its current assets at the time exceeded its current liabilities by more than a two to one ratio. (A-4, p. 12; A-13 and A-14) It maintains insurance well in excess of the Commission's minimum limits. (A-4, p. 13)

Applicant handles all sizes of general freight shipments and specializes in the transportation of less-than-truckload shipments. About 95% of all shipments transported weigh less than 10,000 pounds and 40% less than 1,000 pounds. (A-4, p. 13) Its service is available five days a week during normal business hours but shippers can arrange for service on evenings, weekends and holidays by contacting its central dispatch office in Pittsburgh or a local terminal representative. (A-4, p. 14) During winter months, commodities which require protection from

freezing are transported in fibre glass body trailers that hold heat. They are also placed in heated rooms at origin and destination terminals and the trailers are equipped with space heaters. Freezable commodities are handled on a seven day per week basis. (A-4, p. 14) Applicant proposes to offer scheduled pickup and scheduled delivery service and barring unusual circumstances, its vehicles usually average about 45 miles per hour. Within the scope of the application, it expects to be able to deliver most LTL shipments on an overnight basis and truckload shipments on a same day or overnight basis. (A-4, p. 14-15) Upon shipper request, Pitt-Ohio will provide a split pickup and multiple stop-off delivery service, and will spot trailers for the loading or unloading convenience of shippers and receivers. (A-4, p. 15)

Pitt-Ohio currently provides service to and from all points in central Pennsylvania pertinent to the application under its interstate authority, and under certain intrastate grants of authority for specific shippers. It can also provide service to and from the entire central Pennsylvania area with respect to Allegheny County except for points in Blair, Huntingdon and Bedford Counties and portions of Clearfield, Cambria and Somerset Counties. (A-4, p. 15) (18-19) Pitt-Ohio's operations to and from the central Pennsylvania application area or the territory immediately adjacent thereto under these rights are illustrated by its Exhibits 16-20 covering the months of August, 1988 through December, 1988. The exhibits do not distinguish

between interstate and intrastate shipments, nor between LTL and TL shipments, since their purpose is to demonstrate Applicant's level of service to and from the application area, its familiarity with the area and the availability of equipment terminating in or near the area. (A-4, p. 15-16; A-15 through A-20)

The number of shipments outbound and inbound for each of the five months was as follows:

<u>Month</u>	<u>Shipments Outbound From Central PA</u>	<u>Shipments Inbound To Central PA</u>
August, 1988	1,697	3,265
September, 1988	1,853	3,318
October, 1988	1,355	3,482
November, 1988	1,740	3,268
December, 1988	<u>1,687</u>	<u>2,886</u>
TOTALS	8,332	16,219

The Pittsburgh terminal currently serves all of the western part of Pennsylvania with the exception of Erie and part of Crawford Counties, including the northwestern portion of the application area such as Elk, Cameron and McKean Counties. The Harrisburg terminal currently serves the eastern portion of the application territory from the Maryland border to the New York border. Service to the central Pennsylvania counties of Somerset, Bedford, Huntingdon, Blair, Cambria, Clearfield and Centre are served by way of the Cumberland, MD terminal under Applicant's interstate authority. (21-23) Upon approval of the application, LTL shipments would be handled direct through the Pittsburgh and/or Harrisburg terminals, and TL shipments would be handled direct from origin to destination. (25-33) A

brochure has been prepared for distribution to shippers with a matrix indicating Applicant's present intrastate authority, other than for specific shippers, to and from every Pennsylvania county in order to simplify the interpretation of Applicant's present intrastate operating authority. (A-21, p. 21-22) (33-36)

Pitt-Ohio first leased terminal facilities in Cumberland, MD effective September 11, 1988 from Charlton Bros. Transportation Company, Inc. The current Cumberland, MD terminal has been leased from Central Transport, Inc. since November 30, 1988. (508-510)

Prior to opening the Cumberland, MD terminal, Applicant was transporting interstate shipments to and from points in central Pennsylvania. When the traffic volume reached a certain level, Applicant leased a terminal from Charlton Bros. in Cumberland, MD and began to route the interstate shipments through that terminal. After completely staffing the terminal and in accordance with its understanding of its interstate operating authority, on January 11, 1988, it advised Allegheny County shippers and receivers by letter that it was in a position to handle traffic to and from the entire state of Pennsylvania due to the opening of new terminals. The letter did not specifically refer to just the Cumberland terminal nor to interstate or intrastate shipments. (67-75)

Subsequently, LTL shipments were handled between the central Pennsylvania area and other points in Pennsylvania via the Cumberland, MD terminal. Truckload shipments have not been handled between two points in Pennsylvania. (76-80)

Protestants introduced a series of exhibits pertaining to LTL shipments moving between two points in Pennsylvania. In response to a request by Protestants' counsel, Pitt-Ohio produced Pickup and Delivery Performance Logs (manifests) and, where available, driver logs for the shipments transported during 1988. Driver logs for certain shipments were not kept because of an exemption from the driver log requirements. The pickup and delivery performance logs indicate the origin terminal as Cumberland, MD. (P-3 through P-17; P-6A through P-17B) (49-64, 511-528, 530-531)

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B. ABSTRACT OF SHIPPERS' EVIDENCE

1. TUSCARORA PLASTICS CORPORATION (JOHN STUVER)(108-119).

Tuscarora Plastics, Inc. fabricates an expandable polystyrene product, which is a foam plastic used in packaging. (109-110) It produces the polystyrene at its plant in New Brighton, Beaver County. (109-110)

Polystyrene is a lightweight product which is shipped in corrugated cartons. (110) A standard carton weighs approximately 35 pounds. (110) About 95% of the shipments from New Brighton are less-than-truckload (LTL) in size and could weigh up to 1,000 pounds. (110-111)

Tuscarora ships to points in the central third of Pennsylvania including the Bedford, Somerset and Huntingdon areas. (110, 111-112) It averages twelve shipments a year to these locations. (112) It also makes shipments to the eastern part of Pennsylvania as well as to points outside Pennsylvania. (111)

Tuscarora uses Pitt-Ohio to transport materials to points in New Jersey and Virginia as well as eastern Pennsylvania. (112-113) It uses Pitt-Ohio an average of five times a week to either pick up or deliver its freight and within Pennsylvania it uses Pitt-Ohio "as much as it can". (113) There have been no complaints and Applicant's service has been "excellent". (114)

Tuscarora does not use the service of McQuaide, Ward or Evans except on customer request. (115-116)

In making its shipments to its customers in Huntingdon, Somerset and Bedford counties, Tuscarora depends on overnight

service to meet the "just in time" demands of its customers.

(113-114) Most orders are custom produced. (114) If the present application is approved, Tuscarora would expand its use of Pitt-Ohio to those additional points in the central part of the state. (115)

2. HIGHWAY EQUIPMENT COMPANY (JAMES K. SINES) (119-172).

Highway Equipment Company is a seller of heavy equipment parts which it ships either as component units, such as a transmission, or as a complete unit, such as a skid stirrer. (121-122) These heavy equipment parts are installed in mining and construction machinery used in the coal industry, the limestone industry and in industrial plants. (122)

In most cases, Highway Equipment ships in LTL quantities with shipments ranging in weight from 100 pounds to 18,000 pounds. (123) When using a regulated carrier, Highway Equipment selects the carrier and pays the transportation charges. (123)

Highway Equipment has production plants in DuBois, Clearfield County, Somerset, Somerset County, Zelienople, Butler County and McKean, Erie County. (121) It often ships equipment parts between the plants. (122-123)

The Zelienople plant ships approximately 220 times a year to the DuBois plant, currently by company truck. (124-125) It ships from the Zelienople plant to the Somerset plant by company truck. (155) It ships from the McKean plant to the Dubois plant approximately three times a month, using McQuaide at present. (125) The DuBois plant ships to the McKean plant about two times a month, using McQuaide. (129)

Highway Equipment's Somerset plant is located on Route 601 North which is in the part of Somerset County which is west of U.S. Highway 219. (126) The Somerset plant ships to the DuBois plant approximately three times a week. (127) To ship from the Somerset plant to the DuBois plant, a company truck from Somerset meets another company truck halfway coming southbound from DuBois and the freight is exchanged. (128) The DuBois plant ships to the Somerset plant two or three times a week and a similar interchange of materials occurs halfway. (128)

Highway Equipment also makes shipments direct from its plants to customers. (129) The Zelienople plant ships to Camp Hill about three or four times a year; Williamsport about two times a month; Bedford County approximately three to four times a week; State College/Bellefonte area approximately three times a month; and Clearfield County four or five times a month. (131-132, 134-137)

The Somerset plant ships to Bedford County two or three times a week; Camp Hill about four times a year; Hollidaysburg approximately 15 times a year; the Berlin/Meyersdale area approximately two times a month; Altoona approximately three times a week; and the State College area about twelve times a year. (140-143)

The DuBois plant is physically located directly on the right-hand side of U.S. Highway 219 going north. (149) The DuBois plant ships to Clearfield County two or three times a week; the State College/Bellefonte area two or three times a week; and the Philipsburg area about once a month. (153-154)

Highway Equipment also ships from the DuBois plant to customers in Westmoreland County once every couple of months. (154)

For shipments in these areas Highway Equipment has used Pitt-Ohio, PJAX, McQuaide and Ward. (156-157)

Highway Equipment looks for service first and needs next day service because its customers generally have expensive equipment which require these parts to get their machinery running again. (158) Shipments to mines require jobsite deliveries. (158-159) It uses Pitt-Ohio whenever shipping to the eastern third of the state and to non-Pennsylvania points. (159-160) Pitt-Ohio will either pick up or deliver freight at Highway Equipment's home office at the Zelienople plant approximately five times a week. (160-161) Highway Equipment has found the service of Pitt-Ohio to be "excellent." (160)

If the application were to be approved, Highway Equipment would use Pitt-Ohio's service out of its various plants to customers in either the western or central portion of the state. (160) It would consider replacing its own trucks with Pitt-Ohio for interplant shipments in order to reduce its costs. (160)

3. PITTSBURGH MACK SALES (JIM FEUCHT) (172-185).

Pittsburgh Mack Sales sells and services Mack and Nissan trucks and sells parts for the trucks. (174) It has a facility in Pittsburgh, Allegheny County, and receives parts shipments from other dealers. (174)

From the dealership in Bedford, Bedford County, there are three to five shipments a month and from the dealership in Altoona, Blair County, three to four shipments a month.

(175-176) The shipments weigh between 100 and 2,500 pounds.

(176) Smaller shipments may be liner kits or cylinder liners whereas larger shipments may be an engine block, a transmission case, rear-end housing or a set of frame rails. (176) Pittsburgh Mack selects the carrier and looks for same day service. (175, 177)

Pittsburgh Mack ships materials outbound from its Pittsburgh facility to customers throughout Pennsylvania, including the central portion of the state. (177) These customers are predominately Pittsburgh based companies that have expanded their locations. (177) Pittsburgh Mack has a customer in the refuse business located in Bedford County to which it makes five to ten shipments a month. (178) It also has customers in the State College area and in Clearfield County to which it sees the frequency of shipments growing in the future because of expanding operations. (179)

Pittsburgh Mack uses Pitt-Ohio, Overnight and PJAX as the carriers for its inbound and outbound shipments. (179-180) Of those, Pitt-Ohio is used most often. (179-180) Pitt-Ohio is also used by Pittsburgh Mack for shipments going into Ohio, and western and eastern Pennsylvania. (180) Pitt-Ohio is a "big part" of Pittsburgh Mack Sales' business and has provided "excellent" service for Pittsburgh Mack.

If this application is granted, Pitt-Ohio would receive additional freight that may now be transported by PJAX, Overnight or some other carrier. (181) Pittsburgh Mack Sales has never used nor been solicited by any of the protestants. (182)

4. NEVILLE CHEMICAL COMPANY (JOHN R. RIHN) (185-206).

Neville Chemical Company is a producer of synthetic resins and anti-oxidants, as well as a distributor of various solvents which it does not manufacture. (187) Neville ships commodities in packaged, bulk and loose form. (187-188)

Neville's shipments range from 500 pounds to full truck-loads of 44,000 pounds. (188) Most of its LTL shipments are in the 500 to 5,000 pound range. (188) Neville ships 70%-80% of its shipments in the LTL category. (188)

Neville makes its LTL shipments of resins and anti-oxidants to all types of coatings, adhesives, ink, plastic and rubber industries. (189)

Neville has customers at such representative points as Bedford, Bedford County, Somerset, Somerset County, Ebensburg, Cambria County and Johnstown, Cambria County. (189) Those customers each receive approximately 100 to 130 shipments of packaged freight a year from Neville Island. (190)

Neville has two buildings at its Neville Island plant which it uses to store products. (190) Each warehouse has three loading docks. (190)

Neville now uses its own fleet of vehicles to carry its packaged dry freight. (190) The use of its private fleet extends to parts of Ohio and West Virginia as well as parts of Pennsylvania, including the six county application area. (191)

Neville uses Pitt-Ohio for shipments into the eastern and northern parts of Pennsylvania, and for interstate shipments. (191) Pitt-Ohio has trucks at Neville's facilities picking up

freight four to five days a week. (191-192) Neville requires at least overnight service. (192)

Neville uses the services of McQuaide only at the request of a customer located in Bedford. (192) McQuaide has not presented Neville with a program or solicited Neville's freight. (193)

Neville uses Ward on LTL freight, but only when it is requested by the customer. (193) In Neville's experience, Ward has been non-competitive price-wise and has had difficulties with scheduled pickups. (193)

There are a number of points on which Neville has based its decision to support this application. (194) First, Pitt-Ohio is a prime carrier for Neville to other areas and has done an excellent job and has been on the leading edge of price and service innovations. (194) Second, there is a possibility that Neville will limit or discontinue its private fleet and use the services of Pitt-Ohio in its place. (194) Finally, Pitt-Ohio, unlike Ward and Evans, is willing and able to make late pickups in the afternoon and still maintain the overnight delivery. (195-196)

5. LINCOLN ALUMINUM DISTRIBUTING COMPANY (DOUGLAS B. FIELD)
(207-230).

Lincoln Aluminum Distributing Company is a master distributor for aluminum products such as aluminum extrusions, window frames, door frames and doors. (208) It ships these products to glass shops in Pennsylvania, Ohio, West Virginia and Maryland.

(208) The glass shops put the glass into the frames and do the actual installation of the products. (208-209)

Lincoln's plant is located in Jeannette, Westmoreland County. (209) It has one main dock for outbound and inbound shipments. (209-210) The size of Lincoln's outbound shipments range between 60 and 25,000 pounds. (210)

Lincoln makes shipments to its customer in Altoona about twice a month and the annual volume is about 20,000 pounds.

(212) Shipments to Clearfield occur about once a month and the volume is about 10,000 pounds a year. (213) Lincoln ships to DuBois about twice a month, with annual volume of 18,000 pounds.

(213) Lincoln ships to St. Marys about twice a month and the annual volume is about 18,000 pounds. (213-214)

Shipments to State College run two and one-half to three times a month with an annual weight of 26,000 to 30,000 pounds.

(214) Waynesboro, Franklin County receives shipments about once a month which have an annual collective weight of 10,000 pounds.

(214) Lincoln ships to Bedford about once a month and the annual volume is 10,000 pounds. (214)

Lincoln primarily uses Pitt-Ohio to move its freight to customers in the central part of the state via a terminal in Maryland. (215-216) It also uses Pitt-Ohio to locations in the eastern, northwestern and southwestern parts of the state, as well as to out of state points. (216)

Before using Pitt-Ohio, Lincoln primarily used Ward but it no longer uses Ward to any great extent. (215, 224) Lincoln has phased Ward out since it has only one dock and it wanted to

eliminate as much congestion as possible. (216) Also, Pitt-Ohio provided Lincoln with great service whereas Ward has been late making pickups and sometimes missed them altogether without notification. (216)

Lincoln is looking for overnight service which Pitt-Ohio has provided. (217) Pitt-Ohio makes pickups at Lincoln's Jeannette plant within the time limits that Lincoln has set and sometimes makes two pickups in one day. (217)

Lincoln is unfamiliar with McQuaide and has never used it in the central part of Pennsylvania. (218) Lincoln knows of Evans, but has never used it. (219)

Approval of this application would help Lincoln eliminate congestion by allowing it to use just one carrier instead of two or three. (217) If this application is approved, Pitt-Ohio would receive all of Lincoln's traffic to the central part of Pennsylvania. (219, 223-224)

6. ALLING & CORY (WILLIAM T. MURPHY) (235-259).

Alling & Cory is a wholesale distributor of copy paper, office paper, printing paper, paper towels and toilet tissue. (235-236) It has a 110,000 square feet warehouse located in Pittsburgh from which it ships daily to its customers in the tri-state area. (237) The facility has 11 doors, 9 for outbound shipments and 2 for inbound shipments. (237)

Alling & Cory uses 11 of its own trucks and primarily 2 motor carriers for outbound shipments. (237) The size of its inbound shipments range from a minimum shipment of one package

up to a full truckload. (239) Its outbound shipments range from one package to about 15,000 pounds. (238)

Alling & Cory ships outbound daily to customers in central Pennsylvania. (239-240) It ships to Somerset once or twice a day. (240) The annual volume is approximately 75,000 pounds. (240-241) To Bedford there is a shipment a day to printers and a shipment once a week to an industry. (241) The annual volume to Bedford is approximately 150,000 pounds a year. (241) Alling & Cory makes shipments to Ebensburg almost daily. (241) The annual volume to the Ebensburg area is about 250,000 pounds. (241)

Shipments to Altoona in Blair County occur two or three times a day. (242) Over a period of a year, the collective volume to Altoona is about 500,000 pounds. (242) Alling & Cory has several customers in Huntingdon County to which it makes one or two shipments a week. (242) The yearly volume to Huntingdon County is about 25,000 pounds. (242) Several customers in Clearfield County receive shipments once every other day. (242) The total volume to Clearfield is approximately 200,000 pounds a year. (242)

When using a carrier to make shipments to the six county application area of central Pennsylvania, Alling & Cory looks for overnight service because its customers have no inventory. (243) Further, many of Alling & Cory's competitors provide overnight service. (243)

Alling & Cory selects the carrier on shipments of paper products moving out of Hammermill Paper in Erie. (245-246, 250)

Alling & Cory directs the Hammermill Erie plant to ship about 20,000 pounds a year to customers in Altoona, about 15,000 pounds a year to customers in Clearfield County, about 10,000 pounds a year to customers in Bedford County, 10,000 pounds a year to Ebensburg and 10,000 pounds a year to Somerset.

(251-252)

Alling & Cory uses Pitt-Ohio and PJAX to make shipments to the six county application territory. (253) These shipments move under a commodity rate which is money saving to Alling & Cory. (253-254) Alling & Cory also uses Pitt-Ohio to ship to regions beyond the six county application area such as West Virginia, Ohio, Maryland and Washington, DC. (254-255)

Pitt-Ohio is scheduled to come to Alling & Cory's facility in Pittsburgh every day. (255) It makes pickups late in the day and provides overnight delivery. (255)

Alling & Cory is familiar with Ward, Evans and McQuaide but does not use their services. (256) If the Commission were to grant this application, Alling & Cory would use Pitt-Ohio's services from its warehouse into the six county area and vice versa. It would also designate Pitt-Ohio as the carrier for the Hammermill Erie traffic that moves into the six county area of central Pennsylvania. (256)

7. J.A. WILLIAMS (BOB McAFEE) (260-279).

J.A. Williams Company is an exclusive wholesale distributor of consumer goods such as electronics, televisions, VCR's, refrigerators, air conditioners, freezers, washers, dryers, white goods and electronic parts. (261)

Williams has a sales office and a warehouse in Pittsburgh. (261) Its customers are dealers that range in size from small operations to larger chain accounts. (262) It has approximately 300 dealer-customers located in virtually every county in Pennsylvania, as well as West Virginia and Ohio. (262, 264)

Williams ships parts to the central Pennsylvania customers on a daily basis. (263) Its shipments typically range from 150 to 5,000 pounds. (274)

The dealers initially receive the merchandise from Baltimore but may refuse a shipment as damaged or overstocked. (266, 2688) In a damage situation, Williams arranges for the merchandise to be transported back to its Pittsburgh facilities where it checks the merchandise and, if satisfactory, ships it to another dealer for resale. (263, 266) Thus, there is a two-way movement to and from the six county application area. (263-269)

In an overstock situation, the merchandise may be shipped from one dealer to another without going to the Pittsburgh facilities. (268-269) There are occasions when overstocked merchandise is shipped from a dealer located in the six county application area to another dealer located in western Pennsylvania, west of U.S. Highway 219. (270)

J.A. Williams has dealers in all of the six central Pennsylvania counties, including two to six dealers in Bedford County. (270, 276) It also has dealers in all of the western Pennsylvania counties. (270-271)

J.A. Williams needs a motor carrier which provides timely pickup and delivery service. (271) It needs either same day or next day service. (271)

Williams primarily uses Pitt-Ohio for its traffic in the tri-state area. (273) Pitt-Ohio serves Williams on a daily basis on its interstate and intrastate traffic. (271-273) No one from McQuaide, Ward or Evans has solicited Williams' business within the last year. (275)

Traffic which Pitt-Ohio is now handling separately under interstate and intrastate authority would be matched up so that additional freight could be put on the same vehicle. (273)

8. CARDELL SALES (DANIEL MCKENNA) (279-302).

Cardell Sales is a manufacturer's representative in the electrical industry. (280) It stores and sells for 18 manufacturers of wire, conduit, fixtures, fittings and baseboard heating. (280) Its customers are electrical distributors in western Pennsylvania and West Virginia and home centers in the eastern part of the United States. (280) Its business is growing 20% a year. (294)

Cardell has two warehouses in Pittsburgh from which it ships on a two week shipping schedule using its own private trucks for 60% of the traffic. (280-281) About 40% of the freight which either does not fit on its own trucks or must be shipped in between its shipping schedule, is done by common carrier. (281-283) About 10% of the traffic goes to jobsites. (291)

From the company-owned warehouse, where the main commodity is wire, the shipments vary from 1,000 to 20,000 pounds. (283) From the leased warehouse, where the main commodity is ten foot long conduit steel pipe, the shipments range between 5,000 and 15,000 pounds. (283)

Cardell ships to two or three distributors in Somerset County every two weeks on its own trucks and another 5,000 pounds three or four times in between by common carrier. (284) It has a customer in Bedford County to which it ships 5,000 or 10,000 pounds every two weeks. (284) Cardell ships 12,000 to 15,000 pounds a month to customers in DuBois by its own trucks or common carrier. (284) If this application is approved, Cardell would switch from private carriage to Pitt-Ohio to handle the traffic into Somerset, Bedford and Clearfield counties. (285) This would help Cardell reduce its shipping costs. (285)

Cardell also ships 40,000 to 60,000 pounds of freight a month to Windber, Somerset County, where the customer demands same day service which Cardell is presently unable to provide, causing it to lose business to its direct competitors. If this application is approved, Pitt-Ohio would be given the great majority of the Windber traffic. (286, 287, 290-291) A major customer in Altoona, Hite, which receives up to 35,000 pounds twice a week, refuses to be served in private carriage. (289) There is a small volume of traffic to Huntingdon County. (289) All home centers usually receive about 1,000 pounds each month. (289)

Cardell uses Pitt-Ohio almost 98% of the time. (290, 295) Presently, shipments by Pitt-Ohio from Pittsburgh into the six county application area cannot be delivered on the same day but it has promised to dedicate equipment to Cardell in order to provide same day service when necessary. (287-288) Cardell uses Pitt-Ohio on shipments into the rest of Pennsylvania, all of West Virginia, Maryland and New Jersey. (290)

Cardell uses McQuaide only when it is directed by one particular customer. (292) McQuaide has called Cardell to solicit business only once within the last nine years. (293)

Cardell used Ward seven or eight years ago for a couple of months but has not heard from Ward for six or seven years.

(293) Cardell does not use the services of Evans. (293)

Cardell used Evans two or three years ago, but experienced some difficulties and disagreements. (293) Another reason why Cardell does not choose to use the three protestants is that each is located outside the city of Pittsburgh and unable to reach Cardell's facilities within a short period of time. (293)

If this application is approved, Cardell will gradually discontinue its private carriage operations into the application territory, with very minor exceptions. (294) Approval of this application would provide Cardell with same day service and the opportunity to increase its profits. (295)

9. A.R. CHAMBERS (BILL CARLIN) (302-339).

A.R. Chambers is a wholesaler of construction, industrial and packaging supplies such as concrete, insulation, curing

aspects, apoxies or anything that has to do with road or building construction. (303-304) It sells to Penn-Dot and all major construction companies throughout Pennsylvania. (304, 306-307) Most of Chambers' shipments from its Pittsburgh warehouse fall into the LTL category and weigh no more than 9,000 pounds. (303, 304) It has had contracts for work in Bedford, Altoona and Clearfield, (324, 328, 334) and has bids out for the next work season. (338-339)

Shipments generally move directly to the job sites of contractors. (307, 309) In a good season, Chambers makes 50 to 60 shipments per month into the six county application area. (308) Chambers' business is seasonal, so there are times within the year when it has little or no traffic because its contracts are in the bid stage and times when traffic is heavy. (338) In 1988 Chambers successfully bid on 100 non-highway type jobs to supply materials to contractors located in the six county application area. (322) Pitt-Ohio handled that freight whenever same day service was not needed. (323)

A.R. Chambers also has freight going directly from vendors to job sites in Clinton, Cumberland, Franklin, Potter, Cameron and Bedford Counties. (313-314, 332) In those situations, Chambers chooses the carrier that will handle the freight and pays the freight charges. (310-312)

Chambers requires a dependable carrier that is able to provide same day or next day service. (309) Since Pitt-Ohio is only nine blocks down the street from A.R. Chambers' facilities,

Pitt-Ohio is able to provide assistance on emergency late afternoon calls requiring overnight service. (319) Chambers would benefit by having a carrier that is able to pick up all of its shipments going into the application area as well as to other points with one truck since that would help to eliminate congestion at its dock during the heavy traffic season.

(315-316)

Chambers has not had any solicitation of its business from McQuaide, Ward or Evans, nor has it used any of these three companies. (317) Chambers has tried to reach McQuaide in the past but was unable to get hold of them by telephone. (336) Chambers presently uses Pitt-Ohio on both an intrastate and interstate basis and has found Pitt-Ohio's service to be "excellent." If this application is granted, Pitt-Ohio would receive 100% of Chambers' outbound traffic into the six county application area. (318-319)

10. OKONITE COMPANY (KENNETH LAMISON (341-369)).

Okonite Company operates a wire and cable warehouse in Leetsdale, Allegheny County. (342) The Okonite warehouse receives electrical wiring cable in master reels, cuts the cable to a length ordered by the customer, and reships the cable to the customer. (343) The electrical cable is produced at Okonite's manufacturing plants in New Jersey, California and Kentucky. (343) Occasionally, Okonite ships splicing materials from its Leetsdale plant, such as tape and cements, along with the cable. (343)

The weight of Okonite's LTL shipments range from 71 to 20,000 pounds. (343) Ninety to 95% of Okonite's shipments are in the 20,000 pounds or lower LTL category. (344) The balance of the shipments are in the truckload category. (344)

Okonite ships to end users that are installing the electrical cable, such as utilities, coal mines, railroads and distributors of electrical cable. (345) As much as 20% of Okonite's shipments go to the job sites located within the six county application area of central Pennsylvania. (345)

Okonite has utility customers that receive shipments throughout the six county application area. (346) Shipments to a mining cable distributor in Ebensburg can occur from three times a week to once every two months. Shipments to the Ebensburg customer go to a central location 90% of the time, with the balance going directly to job sites. (348) Okonite ships 40,000 pounds of material annually to an electric company in Altoona, Blair County, and Windber, Somerset County. (347) It ships 50,000 to 60,000 pounds of material annually to a railroad customer in Altoona. (350) It ships 20,000 to 30,000 pounds of freight to a DuBois customer. (347)

Customers of Okonite expect same day or next day delivery. (349) If necessary, the customers occasionally pick up materials with their own trucks. (349)

Okonite has inbound shipments of splicing kits and lead pipe to its Leetsdale warehouse from origins in the six county application area, mainly Altoona and Bedford. (352) The yearly inbound shipments of lead pipe from Altoona weigh 40,000 pounds.

(352) The yearly inbound shipments of tape from Bedford weigh 30,000 to 40,000 pounds. (352)

Okonite has not used Ward or McQuaide for any of its outbound traffic. (355) McQuaide is the designated carrier for inbound shipments from Bedford. (353) Ward is the designated carrier for the shipments coming in from Altoona. (354) Okonite has found that it is paying more for the inbound freight than it needs to. (353-354) Further, Okonite has found the service of Ward to be unacceptable since it takes two days for delivery. (354)

Okonite's Leetsdale facility has five shipping doors. (356) It uses eight carriers from the warehouse to points throughout the country. (363) It wants to consolidate shipments to points within the six county application area with shipments to other points in Pennsylvania. (355)

Through dealing with Pitt-Ohio, Okonite has come to expect next day service for any shipment within the state of Pennsylvania. (357) Pitt-Ohio is able to provide next day service to points beyond the state of Pennsylvania, such as New Jersey, Maryland, southern West Virginia and Ohio. (357) It spots equipment for Okonite to load at its convenience. (358)

The ability of Pitt-Ohio to transport material in a timely fashion to customers in the eastern part of the state has resulted in an increase in Okonite's business. (359) If Pitt-Ohio were granted the authority to operate from points in Allegheny County to all points in Pennsylvania, Okonite's

routing problems would end. (368) If this application is approved, Pitt-Ohio will receive 100% of the Okonite traffic going into the six county application area. (358)

11. ALLEGHENY DISTRIBUTING, INC. (RICHARD SPITLER) (370-387).

Allegheny Distributing is a wholesale distributor of lawn and garden equipment, lawn mowers and snow blowers. (370) Its business has two heavy seasons. (370)

Allegheny Distributing has a 7,500 square foot warehouse in Pittsburgh which has two docks available for loading trucks. (371) Because Allegheny Distributing does not have large facilities for loading trucks, space is limited and inventory is not stored for any lengthy period of time. (372) These space limitations require that merchandise be shipped out of the warehouse in a short period of time. (372, 374)

All of Allegheny Distributing's outbound shipments are LTL in size. (372) Lawn and garden dealers, supply houses and hardware stores are among Allegheny Distributing's customers. (372) A typical customer receives five or six shipments during the course of a year. (374) Allegheny Distributing has customers in DuBois and Clearfield, Clearfield County, Johnstown, Summerhill and Windber, Cambria County, Bedford, Bedford County, and Altoona, Bellwood, Hollidaysburg and Roaring Springs in Blair County. (376-377)

Since Allegheny Distributing has no trucks of its own, it relies 100% on common carriers. (374) Most of its competitors, on the other hand, have their own trucks and can provide over-

night service. (374) By utilizing the good service of Pitt-Ohio, Allegheny Distributing is able to provide overnight service as well. (374)

Allegheny Distributing uses primarily Pitt-Ohio to ship to points in the western part of Pennsylvania, Ohio and northern West Virginia. (378-379) It ranks Pitt-Ohio's service as "excellent." (379) Pitt-Ohio picks up and delivers Allegheny Distributing's shipments on schedule. (379) Occasionally, Pitt-Ohio will spot Allegheny Distributing a trailer when there are heavy shipments. (379) It wants to stage and ship intra-state and interstate shipments together. (380)

Allegheny Distributing is not interested in using the services of the carriers opposing this application. (379) It has never used Ward. (379) Allegheny Distributing used McQuaide in the past, but stopped using them because freight was damaged and pickups were late. (380-381, 386-387)

12. PITT PENN OIL COMPANY (DANIEL BURDA) (387-400).

Pitt Penn Oil Company is a manufacturer of automobile petroleum products, such as antifreeze and lubricants. (388) The company is located in Creighton, Allegheny County. (388) It ships its products in both bulk and packaged form. (388) Approximately 75% of its freight is shipped in packaged form, and 25% of the shipments are in the LTL category. (389)

Pitt-Penn's customers are automobile distributors, small automotive stores and wholesalers, and are located in all six of the central Pennsylvania counties. (389-390) The frequency of

shipments fluctuates depending on weather conditions, product availability and customer need. (390-391) There are customers in Bedford, Everett and Woodbury, Bedford County, and Claysburg, Blair County, Somerset County along the Pennsylvania Turnpike, Clearfield, Clearfield County, and Mount Union, Huntingdon County. (390-393) Pitt Penn Oil made approximately 50 truckload shipments to Altoona between August, 1988 and March, 1989. (392)

Pitt Penn Oil primarily uses its own private carriage operation called Pitt Penn Distribution to ship into the six county application area. (393, 397) It has used PJAX to make truckload shipments to the six county area on occasion. (393) It uses Pitt-Ohio often to ship to Philadelphia, Harrisburg and Maryland. (396)

Pitt Penn Oil's normal working hours are from 8:00 a.m. to 4:30 p.m. (393) During its busy season, however, it operates from 6:30 a.m. to 11:00 p.m. (394) In the busy season, Pitt Penn Oil needs a carrier that is able to make pickups within an hour's notice. (396)

Pitt Penn Oil needs carriers to provide overnight delivery on both LTL and truckload shipments. (394) Pitt Penn Oil is supporting the application because Pitt-Ohio is able to provide the kind of service which Pitt Penn Oil needs. Since Pitt-Ohio is located only 15 miles from Pitt Penn Oil, late afternoon pickups are possible in busy seasons. On occasion trailers must be spotted at its plant. (395-396)

If this application is approved, Pitt-Ohio will be able to make multiple stop-off shipments to points both in and outside

Pennsylvania for Pitt Penn Oil. (396) Pitt Penn Oil is also looking to Pitt-Ohio as a substitute and backup for its private carriage operation. (396-397)

Pitt Penn Oil has never dealt with McQuaide or Ward. (397) It had occasion to deal with Evans about two years ago to make shipments into Philadelphia, but stopped using it because of poor service. (397) Pitt-Ohio, on the other hand, has provided dependable and timely service into Philadelphia. (398) Pitt-Ohio's exemplary service has led many of Pitt Penn Oil's customers to request Pitt-Ohio as the carrier. (398)

13. STEEL CITY PRODUCTS (PATRICK J. GALLAGHER) (401-414).

Steel City Products is a national wholesale distributor of automotive accessories. (401) Steel City has an 80,000 square foot warehouse in Blawnox, Allegheny County, where it inventories about 6,000 different commodities including floor mats, seat covers, auto waxes, polishes, chemicals, engine additives, mirrors and antennas. (401-402) It markets these products to discount stores, mass merchandisers, other wholesale distributors, independently owned stores and jobbers. (402)

During the period March 1 through June 30, 1988, Steel City made the following shipments from its Blawnox warehouse to representative customers in the six county area in central Pennsylvania: Altoona, Blair County--35 cartons, 48,010 pounds, 22 shipments; Altoona--233 cartons, 3,315 pounds, 3 shipments; Altoona--253 cartons, 3,645 pounds, 3 shipments; Huntingdon, Huntingdon County--179 cartons, 2,595 pounds, 3 shipments;

Clearfield, Clearfield County--68 cartons, 950 pounds, 1 shipment; DuBois, Clearfield County--48 cartons, 675 pounds, 1 shipment; DuBois--753 cartons, 10,100 pounds, 5 shipments; DuBois--84 cartons, 1,080 pounds, 3 shipments. (403-405) The above-mentioned information is a fairly typical volume of traffic to these customers over a four month period. (405-406)

Steel City has additional customers both in and out of the six county application area. (406) Steel City serves the entire eastern seaboard, including all of Pennsylvania. (402-403) About 95% of Steel City's traffic is in the LTL category. (406)

Steel City needs overnight service on a regular basis. (406) Some of Steel City's products are susceptible to freezing in cold weather. (406) If the overnight service standard is maintained, however, the likelihood of a product freezing is remote. (407)

Steel City uses Pitt-Ohio to ship both within the state of Pennsylvania and to other states. (410) Pitt-Ohio is at Steel City's place of business at least once a day to either pickup or deliver freight. (410)

Steel City uses McQuaide to make shipments to a customer in Altoona, but only at the customer's request. (409) Steel City does not use Ward because it experienced difficulties with it in the past. (410) Ward does not solicit Steel City's business. (410) Steel City does not use Evans as a carrier. (410)

If Pitt-Ohio had the authority to pick up Steel City's freight going to the entire state of Pennsylvania along with the

interstate freight, there would be less congestion at Steel City's facilities. (411) Steel City regards Pitt-Ohio as its "Number One" carrier and has found its service to be excellent. (403, 411)

If this application is granted, Steel City would tender Pitt-Ohio its traffic going into the central region of the state if it maintained its usual service standards. (411)

14. ALLEGHENY BINDERY CORPORATION (RAYMOND D. DIPASQUALE)
(420-441).

Allegheny Bindery Corporation is in the business of binding books, annual reports, financial reports and similar materials. (421) Its facility is located in Pittsburgh approximately one mile from the terminal facilities of Pitt-Ohio. (421)

Allegheny Bindery is a 24 hour a day operation, six days a week. (425) It has one dock which can accommodate only one truck at a time. (425) If a truck is scheduled to be at the dock at a certain time, it must be there to avoid interrupting the entire schedule. (425) Allegheny Bindery schedules most of its outbound shipments for pickup between 6:00 p.m. and 11:00 p.m. and its inbound shipments for delivery between 6:30 a.m. and 8:30 a.m. (426) Its facilities are on a hill in a very congested area which has traffic problems at certain hours. (427)

Allegheny Bindery's customers are printers which ship to Allegheny Bindery which, after binding, sends the materials back to the printer or to the printer's customers. (424)

Representative customer points include Johnstown, Cambria County, Holsopple, Somerset County, Altoona, Blair County and Clearfield, Clearfield County. (429-430)

Allegheny Bindery ships and receives from Clearfield two or three times a month, from Altoona three or four times a month, and from Holsopple and Johnstown every quarter. (430-432) All of the shipments are in the LTL category, usually weighing 2,000 to 3,000 pounds. (430)

Allegheny Bindery requires same day service since much of the material being bound is dated financial work needed for corporate meetings. (433-434) It expects carriers to be available six days a week. (433)

Allegheny Bindery has never used the services of McQuaide, Ward or Evans. (435) No one from Ward or Evans has ever solicited the business of Allegheny Bindery. (435) Pitt-Ohio has provided service to Allegheny Bindery for ten years. (436) Pitt-Ohio handles Allegheny Bindery's interstate traffic, such as inbound shipments from Lorain, Ohio and return shipments out to New Jersey and Cleveland, Ohio. (436) Pitt-Ohio also handles the intrastate traffic for Allegheny Bindery. (436) Pitt-Ohio has provided Allegheny Bindery with excellent service. (436)

Allegheny Bindery can make four to forty outbound shipments a day to interstate and intrastate locations. (437) Pitt-Ohio is at Allegheny Bindery's facility every day to make pickups. (437) If this application is granted, Pitt-Ohio would receive 80% to 90% of the traffic moving to and from the points in central Pennsylvania. (437)

15. ARISTECH CHEMICAL CORPORATION (STEVE R. STOFKO)(442-461).

Aristech Chemical Corporation, formerly USX Chemicals, manufactures, supplies and trades chemicals. (443) It has two manufacturing plants on Neville Island, a warehouse in Coraopolis, and a research center in Monroeville. (443) One plant on Neville Island is the world's largest producer of polyester resin. The second Neville Island plant makes plasticizers and anhydrites. (444)

The polyester resin is shipped in drums. (444) The anhydrites are shipped in bags on pallets or in super sacks. (445) The plasticizer is shipped to the warehouse in Coraopolis in bulk form because there are no facilities at the plant to package it. (445) The plasticizer is then put in drums and shipped out of the Coraopolis warehouse. (445)

Aristech ships in both truckload and LTL quantities, almost exclusively by vans. (445) It ships primarily to other chemical and industrial companies. (446) Representative destination points include Altoona, Blair County, Johnstown, Cambria County and Clearfield, Clearfield County. (445) Resin shipments to Altoona, Johnstown and Clearfield range from 3,000 to 5,000 pounds, once or twice a week. (446) On a weekly basis, Aristech makes shipments of plasticizers in bags weighing about 6,000 pounds from Neville Island to each customer in Altoona and Johnstown. (447) On a weekly basis the Coraopolis warehouse makes shipments of plasticizer in drums weighing about 6,000 pounds to the Altoona and Johnstown customers. (448) The

research center in Monroeville makes shipments of sample products and other items which can range in size from a 5 gallon pail to about 5,000 pounds. (449-450) The research center ships to the customers in Altoona, Johnstown and Clearfield regularly and to other companies in the application area that might sample Aristech's products from time to time. (450) On a regular basis, Aristech receives return material from points within the six county application area. (451)

The resin plant has four loading docks and operates from 8:00 a.m. to midnight. (454) The plasticizer plant has two loading docks and operates from 8:00 a.m. to 3:00 p.m. (454) Aristech ships outbound from Neville Island and Coraopolis on a continuing basis during the hours that it normally ships. (455)

For safety reasons, Aristech wants to limit the number of carriers coming into its plants. (452, 457-458) Aristech already uses Pitt-Ohio as a carrier for its truckload and LTL freight on both intrastate and interstate shipments. (452-453, 456) Pitt-Ohio must go through Cumberland, Maryland, however, to make shipments from Allegheny County origins to Johnstown, Altoona and Clearfield. (454)

If this application is granted, Aristech would use Pitt-Ohio to operate directly into the central Pennsylvania application area. (455) Pitt-Ohio could then be used to make multiple stop-off deliveries to customers throughout the entire state. (456) Approval of this application would improve safety conditions by minimizing the number of carriers at Aristech's facilities. (456)

16. HENRY MILLER SPRING AND MANUFACTURING COMPANY (JAMES W. BELL (461-476)).

Henry Miller Spring and Manufacturing Company manufactures steel railroad and industrial coil springs. (462) It sells 60% of its products to railroad customers and 40% to non-rail customers. (462) The railroad springs are used to build boxcars, flat cars or chemical cars. (463) The industrial springs are used in any type of machinery that moves or that has a spring in it. (463)

Henry Miller makes both TL and LTL shipments from its production facility in Sharpsburg, Allegheny County. (463-464) The LTL shipments range in weight from 200 pounds to 20,000 pounds. (468)

The Sharpsburg facility has only one dock for outbound shipments. (464-465) Its shipping hours are from 7:00 a.m. to 3:00 p.m., Monday through Friday. (464) There are approximately ten trucks which are loaded each day with nationwide shipments. (464) Henry Miller ships between 35 and 40 million pounds of freight in a year's time. (465)

On an annual basis, Henry Miller ships between one and two million pounds of freight into the six county application area. (465) Representative destination points include Bedford, Bedford County, Juniata, Blair County, Altoona, Blair County, Hollidaysburg, Blair County, Johnstown, Cambria County and Windber, Somerset County. (466) The customers in Hollidaysburg, Altoona and Johnstown receive freight weekly. (467-468)

Henry Miller needs next day service. (468) It wants one carrier that can pick up both its intrastate and interstate shipments in order to reduce congestion. (469-470)

Henry Miller uses the services of Pitt-Ohio on shipments moving within Pennsylvania and on shipments to Ohio, West Virginia and Maryland. (469) It has used Pitt-Ohio for ten years and characterizes the service as "very good, excellent". (469)

If the Commission were to grant this application, Pitt-Ohio would have the ability to make more multiple pickups, and this would benefit Henry Miller. (469) Pitt-Ohio's authority to ship directly into the six county application area would help keep the number of trucks down at its facility. (470) Henry Miller's facility has very limited space because it is located on a very narrow street and has only one dock. (470) The main terminal of Pitt-Ohio is located approximately three miles from Henry Miller's Sharpsburg facility. (470) The close proximity allows Pitt-Ohio to make quick pickups for emergency type shipments. (470)

Henry Miller has used McQuaide, Ward and Evans. (471) McQuaide is currently being used to make shipments to the six county application area. (471) If this application is granted, Henry Miller has no intention of using only one carrier into the area. (472)

17. WATSON-STANDARD PAINT COMPANY (DONALD BECKETT)(477-491).

Watson-Standard manufactures various chemical coatings for the can business and finishes, primers and enamels for the

machinery business, primarily for business and industrial customers, not the general consumer. (478) It has two manufacturing plants in Allegheny County, one in Harwick and one in Neville Island, which produce completely different types of products. (478-479) Between the two plants, Watson-Standard produces thousands of different types of paint products. (480)

Watson-Standard ships its products either in 55 gallon drums, 5 gallon pails or in 1 gallon cans, depending upon the requirements of its customers. (481) The normal shipping hours for both plants are from 7:00 a.m. to 3:30 p.m., but there is a second shift in case a customer needs material late in the day. (482) Watson-Standard requires late day pickups on a weekly basis. (482) Many times it needs same day service or early next day service. (482) Watson-Standard expects early next day service on shipments from its Allegheny County plants to customers located in the central part of Pennsylvania involved in this application. (482)

Watson-Standard has a customer in Bedford County to which it ships two to four times a month. (483) The normal size of a shipment going to the Bedford customer is 2,000 pounds. (483) Sometimes a product which the Bedford customer orders is not in stock, so Watson-Standard must manufacture the product and possibly ship it the same or next day. (483) Time is so critical that sometimes the Bedford customer comes to the plant and picks up the product with its own trucks. (483)

Watson-Standard uses Pitt-Ohio on nearly all the shipments that it can. (484) Pitt-Ohio generally provides same day

delivery. (484) Watson-Standard uses Pitt-Ohio to make shipments to Ohio, New Jersey, West Virginia, eastern Pennsylvania, western Pennsylvania and central Pennsylvania. (485) Most of Watson-Standard's shipments to the surrounding states and eastern Pennsylvania are LTL in size. (485)

More than once a week a customer of Watson-Standard will order materials which are produced in the two different plants. (486) Watson-Standard would benefit from having one carrier that could make the pickups at both plants, either on the same truck or by handling it through a terminal where the shipments are combined for delivery. (486)

Watson-Standard uses Pitt-Ohio on a daily basis. (487) On some days, Pitt-Ohio will carry five or six shipments for Watson-Standard. (487) Watson-Standard wants to limit the number of carriers that it uses. (487) Many of Watson-Standard's problems would be solved if there was one carrier that was able to make shipments to a variety of different locations. (488)

The protestants have seldom solicited the business of Watson-Standard. (489) Watson-Standard has had very little experience with the protestants and is not using them to ship into central Pennsylvania. (489)

If this application is granted by the Commission, Watson-Standard would continue to use Pitt-Ohio exclusively to service the six county application area in central Pennsylvania. (490) With its new authority, Pitt-Ohio would be able to provide same day delivery into the six county application area.

(490) Central Pennsylvania customers then would no longer need to send their own trucks into Allegheny County to pick up freight. (490) Watson-Standard is hoping to develop more customers in the central part of Pennsylvania in the future. (484)

18. WEYERHAEUSER (ROBERT MacKAY)(492-503).

Weyerhaeuser is a wholesale distributor of building products such as lumber, plywood, nails, paneling, roofing and shingles. (493) Weyerhaeuser has one of its 58 facilities in Murrysville, Westmoreland County. (492-493) Its customers include building home centers and lumber yards. (498)

Weyerhaeuser makes outbound shipments from its Murrysville warehouse to points in the central third of the state of Pennsylvania. (494) The weight of its shipments range from 30 pounds to 50,000 pounds. (494) The normal weight of an LTL shipment is 1,000 to 10,000 pounds. (494) The Murrysville facility of Weyerhaeuser operates a private fleet of vehicles consisting of seven tractor-trailers and one straight truck to handle about 30% of its deliveries into the application area. (495) It normally uses a common carrier on LTL shipments which are not economically feasible to take on its own vehicles. (495) It also uses a common carrier on shipments going directly to the jobsite rather than the private yard. (496)

With respect to the common carrier movements, Weyerhaeuser makes the following shipments to points located within the six

county application area: Altoona, Blair County--6 or 7 shipments a year; Johnstown, Cambria County--12 to 15 shipments a year; Bedford, Bedford County--2 to 4 times a year; Salisbury, Somerset County--4 or 5 times a year; Meyersdale, Somerset County--3 times a year; Kane, McKean County--2 or 3 times a year; Somerset, Somerset County--about 10 times a year; Huntingdon, Huntingdon County--3 or 4 times a year; DuBois, Clearfield County--2 or 3 times a year; Martinsburg, Blair County--2 times a year; Everett, Bedford County--2 times a year; and St. Marys, Elk County--2 or 3 times a year. (497-498)

Pitt-Ohio has not been used to the above mentioned customers located in the central part of the state. (499) Weyerhaeuser does use Pitt-Ohio to make shipments into western Pennsylvania as well as into Ohio and West Virginia and has been very satisfied with Pitt-Ohio's service. (499-500)

Although McQuaide has been hauling the shipments into central Pennsylvania, Weyerhaeuser is supporting this application because it would rather have one carrier take multiple shipments into the entire area to which it ships on one truck. (500-501) If Weyerhaeuser had its choice, it would use Pitt-Ohio rather than McQuaide to ship to the central Pennsylvania destinations. (501) Weyerhaeuser is happy with Pitt-Ohio because it guarantees timely delivery as well as timely pickups. (501)

C. ABSTRACT OF PROTESTANTS' EVIDENCE

1. WARD TRUCKING CORP. (DANIEL J. McFARLAND)
(P-18 to P-25) (539-575)

Ward holds authority at Docket No. A-00068795, Folder 5, Am-M and Am-P to transport property, with certain exceptions, between points in Pennsylvania. (P-18, p. 14 and 15) (540) At Docket No. MC-65916 (Sub-21) it holds interstate operating authority to transport general commodities, with certain exceptions, between points in the United States (except Alaska and Hawaii). (P-19) (540-541)

Ward has 18 terminals of which the ones at Altoona, Chambersburg, DuBois, Erie, Grove City, Harrisburg, Johnstown and Greensburg are particularly relevant to the application area. (P-21) (543) Those terminals have 345 employees. Ward has a total of 640 employees system wide. (P-21) (543)

Ward operates 22 straight trucks, 265 tractors of which 160 are assigned for local pickup and delivery work at a terminal, 273 van trailers ranging from 27 feet to 30 feet in length, 29 40-foot van trailers, 242 45-foot van trailers, 41 48-foot van trailers, four open top trailers and 118 converter dollies which are used to join two shorter trailers for over the road movement. (P-20) (541-542, 551-553)

Ward's services include same day pickup, some overnight deliveries, five day per week service with service available by special arrangement on weekends and holidays. It handles collect and prepaid shipments, order notify shipments, C.O.D. shipments and it makes jobsite deliveries available, will spot

trailers and will provide heater service at certain times. In that connection, most of the portable heaters are assigned to the Altoona terminal and Ward basically wants to pick freezable commodities up on Monday, Tuesday and Wednesday so that they can be delivered prior to a weekend rather than having to be held over. (545-546, 553-555) It also handles both truckload and less-than-truckload shipments. (546)

Ward presented a traffic exhibit for the period February 10, 1989 through August 16, 1989 purporting to show shipments handled for supporting shippers. Of the 17 shipments the only one pertinent to the application territory was handled for Lincoln Aluminum Distribution Company on March 23, 1989 from Jeannette to State College which weighed 124 pounds and produced revenue of \$37.50. (P-23) (557-560)

Ward presented a second traffic exhibit for non-supporting shippers for July 31, 1989. At least three and possibly five of the shipments are not relevant to the application territory, reducing the gross revenue of the shipments to about \$2,800. (P-24) (547, 560-567)

2. W. C. McQUAIDE, INC. (WILLIAM F. McQUAIDE)
(P-26--P-31) (575-608)

McQuaide holds authority at Docket No. A-00084290, Folder 7, Am-RR to transport property, with certain exceptions, between points in Pennsylvania. (P-26) (576-577) It holds authority from the Interstate Commerce Commission at Docket No. MC-116280 (Sub-No. 32) to transport general commodities, with certain

exceptions, between points in the United States (except Alaska and Hawaii). (P-27) (577-578)

The witness was cross-examined about a McQuaide brochure entitled Direct Service Points and agreed that on the basis of a map contained therein it serves the northern portion of West Virginia on a direct basis but would interline interstate shipments to the southern half of West Virginia. (589-593)

McQuaide has terminals in Johnstown and Bethel (Berks County) and equipment storage points but no terminals at Pittsburgh, Erie, Williamsport, Scranton and Philadelphia. (P-28) (578-579) The Johnstown terminal has 80,000 square feet of dock space, 100 doors, maintenance and fueling facilities, a two-way radio base station and Watts lines. (P-28) McQuaide has a total of 439 full time employees and 37 part time employees. (P-28)

McQuaide operates a total of 69 straight trucks, 200 tractors, 395 trailers and 32 converter dollies. The trailers include seven open tops and 318 closed vans. (P-29) (579-580)

McQuaide holds itself out to the public to provide same day pickup service, overnight delivery service, same day service, if possible, scheduled pickup and scheduled delivery service, multiple pickup and multiple delivery service, heated equipment and van equipment. It handles LTL and truckload shipments and accepts C.O.D. shipments, order notify bills and government bills of lading. It also offers jobsite deliveries. (582-583) It will combine interstate and intrastate shipments, and spot equipment if the volume is sufficient. (583)

McQuaide presented traffic exhibits allegedly summarizing the shipments transported for supporting shippers within Pennsylvania during 1988 and the first seven months of 1989. After cross-examination of the witness and an off the record discussion, it was stipulated that the exhibits include interstate shipments, shipments moving within Pennsylvania but to or from points beyond the scope of the application, or shipments involving points such as Somerset which may or may not be relevant to the application. As a result the exhibits are intended to show only that McQuaide has handled traffic for some of the supporting shippers but not the amount of traffic that is relevant to the application nor which may be subjected to diversion. (595-607)

During 1988, McQuaide had gross revenue of approximately \$24 million, evenly divided between interstate and intrastate traffic. Through seven months, the 1989 revenue was running at about the same level. (586-587)

APPENDIX 2

List of Commodities
Shipped and/or Received
By The Supporting Shippers

Polystyrene	Washers
Equipment Parts	Dryers
Transmissions	White Goods
Skid Stirrer	Electronic Parts
Truck Parts	Wire
Synthetic Resins	Conduit
Anti-Oxidants	Fixtures
Aluminum Extrusions	Fittings
Window Frames	Baseboard Heating
Door Frames	Concrete
Doors	Insulation
Copy Paper	Apoxies
Office Paper	Wire Cable
Printing Paper	Lawnmowers
Paper Towels	Snow Blowers
Toilet Tissue	Lawn and Garden Equipment
Electronic Equipment	Petroleum Products
Televisions	Antifreeze
VCR's	Lubricants
Refrigerators	Automotive Accessories
Air Conditioners	(6,000 items - Examples)
Freezers	Floormats
Bound Documents	Seat Covers
Polyester Resin	Auto Waxes
Plasticizers	Polishes
Anhydrites	Engine Additives
Chemical Coatings	Chemicals
Enamels	Mirrors
Plywood	Antennas
Paneling	Springs
Shingles	Primers
	Lumber
	Nails
	Roofing

APPENDIX 3

Representative Origins and Destinations
of Supporting Shippers' Traffic

<u>Shipper</u>	<u>Origins</u>	<u>Destinations</u>
Tuscarora Plastics	New Brighton	Somerset Huntingdon Bedford
Highway Equipment	Zelienople McKean DuBois Somerset	DuBois Somerset McKean Camp Hill Williamsport Bedford County State College Bellefonte Clearfield County Hollidaysburg Berlin Meyersdale Altoona Philipsburg Westmoreland County
Pittsburgh Mack	Bedford Altoona	Pittsburgh
Pittsburgh Mack	Pittsburgh	Bedford County State College Clearfield County
Neville Chemical	Neville Island	Bedford Somerset Ebensburg Johnstown
Lincoln Aluminum	Jeannette	Altoona Clearfield DuBois St. Marys State College Waynesboro Bedford
Alling & Cory	Pittsburgh	Somerset Bedford Ebensburg Altoona Huntingdon Clearfield County

<u>Shipper</u>	<u>Origins</u>	<u>Destinations</u>
Alling & Cory	Erie	Altoona Clearfield County Ebensburg Bedford County Somerset
J. A. Williams	Bedford	Pittsburgh
Cardell Sales	Pittsburgh	Bedford County DuBois Altoona Huntingdon County Windber
A. R. Chambers	Erie New Castle	Clinton County Cumberland County Franklin County Potter County Cameron County
A. R. Chambers	Pittsburgh	Bedford Altoona
Okonite Company	Leetsdale	Ebensburg Altoona Windber DuBois
Okonite Company	Bedford	Leetsdale
Allegheny Distributing	Pittsburgh	DuBois Clearfield Johnstown Summerhill Windber Bedford Altoona Hollidaysburg Bellwood Roaring Springs
Pitt Penn Oil	Pittsburgh	Bedford Everett Woodbury Altoona Claysburg Somerset County Clearfield Mount Union

<u>Shipper</u>	<u>Origins</u>	<u>Destinations</u>
Steel City Products	Blawnox	Altoona Huntingdon Clearfield DuBois
Allegheny Bindery	Pittsburgh	Johnstown Holsopple Altoona Clearfield
Allegheny Bindery	Johnstown Holsopple Altoona Clearfield	Pittsburgh
Aristech Chemical	Neville Island Coraopolis	Altoona Johnstown Clearfield
Henry Miller Spring	Sharpsburg	Bedford Juniata Altoona Hollidaysburg Johnstown Windber
Watson-Standard	Harwick Neville Island	Bedford
Weyerhaeuser	Murrysville	Altoona Johnstown Bedford Salisbury Meyersdale Kane Somerset Huntingdon DuBois Martinsburg Everett St. Marys

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November 13, 1989

RECEIVED

Re: Pitt-Ohio Express, Inc.
Docket No. A-00102471, F. 1, Am-P
Our File 2691-27

NOV 13 1989

**SECRETARY'S OFFICE
Public Utility Commission**

MAILED WITH U.S. POSTAL SERVICE
CERTIFICATE OF MAILING FORM 3817

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

Dear Mr. Rich:

We enclose for filing with the Commission the original and nine copies of Reply Brief of Pitt-Ohio Express, Inc.

Copies of the Reply Brief have been served on all parties of record.

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

pz

Enclosures

cc: Honorable James D. Porterfield,
Administrative Law Judge (w/Postal Certificate)
Christian V. Graf, Esquire (w/Postal Certificate)
Pitt-Ohio Express, Inc.

**DOCUMENT
FOLDER**

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NOV 13 1989

BEFORE THE
Pennsylvania Public Utility Commission

SECRETARY'S OFFICE
Public Utility Commission

DOCKET NO. A-00102471, F. 1, Am-P

PITT-OHIO EXPRESS, INC.

REPLY BRIEF OF PITT-OHIO EXPRESS, INC.

ORDER
NOV 13 1989

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

DOCKETED

NOV 17 1989

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

Due Date: November 13, 1989

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00102471, F. 1, Am-P

PITT-OHIO EXPRESS, INC.

REPLY BRIEF OF PITT-OHIO EXPRESS, INC.

I. STATEMENT OF THE CASE

The background of this proceeding and the authority being requested by Pitt-Ohio Express, Inc. (Applicant or Pitt-Ohio) is set forth in detail at pages 1-4 of Applicant's Main Brief which was previously filed. A Brief in opposition to the application has been filed by W. C. McQuaide, Inc. (McQuaide) and Ward Trucking Corp. (Ward), herein jointly referred to as Protestants. Applicant now files its Reply Brief in support of the application.

II. ARGUMENT

1. CONTRARY TO THE POSITION SET FORTH IN THEIR MAIN BRIEF, PROTESTANTS HAVE FAILED TO SHOW THAT THEY CAN PROVIDE THE COMBINATION INTRASTATE-INTERSTATE SERVICE REQUIRED BY THE SHIPPERS.

Throughout their Main Brief, Protestants allege or insinuate that they provide broad interstate service so as to meet any shipper's need to have one carrier handle both its interstate and intrastate shipments. (Protestants' Main Brief, pp. 22, 27, 28, 30 and 31) The record, in fact, shows only that Ward and McQuaide hold certificates from the Interstate Commerce Commission to transport property between points in the United States. (P-19 and P-27)* The evidence does not show in any way that either Protestant actually provides full interstate coverage of even the states adjacent to Pennsylvania.

Ward's witness merely identified its interstate certificate but offered no testimony at all with respect to the extent of the service offered thereunder. The statement on page 27 of Protestants' Main Brief that Ward has the "ability" to serve all points in the continental United States is not supported by any evidence other than the bare certificate.

*Numbers in parentheses preceded by "A" and those followed by "A" and "B" refer to exhibits presented by the Applicant. Numbers in parentheses preceded by "P" refer to exhibits presented by the Protestants. Numbers in parentheses preceded by "p." refer to pages of the exhibits. All other numbers in parentheses refer to pages of the transcript of testimony.

As for McQuaide, there is specific evidence that it does not in fact offer much in the way of direct interstate service beyond Pennsylvania. The witness was cross-examined about a McQuaide brochure entitled Direct Service Points. He admitted that to distant states such as Texas, Oregon and Florida only truckload shipments would be handled. (590-591) He also admitted that McQuaide is not transporting less-than-truckload shipments operating throughout the United States. The brochure contained a map of Pennsylvania and the surrounding states on which was shown a red line indicating the extent to which interstate service was being offered. He stated that service was available to all points in Ohio, only the lower tier of New York, and only the northern half of West Virginia. (592) As to points in the southern half of West Virginia such as Charleston and Bluefield, interstate shipments would be interlined with another carrier at such points as Pittsburgh, Wheeling, WV or Zanesville, OH. (592) No mention of this testimony is made in Protestants' Main Brief. McQuaide is therefore being somewhat less than totally candid when it repeatedly refers to its ability to meet all of the shippers' needs, both intrastate and interstate.

In the same vein, there are references in the abstracts of shipper testimony at pages 9 through 20 of Protestants' Main Brief to alleged testimony that the shippers are aware of the availability from Protestants of broad interstate service. In fact, the witnesses were responding on cross-examination to hypothetical questions posed by Protestants' counsel along the

line that if McQuaide and Ward were later shown to have the operating authority, equipment and operations to handle all of their interstate and intrastate shipments, would they not then have the type of service they were looking for. Subject to those qualifiers, and subject to the availability of the type of service they needed, and taking into consideration either the problems some of the shippers have had with Protestants or the Protestants' lack of interest in their business, the witnesses tentatively agreed with the hypothetical question. But since the proof was not forthcoming from Protestants to support the premise of the question, the answers cannot now legitimately be used to bolster Protestants' argument on this issue.

2. APPLICANT'S OPERATIONS VIA CUMBERLAND, MD HAVE BEEN CONDUCTED IN COMPLIANCE WITH THE LAW.

At pages 24 and 25 of Protestants' Main Brief they comment on Applicant's development of its Cumberland, MD facilities and its operations through that terminal. Certain facts are emphasized with feigned astonishment. The point of the comments is not totally clear to Applicant, but if it is intended to imply that Pitt-Ohio's operations are somehow suspect, the claim is totally without merit.

On April 20, 1982, the ICC issued Pitt-Ohio a common carrier certificate to transport general commodities, with the usual exceptions, on a non-radial basis between points in 18 states and the District of Columbia. The states include Pennsylvania, Maryland, West Virginia, Ohio, New York, New Jersey and

Delaware. (A-4, p. 6-7; A-9) Both prior to and subsequent to that date, Pitt-Ohio obtained by application and acquisition various grants of intrastate authority from this Commission. (A-4, p. 5-6; A-7) By this application published in the Pennsylvania Bulletin on August 30, 1986, Applicant requested authority to transport property from points on and west of U.S. Highway 219 to points on and east of U.S. Highway 219, and vice versa. As a result of obtaining additional authority by application and acquisition since the filing of the instant application, the geographical scope was amended to eliminate areas of duplication. (A-4, p. 3-5; A-5 and A-6) The point is that this application was filed in a broad fashion to complement Pitt-Ohio's then limited intrastate authority and without any contemplation of opening a terminal in Cumberland, MD.

For some reason, Protestants find it interesting and significant that this application was filed some four years after the interstate authority was issued, the Cumberland terminal was established a year after the application was filed and the institution of a less-than-truckload service via Cumberland was not begun for another year. Applicant's operating witness testified that prior to opening the Cumberland terminal, Pitt-Ohio was transporting a substantial volume of interstate freight to and from points in western Maryland, West Virginia and the central part of Pennsylvania. (74) When the volume reached a certain level, Applicant leased terminal facilities from Charlton Bros. Transportation Company, Inc. on September 11, 1987. (74, 509)

As indicated by Exhibits P-3, P-4 and P-5, it began to handle less-than-truckload shipments between two Pennsylvania points via the Cumberland terminal in the last quarter of 1987. On January 11, 1988, it formally advised its Allegheny County shippers and receivers by letter that it was in a position to handle traffic to and from the state of Pennsylvania due to the opening of new terminals. That letter did not refer only to the Cumberland terminal or only to intrastate or interstate shipments. (67-75) Prior to opening the Cumberland terminal, no LTL shipments were handled between the central Pennsylvania area and other points in the state. Truckload shipments have not and are still not being handled between involved application points even by way of Cumberland. (74, 76-80)

On November 30, 1988, Pitt-Ohio moved to another terminal in Cumberland which it leases from Central Transport, Inc. (509-510)

The progression of events outlined above shows nothing more than the natural steps a trucking company would take as its business increases and its customers' demands expand. Frankly, we are at a loss to understand why Protestants find this sequence of events particularly interesting or significant other than to demonstrate that Applicant is a progressive company which attempts to respond in a prudent, productive way to changing business conditions. Protestants themselves concede at page 32 of their Main Brief that Applicant's operations since January 1, 1988 (we would use September 11, 1987) have been proper, based on

the recent Commonwealth Court decision in Pittsburgh-Johnstown-Altoona Express, Inc. v. Pennsylvania Public Utility Commission, No. 1885, C.D. 1988 (decided January 31, 1989).

Perhaps the most incomprehensible statement contained in Protestants' Main Brief is that on page 25 wherein Protestants find "equally startling" the fact that discounts are available as a result of Applicant's interstate tariffs. The LTL shipments being handled via the Cumberland terminal, which Protestants concede is proper, are being transported under interstate operating authority. How could applicable discounts on such traffic be published in anything but its tariffs on file with the ICC? (54)

3. APPLICANT HAS CLEARLY MET THE KINARD CRITERIA AND HAS DEMONSTRATED THAT APPROVAL OF THE APPLICATION WILL SERVE A USEFUL PUBLIC PURPOSE.

At pages 29 and 30 of their Main Brief, Protestants refer in a summary fashion to the nine criteria established as alternatives to a showing of inadequacy established by the Commission in Application of Richard L. Kinard, Inc., Docket No. A-00095829, F. 1, Am-D. Those criteria were discussed in detail in Applicant's Main Brief at pages 20-24. It was there shown that there was evidence addressed specifically to those criteria concerning efficiency of operations, future need for service, the effect of shipper competition, the need for a carrier to hold comprehensive intrastate and interstate authority, and the benefit that would accrue to Pitt-Ohio upon approval of the application. In

addition, it was shown that a useful public purpose would be served for several other reasons not specifically mentioned in Kinard, namely, a need for "just in time" delivery service, relief from congestion problems at loading and unloading docks, and the contemplation by at least four of the shippers to substitute Applicant's service for their present private carriage operations.

There is one other factor that is implicit by the very nature of this application and it addresses the Kinard criteria pertaining to rectification of current operating authority. Pitt-Ohio presently is authorized to transport property from points in Allegheny County to all points in Pennsylvania, and vice versa, with the exception of seven central Pennsylvania counties. Part (1) of the application is intended to close that gap or round out the Allegheny County authority with respect to all points in Blair, Huntingdon and Bedford Counties, and those portions of Clearfield, Cambria and Somerset Counties which are located on and east of U.S. Highway Route 219.

The same is true on a somewhat broader scale with respect to Part (2) of the application. Pitt-Ohio presently is authorized to transport property from points in Pennsylvania on and west of U.S. Highway 219 to points in the state located on and east of U.S. Highway 15, and vice versa, in short, from the western third of the state to the eastern third of the state, and vice versa. (A-4, p. 4; A-7, p. 5) It also holds authority to operate between all points in 17 western Pennsylvania counties, with

certain exceptions. (A-7, p. 1-2) And by virtue of a recent acquisition it can transport property, with few exceptions, between all points in approximately the eastern half of Pennsylvania. (A-24, p. 1)

Clearly, this application will not in any way totally round out Applicant's authority so as to permit it to operate between all points in Pennsylvania. But it will significantly improve its ability to provide a more comprehensive service to its customers, to better integrate its interstate and intrastate operations with respect to the central portion of Pennsylvania, and ultimately to render a more efficient and economical service.

Finally, Protestants analysis overlooks completely the evidence of shipper dissatisfaction with the service of McQuaide, Ward and Evans. That information was summarized at pages 20 and 21 of Applicant's Main Brief. Pitt-Ohio has therefore not only met its burden of proof under the Kinard standards but it has also established that the service of the Protestants is not adequate to meet the transportation needs of the shippers. There is no merit to Protestants' position with regard to this issue.

4. APPLICANT PRODUCED DOCUMENTATION REQUESTED BY PROTESTANTS TO ESTABLISH THE INTERSTATE NATURE OF ITS PRESENT OPERATIONS.

At the initial hearing, Protestants' counsel introduced a series of Pitt-Ohio shipping documents covering transportation which purportedly had both Pennsylvania origins and destinations. At a subsequent hearing, the Applicant's witness presented manifests for as many of the shipments as could be located in accordance with a request made by Protestants' counsel.

The shipping documents and Applicant's manifests are referred to at pages 7 and 8 of Protestants' Main Brief. In the second full paragraph on page 8 Protestants state:

On some of these shipments logs were attached, but the logs were significantly omitted as drivers' logs on P-8-B and the driver's duty status was omitted on P-9-A. The entire log was also omitted on P-10-A and B; P-14-A, P-15-A, P-15-B, P-16-A, P-16-B and P-17-A and comparable exhibits were not present for the balance of the traffic reflected on the other "P" exhibits.

The implication of the above quoted material is that Applicant failed to present the requested documentation and in some instances for some mysterious reason did not divulge all of the information. Applicant takes exception to these implications and submits that they are not a fair representation of the evidence.

Applicant was asked to supply the "manifests for the dates shown" on the shipments reflected on the shipping documents identified as P-3 through P-17. (94) On his return appearance, the Applicant's operating witness produced 15 of the 19 requested manifests. He explained that the shipments reflected on Exhibits P-3, P-4 and P-5 were transported during the latter portion of 1987 and that manifests from that period had been discarded. (510-511) Of the 16 shipments transported in 1988, he was unable to locate the manifest pertaining to a shipment on January 14, 1988 set forth on Exhibit P-14. (525) Those four shipments presumably are the "balance of the traffic" referred to on page 8 of Applicant's Main Brief for which documents were not produced.

Applicant's witness testified in detail concerning the manifests which it calls P&D Performance Logs. (512-516) He also explained that local pickup and delivery drivers were operating under an exemption that relieved them of the necessity to maintain driver logs. However, as the result of a DOT audit in which some questions about hours of service came up, Pitt-Ohio added to the bottom of its P&D Performance Log the driver log which is to be kept by drivers when they are going to be away from the terminal and on duty more than 12 hours. (530-531) If a driver knows he is not going to be out 12 hours, he might just put "not applicable" on the log. (531)

In view of the unambiguous testimony of the Applicant's operating witness, Protestants' characterization of the testimony and the implications therein are totally erroneous. It states that the driver log was significantly omitted with respect to the shipment P-8-B. In fact, Exhibit P-8-B is a Pitt-Ohio freight bill produced to show that a discount under its ICC tariff was applied. (518) The manifest pertaining to the shipment was produced as Exhibit P-8-A and contains a completed driver log.

The driver's duty status was supposedly significantly omitted on P-9-A but analysis of the manifest shows that a driver wrote "N/A" in the duty status portion of the document. The document also discloses that the driver left the Cumberland dock at 7:40 a.m. and returned to the dock at 5:45 p.m. That is well within the applicable exemption and is in accordance with the testimony of the operating witness.

With respect to the other eight shipments for which the entire log was allegedly omitted, analysis of the documents will show that all of those shipments were transported between January, 1988 and June, 1988. All of the shipments transported in July and August, 1988 (P-8-A, P-9-A, P-11-A, P-12-A and P-17-B) are on the new form of manifest developed after the DOT audit and show the driver's duty status record at the bottom.

Thus, there is no basis for Protestants alleging or implying that Applicant either failed to produce requested documents or for some mysterious reason withheld pertinent information.

5. PROTESTANTS HAVE OVER-STATED THE ALLEGED IMPACT APPROVAL OF THE APPLICATION WILL HAVE ON THEIR OPERATIONS.

In the abstract of Ward's testimony at pages 21 and 22 of the Main Brief, it is stated that for non-supporting shippers Ward would realize approximately \$324,000 in gross revenue over a five month period "over and above the traffic handled for the supporting shippers". Applicant disagrees both with the dollar amount of the revenue for non-supporting shippers and with the implication that there is substantially more revenue at risk when the supporting shippers are considered.

Ward admits that there are five shipments on Exhibit P-24 which are not applicable to the scope of the application. When the revenue from those shipments is deleted, the daily revenue is approximately \$2,800. Over a five month period that would equate to about \$280,000, not \$324,000.

In addition, six shipments on the exhibit were allegedly delivered to Ward's Altoona terminal from out of state by customer truck for subsequent delivery within the state by Ward. (573-575) There was no actual evidence presented to establish the use of customer truck as opposed to an interline arrangement with common carriers. If the revenue from those six shipments is also eliminated, the daily revenue is approximately \$2,620 or \$262,000 over a five month period. That is a full \$62,000 less than represented by Ward.

With respect to the so-called additional traffic handled for supporting shippers, it was clearly established on cross-examination that only one of the 17 shipments on Exhibit P-23 was relevant to the application. (560) The revenue on that shipment was \$37.50. Since the exhibit covered a six month period, on an annual basis Ward would receive revenue of only \$75 from a shipper supporting this application.

With respect to McQuaide, the summary of its traffic exhibit on page 23 of Protestants' Main Brief must be viewed in the context of the stipulation made at the hearing subsequent to cross-examination of McQuaide's witness on the traffic exhibits it presented. Since the exhibits include interstate shipments, shipments moving within Pennsylvania but to or from points beyond the scope of the application, and shipments involving points such as Somerset which may or may not be relevant to the application, it was agreed that the exhibits in no way reflect the extent to which traffic or revenue might be diverted from McQuaide by

approval of this application. The exhibits show only that McQuaide has handled traffic for some of the supporting shippers. (605-606)

Finally, at page 32 of Protestants' Main Brief it is stated that since Applicant is lawfully handling shipments via Cumberland and the shippers are satisfied with its service, there is no need for direct intrastate authority to be granted. Protestants refer to this as a "double-edged sword".

Protestants overlook several factors. First, a number of shippers have truckload shipments moving within the scope of the application which cannot presently be handled under interstate authority via Cumberland. Approval of the application would therefore meet a transportation need of the shippers for direct truckload service between the involved territories. Second, Protestants overlook the economies and efficiencies which might be realized by Pitt-Ohio if it could also handle less-than-truckload shipments direct from origin to destination, particularly in view of the possible placement of a new terminal in the central Pennsylvania area.

Applicant would also point out that the test as to whether or not the application should be approved is not whether Pitt-Ohio is in some manner presently able to provide the service, under interstate authority or otherwise, but rather whether the Applicant has met its burden of proof under the law and Commission regulations. Here, Applicant has clearly met its burden of proof and Protestants' position is therefore without merit.

Finally, the double-edged sword referred to by Protestants cuts both ways. If Pitt-Ohio can presently provide the service via its Cumberland terminal, then Protestants do not stand to lose any traffic or revenue whatsoever as a result of approval of the application. As a consequence, they have completely failed to meet their burden of proof under 52 Pa. Code §41.14(c) and there is no basis for denying the application since approval will not in any way endanger or impair their operations or be contrary to the public interest.

6. MISCELLANEOUS CORRECTIONS.

At page 18 of Protestants' Main Brief concerning the testimony of Steel City Products, it is stated that 95% of that shipper's traffic is truckload. On the contrary, the witness testified that 95% of its traffic consists of less-than-truckload shipments. (406)

At page 7 of Appendix 1 to Applicant's Main Brief, in line 7 it was stated that Pitt-Ohio first leased terminal facilities in Cumberland, MD on September 11, 1988. The correct date is September 11, 1987. (509)

At page 12 of Applicant's Main Brief, the Commission adopted its decision in Application of Eazor Express, Inc. on July 29, 1979, not 1989.

III. CONCLUSION

For all of the reasons set forth above, as well as in Applicant's Main Brief, it is respectfully requested that the Administrative Law Judge make findings in accordance with the position of the Applicant and thereafter grant the application, as amended, in its entirety.

Respectfully submitted,

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Due Date: November 13, 1989

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Reply Brief of Pitt-Ohio Express, Inc. on all parties of record by first class mail, postage prepaid, with U.S. Postal Certificate of Mailing Form 3817.

Dated at Pittsburgh, PA this 13th day of November, 1989.

William J. Lavelle
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