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BEFORE

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THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S OFFICE  
Public Utility Commission

In re: A-00102471, F001, Am-P Application of Pitt-Ohio Express, Inc. Amendment to permit the transportation, by motor vehicle, 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; \*\*\*. Prehearing conference.

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DOCUMENT  
FOLDER

Pittsburgh, Pennsylvania  
September 22, 1987

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OCT 9 - 1987

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Pages 1 to 25, inclusive

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HOLBERT ASSOCIATES  
LISA J. BERKEY  
Suite 401, Kunkel Building  
301 Market Street  
Harrisburg, Pennsylvania 17101

CERTIFIED ORIGINAL

BEFORE  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00102471, F001, Am-P Application of Pitt-Ohio Express, Inc. Amendment to permit the transportation, by motor vehicle, 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; \*\*\*. Prehearing conference.

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Stenographic report of hearing held at the State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania

Tuesday,  
September 22, 1987  
10:15 a.m.

BEFORE  
MICHAEL NEMEC, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

WILLIAM J. LAVELLE, ESQUIRE  
Vuono, Lavelle & Gray  
2310 Grant Building  
Pittsburgh, Pennsylvania 15219  
Appearing on behalf of Pitt-Ohio Express, Inc.

## 1 APPEARANCES CONTINUED:

2 JOHN FULLERTON, ESQUIRE  
3 CHRISTIAN V. GRAF, ESQUIRE

4 407 North Front Street  
5 Harrisburg, Pennsylvania 17101

6 Appearing on behalf of Protestants Ward Trucking  
7 Corporation, W.C. McQuaide, Inc., Ray Brandt  
8 Trucking Company, R.H. Crawford, Inc., Hall's  
9 Motor Transit Company, Independent Freightways,  
10 Inc., Penn's Best, Inc., Powers Trucking Company,  
11 S & L Services, Inc., Evans Delivery Company

12 DWIGHT L. KOERBER, JR., ESQUIRE

13 BY: John Fullerton, Esquire  
14 110 North Second Street  
15 P.O. Box 1320

16 Clearfield, Pennsylvania 16830

17 Appearing on behalf of Protestant Butler Trucking  
18 Company  
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INDEX TO EXHIBITS

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APPLICANT

IDENTIFIED

ADMITTED

*M* Ex. No. 1  
*M* Ex. No. 2  
*M* Ex. No. 3

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1 JUDGE NEMEC: This morning we have an initial hearing in  
2 the case that's captioned Application of Pitt-Ohio Express,  
3 Incorporated. The matter is docketed at A-00102471, Folder 1,  
4 Amendment P. Present this morning are attorneys William  
5 Lavelle, representing applicant; and John Fullerton,  
6 representing the remaining protestants in the case. My name  
7 is Michael Nemeec. I'm an Administrative Law Judge with the  
8 Pennsylvania Public Utility Commission. I've been assigned to  
9 conduct the hearing or hearings that may be required in this  
10 proceeding.

11 Prior to the hearing Mr. Lavelle has discussed with me  
12 the possibility that the hearing today might be transformed  
13 into a prehearing conference. I indicated to him that that  
14 could be accomplished with the consent and agreement of other  
15 counsel. Mr. Lavelle, you may proceed.

16 MR. LAVELLE: Yes, sir. I talked to Mr. Fullerton, who  
17 is representing all but one of the protestants, and he had no  
18 objection to converting this into a prehearing conference. I  
19 talked to him yesterday. Mr. Koerber I also talked to  
20 yesterday, explained the situation, and he advised me that he  
21 had no objection to making this into a prehearing conference  
22 also. He explained to me the general interest of his client  
23 to be considered insofar as amendments might be concerned, and  
24 asked that I tell Mr. Fullerton -- ask Mr. Fullerton to enter  
25 an appearance for him, which I assume has been done.

1 JUDGE NEMEC: He has done so.

2 MR. LAVELLE: So that I believe that covers all of the  
3 people who are parties of record. I can make a further  
4 comment here that the record should reflect already that the  
5 protests filed by Central Storage and Transfer Company of  
6 Harrisburg and Pyramid Lines, Inc., were withdrawn on November  
7 19, 1986, by Christian V. Graf, who had filed a protest for  
8 them. The protest of Courier Express, Inc., was withdrawn on  
9 November 14, 1986, by John A. Pillar. The protest of Preston  
10 Trucking Company, Inc., filed by Brian L. Troiano was  
11 withdrawn by a letter dated August 18, 1987. Those four  
12 protests have officially been withdrawn.

13 The protest of Kulp and Gordon, Inc., was filed by a  
14 company representative, Charles Kulp, Jr. I've advised him  
15 several times, as well as other counsel, of the nature of this  
16 application, and some things which I'll explain in a moment,  
17 which in reviewing the protest of that company, I can't see  
18 that there's any remaining interest that that company has in  
19 the application at all. And I think regardless of whether or  
20 not there's any amendments made or not, that company's  
21 interest, I think, will effectively be precluded by the  
22 explanation I'll make.

23 So with that in mind, I would ask that the proceeding  
24 today be considered in the nature of a prehearing conference,  
25 and I think Mr. Fullerton and I, if we have an opportunity to

1 discuss the application, might be able to resolve many of the  
2 conflicts that remain between the applicant and the  
3 protestants he represents. Not all of them, but -- I'm not  
4 suggesting all of them will be satisfied, but a good many.

5 JUDGE NEMEC: All right. I have no problem with  
6 considering it a prehearing conference.

7 MR. FULLERTON: So the record is clear, I concur in what  
8 Mr. Lavelle said.

9 JUDGE NEMEC: All right.

10 MR. LAVELLE: Your Honor, before we went on the record,  
11 Mr. Fullerton asked that I make some representations about the  
12 effect of this application as to the extent as to what really  
13 is involved here.

14 JUDGE NEMEC: All right.

15 MR. LAVELLE: I have no objection to doing that at all.  
16 What I'd like to do is just distribute these. These were  
17 going to be hearing exhibits, but I'll just distribute them  
18 now for information's sake and it might help everyone to  
19 understand what I'm about to describe here.

20 JUDGE NEMEC: Well, shall we mark them at least at this  
21 point?

22 MR. LAVELLE: If you think it would be advisable to mark  
23 them as exhibits, I have no objection to that.

24 JUDGE NEMEC: There's no problem with doing that and if  
25 you want to admit them -- move for their admission later

1 through a witness, that's fine. But for purposes of clarity  
2 in the record, it might be helpful to mark them as exhibits.

3 MR. LAVELLE: All right. Then the first document I've  
4 passed out is a county map of Pennsylvania. Mark that as, I  
5 guess, applicant's 1.

6 JUDGE NEMEC: It will be so identified as applicant's  
7 Exhibit 1.

8 (Applicant's Exhibit No. 1 was produced and  
9 marked for identification.)

10 MR. LAVELLE: The second one is a multi-page summary of  
11 the operating authority presently held by Pitt-Ohio Express.

12 JUDGE NEMEC: Okay. That's --

13 MR. LAVELLE: That's the one --

14 JUDGE NEMEC: Has lead certificate?

15 MR. LAVELLE: Has lead certificate on it, yes.

16 JUDGE NEMEC: Okay. We'll mark that as applicant's  
17 Exhibit 2.

18 (Applicant's Exhibit No. 2 was produced and  
19 marked for identification.)

20 MR. LAVELLE: Then the third document is a three page  
21 exhibit which has on it the scope of three pending  
22 applications.

23 JUDGE NEMEC: Okay. We'll mark that as applicant's  
24 Exhibit 3.

25 (Applicant's Exhibit No. 3 was produced and

1 marked for identification.)

2 MR. LAVELLE: Your Honor, in order to explain the  
3 application, I think probably initially that map, Exhibit 1 as  
4 referred to, it might help to clarify this. When the  
5 application was filed and published in the Pennsylvania  
6 Bulletin, it sought authority to transport, and it still does,  
7 property from points in that part of Pennsylvania on and west  
8 of U.S. Highway Route 219, which is the western third of the  
9 state shown on the map. From that territory to points in  
10 Pennsylvania on and east of U.S. Highway Route 219, and vice  
11 versa, which would be everything east of that 219, or the  
12 eastern two-thirds of the state. And there were certain  
13 restrictions imposed against household goods, commodities in  
14 bulk, so forth, with the right to interchange property.

15 On the map you can see we designated roughly the  
16 location of U.S. Highway Route 219 in the west, and on the  
17 eastern side we've indicated roughly the location of U.S.  
18 Highway Route 15, both of which run north and south through  
19 the state.

20 I notified all parties to the proceeding by a letter on  
21 October 28, 1986, which was shortly after the due date for  
22 protests had expired, and explained essentially what the  
23 situation was at that time, and that is the applicant, if we  
24 refer to Exhibit A-2, holds certain permanent authority.  
25 Several additional grants since October of last year have come

1 through and been granted, but they're all shown now on this  
2 exhibit.

3 They hold authority for certain named shippers, which I  
4 won't go through each one of them individually, to serve  
5 certain companies to and from the entire state. As an  
6 example, on page 2, under the Folder 1 Amendment C grant, they  
7 have authority to transport property for H.J. Heinz Company  
8 between all points in Pennsylvania. That's one example.

9 Other ones are located -- or other ones might be termed  
10 -- an example at the top of page 3, property for Sherwin-Davis  
11 from its facilities in Allegheny County to all points in the  
12 state and vice versa. So there are a number of those broad  
13 grants of authority for specific shippers.

14 If you turn to the very last two pages of -- or last  
15 three pages of Exhibit 2, it's a copy of an order at Folder 1  
16 Amendment J, and on the public meeting on February 13, 1986,  
17 the Commission granted temporary authority to Pitt-Ohio  
18 Express to operate part of the rights of Hammel's Express,  
19 Inc., and there's a pending transfer application still before  
20 the Commission. I checked last week to see if it might have  
21 been finalized as of the September 17 session of the  
22 Commission and it did not go up then, but I am advised by the  
23 Commission Staff that the decision has been written and it  
24 probably will go to the Commission within the next several  
25 sessions.

1           But if you look at the second page of that temporary  
2 authority grant -- and by the way, the authority under this  
3 grant is identical to what's being transferred in the  
4 permanent proceeding. The first paragraph of authority would  
5 authorize the transportation of property from points in  
6 Pennsylvania on and west of 219, Route 219, with the exception  
7 of Allegheny County, to all points in Pennsylvania on and east  
8 of U.S. Highway Route 15 and vice versa, which, if you refer  
9 back to Exhibit 1, means with the exception of Allegheny  
10 County, when that transfer application is approved, Pitt-Ohio  
11 will be able to go anywhere from the western third of the  
12 state to any point in the eastern third of the state east of  
13 U.S. Highway 15 and vice versa. For example, from Venango  
14 County to any point east of 15 or vice versa. Now, with  
15 respect to Allegheny County, it's a little different situation  
16 there.

17           MR. FULLERTON: Excuse the interruption. This is  
18 subject to certain exclusions.

19           MR. LAVELLE: Okay, fine.

20           MR. FULLERTON: That were given to protect some of my  
21 clients when this was granted.

22           MR. LAVELLE: Right. There's a second paragraph of  
23 authority there, and that is followed by two main -- or two  
24 restrictions which do apply to what I just said as far as the  
25 east-west authority is concerned. I was going to get to

1 those, but I just want to do it on a geographical basis first.

2 The exclusion as to Allegheny County was brought about  
3 because of another transfer application which was filed prior  
4 to the filing of this particular application we're talking  
5 about here and was already in process, and that was a grant of  
6 authority -- or an application to purchase a portion of  
7 authority from Exhibitor Service Company that had been filed  
8 back in, I think it was May of 1986; whereas, this application  
9 was filed, I think it was May of '85, as a matter of fact, and  
10 that authority now has been concluded and it's set forth on  
11 page 3 of Exhibit 2 under the Folder 1 Amendment I grant.

12 Geographically it reads, property from points in  
13 Allegheny County to other points in Pennsylvania beyond the  
14 County of Allegheny and vice versa, with certain restrictions,  
15 and I'll mention the geographical ones that are important  
16 here. They are set forth in Paragraph No. 7 at the top of  
17 page 4. So that if you forget for a moment that particular  
18 restriction, the basic grant would say, from all points in  
19 Allegheny County to any other point in the State of  
20 Pennsylvania and vice versa, which would include the eastern  
21 third of the state.

22 If you look at Paragraph No. 7, there are three counties  
23 in the eastern part of the state which are excluded, and they  
24 were exclusions in the Exhibitor's authority that was being  
25 transferred; namely, Lebanon, Berks and Lancaster Counties.

1 That authority, as I say, from Exhibitor has already been  
2 approved so that Pitt-Ohio presently can operate from all  
3 points in Allegheny County to all points in the State of  
4 Pennsylvania and vice versa, with the exception of these  
5 counties, three of which are in the eastern part of the state,  
6 Lebanon, Berks and Lancaster.

7 And then there are another half dozen or so, seven  
8 counties I believe, that are located more in the central part  
9 of the state that are also included, and that was an exclusion  
10 under Exhibitor's.

11 MR. FULLERTON: In addition, there were two other  
12 exclusions specifically for two of my clients, one from Baker  
13 for the limestone and one for American Home Foods, for S & L.

14 MR. LAVELLE: Right. Those are set forth in Restrictive  
15 Paragraph No. 8 and No. 12 on page 4. But again, dealing  
16 strictly with the geographical end of it, in order to close  
17 that gap in the eastern third of the state involving Lebanon,  
18 Berks and Lancaster, Pitt-Ohio is purchasing from Exhibitors  
19 -- I'm sorry, from Hammel's Express, the right to operate from  
20 points in Allegheny County to points in the Counties of  
21 Lebanon, Berks and Lancaster and vice versa, and that's the  
22 second grant of authority under that Amendment J that we were  
23 referring to initially on page 2.

24 So with respect to the eastern third of the state, then,  
25 when you put these altogether, the Exhibitor's authority in

1 Amendment I authorizes Allegheny County to everything east of  
2 U.S. 15 and vice versa, with the exception of those three  
3 counties. The second paragraph of authority being purchased  
4 from Hammel's authorizes service from Allegheny County to  
5 Lebanon, Berks and Lancaster County and vice versa, which is  
6 also in the east.

7 So in effect, the combination of these things results in  
8 Pitt-Ohio having authority -- or will have authority for  
9 everything west of U.S. Highway 219 to everything east of U.S.  
10 Highway 15 and vice versa, subject to certain restrictions Mr.  
11 Fullerton has pinpointed here already. The net affect, then,  
12 of this application is that the new authority being requested  
13 really boils down to from points west of 219 to points in the  
14 central third of the state that lie between 219 and 15 and  
15 vice versa.

16 Now, one further qualification on that. Under  
17 Exhibitor's authority that was purchased, it was from  
18 Allegheny County to all points in the state and vice versa,  
19 with a couple of exceptions. If you look back at Paragraph 7  
20 on page 4 of Exhibit 2, you'll see that the excluded counties  
21 that lie within the central part of the state include at least  
22 portions of Clearfield, Cambria, Blair, Huntingdon, part of  
23 Somerset and Bedford Counties.

24 So out of Allegheny County, this application is  
25 requesting authority to points in those seven counties, or

1 portions of them, and vice versa. Lebanon, Berks and  
2 Lancaster we've already talked about, and the last nine  
3 restricted counties, beginning with Beaver, all of them lie  
4 west of 219 and really have no impact on this application at  
5 all because we're not asking for authority between two points  
6 in the western third of the state. So for all practical  
7 purposes you can ignore them.

8 Then the application, going away from Allegheny County  
9 as to everything else west of 219, we're requesting the right  
10 to operate from all of that territory to all of the central  
11 third of the state and vice versa. Now, it's -- because of  
12 the timing of these various transfer applications and the new  
13 additions and so forth, and other applications that we started  
14 off with looking for all points in the State of Pennsylvania,  
15 but as I say, it now comes down to this authority basically  
16 between the western third and the central third of the state  
17 and vice versa, subject to some restrictions.

18 That really is the crux of this application, and the  
19 testimony that we would be presenting through supporting  
20 shipper witnesses, we anticipate would be confined to that  
21 general geographical area.

22 JUDGE NEMEC: Okay.

23 MR. FULLERTON: May I make -- may I ask Mr. Lavelle a  
24 question?

25 JUDGE NEMEC: Sure.

1 MR. FULLERTON: I'm not clear I understood that part of  
2 your statement with respect to from points in Allegheny County  
3 to points in the counties west of 219 that are excluded in  
4 Paragraph 7 of Folder 1 Amendment I that you talked about.  
5 Here's why. As I understand the application as published in  
6 the Bulletin, which is the subject matter of this proceeding,  
7 everything will originate on and west of 219 to points on and  
8 east of 219 and vice versa, correct?

9 MR. LAVELLE: Right.

10 MR. FULLERTON: Everything -- to express it another way,  
11 everything has to start out or end up, for example, west of  
12 219?

13 MR. LAVELLE: Yeah. It either has to begin or end west  
14 of 219, with the further qualification that the origin and  
15 destination cannot both be west of 219. There's no local  
16 service in the western third, in other words.

17 MR. FULLERTON: That's correct. Nor can the origin or  
18 destination be east of 219, both origin and destination east  
19 of there?

20 MR. LAVELLE: Right.

21 MR. FULLERTON: All right. Now, you indicated, as I  
22 understood you -- and that's what I want to clear up right  
23 now. Maybe I misunderstood you. One of the purposes of this  
24 application was to get rid of that restriction from points in  
25 Allegheny County to points, for example, like -- well, let's

1 take Erie or Crawford or Beaver. That won't help you there  
2 and this application doesn't seek that?

3 MR. LAVELLE: No. That's what I -- if I didn't make  
4 that clear, that's what I intended. In other words, when I  
5 said we could exclude those counties beginning with Beaver and  
6 ending with Westmoreland, since they are all west of 219,  
7 they're really not involved in this application because we're  
8 not asking for any authority from any of those eight or nine  
9 counties to any point west of 219 or vice versa.

10 As a practical matter, to clarify that a little bit  
11 further, under paragraph -- well, under the Folder 1 Amendment  
12 B authority on page 1 of Exhibit 2, I think the main  
13 restriction there that you want to refer to is on the second  
14 page, Paragraph No. 7. You'll see that the carrier now holds  
15 authority between points in 15 counties, all of which, I  
16 believe, but maybe one or two, flop over the line there. But  
17 I think they're all west of 219. So today they can go from  
18 Allegheny County to Erie County and vice versa.

19 MR. FULLERTON: I understand that this doesn't affect  
20 your existing authority. That can't --

21 MR. LAVELLE: No. In answer to your question --

22 MR. FULLERTON: I just wanted to make sure when you were  
23 talking about Paragraph 7, that is the Exclusion 7 of the  
24 authority you got from Exhibitors, that this application  
25 currently, the one being heard today, didn't have any affect

1 on that.

2 MR. LAVELLE: No, it doesn't have any affect because  
3 those counties are all west of 219. But furthermore,  
4 Pitt-Ohio already has the right, under the Amendment B  
5 certificate, to operate between Allegheny County and Beaver  
6 County, or Allegheny and Erie County in your example. We've  
7 already got that. So, one, it's not involved in the  
8 application geographically because we don't ask for it, but  
9 secondly, as a practical matter, we've already got it.

10 MR. FULLERTON: But you don't have from Allegheny to  
11 Armstrong, for example, or Butler or Greene, which are west of  
12 219, do you?

13 MR. LAVELLE: No, we don't have those, but those  
14 counties are not listed in Paragraph 7 either.

15 MR. FULLERTON: Right.

16 MR. LAVELLE: If read in conjunction, you can see where  
17 the authority is and is not.

18 MR. FULLERTON: Right.

19 MR. LAVELLE: That is where we are geographically. Then  
20 Exhibit 3 which we have introduced are -- sets forth the scope  
21 of three pending applications which are unopposed modified  
22 procedures being used. The verified statements in support of  
23 the applications have all been presented to the Commission and  
24 we're waiting for decisions. Each one of these is limited to  
25 a specific shipper. Basically, the authority is from the

1 facilities of the named company at a particular location to  
2 points in the State of Pennsylvania and vice versa, subject to  
3 a couple of restrictions.

4 MR. FULLERTON: As I understand, the transportation has  
5 to move for that named shipper?

6 MR. LAVELLE: Yes. In each case it's for the named  
7 shipper, right.

8 JUDGE NEMEC: Well, when was the authority from  
9 Exhibitor, the transfer, when was that completed? Within the  
10 last year?

11 (Brief pause.)

12 MR. LAVELLE: I'm trying to reconstruct it here.

13 JUDGE NEMEC: That's okay.

14 MR. LAVELLE: Your Honor, I don't have the files on  
15 those cases with me here.

16 JUDGE NEMEC: I can't find the order in the file that I  
17 have.

18 MR. LAVELLE: I just have the summary here, but to the  
19 best of my recollection, the application -- the sales  
20 agreement to purchase the authority from Exhibitors was signed  
21 approximately March of 1985, and filed late April of 1985.  
22 Temporary authority was granted to Pitt-Ohio to operate a  
23 portion of the Exhibitor's authority in May or June of 1985.

24 The transfer application for Pitt-Ohio to purchase a  
25 portion of the Hammel's authority that we referred to already

1 was filed approximately October or November of 1985. The  
2 temporary authority connected with that was granted in  
3 February of 1986. That's the Folder 1 Amendment J order that  
4 we have attached to Exhibit 2. The transfer application  
5 involved in Exhibitors was finally approved approximately  
6 September or October of 1986, and the present application that  
7 we're involved with here today was filed with the Commission  
8 on -- I mailed it on August 1, 1986.

9 So as you can see, the transfer involving Exhibitors,  
10 with those several county exclusions, was filed first, then  
11 the Hammel's authority transfer application was filed, and  
12 that's why those certain modifications as to Allegheny County  
13 and the three counties in the east and so forth were cut out,  
14 because they were already purchasing the rest of it from  
15 Exhibitors at that point, the exception of those three  
16 counties.

17 MR. FULLERTON: Is the Exhibitors transfer, though,  
18 that's completed?

19 MR. LAVELLE: Oh, yes, that's completed. Everything --  
20 all the authority shown in Exhibit 2 that I have passed out  
21 represents a final grant of authority, with the exception of  
22 the Amendment J, which is the temporary authority involving  
23 the purchase of Hammel's.

24 JUDGE NEMEC: Okay. What's your proposal in terms of  
25 proceeding with all this?

1 MR. LAVELLE: Well, with that explanation in mind,  
2 unless you have any further clarification questions here, we  
3 have -- we distributed to all parties of record and to  
4 yourself, sir, the tentative list of witnesses as of September  
5 14th. I think there were a list -- I think there were 29  
6 names shown on that list of witnesses.

7 I understand that there will be, depending on how many  
8 we decide to present and in view of how long the case might  
9 go, but there's approximately another 12 to 15 witnesses who  
10 have indicated their willingness to support this application.  
11 Their names do not appear on this list. They'll be circulated  
12 to counsel in advance of any hearings when they're going to  
13 testify.

14 I think at this point, with the explanation -- and Mr.  
15 Fullerton and I have already discussed this in part, not only  
16 yesterday, but several weeks ago we had a telephone  
17 conversation where we went through the interests of the  
18 various protestants that he represents and tentatively  
19 discussed the possibility of working out some restrictions  
20 that might satisfy some of his clients.

21 So I think at this point we can do one of two things;  
22 either take a brief recess to allow us to discuss those and  
23 then come back, although I'm not certain that we would be in a  
24 position here, because of the nature of the amendments that  
25 might have to be done, that we could finalize it here today.

1 Or we can proceed with the rest of the prehearing conference  
2 here if you want to in terms of the number of witnesses and  
3 how many days.

4 I think from that standpoint, all I can say is that we  
5 would expect to have all the hearings here in Pittsburgh.  
6 We're not going to ask that we go to any point in the central  
7 part of the state and have hearings at a remote location. I  
8 think we'll bring everybody into Pittsburgh here. It's more  
9 convenient for everybody that way.

10 Based on the couple of hearings that we've been in  
11 recently of this type, I would anticipate that the first day  
12 of hearing we begin the evidentiary part of the proceeding.  
13 We would probably present the operating witness testimony and  
14 perhaps two shipper witnesses we would have at that point.

15 When I first circulated the list last week of witnesses,  
16 with the number of counsel involved and protestants, I had  
17 thought maybe the operating testimony with cross examination  
18 might consume most of the day. So we were going to have one  
19 shipper witness ready to testify today, if need be, and then  
20 probably four to five shipper witnesses the second day of  
21 hearing. I would think that probably that schedule would be  
22 involved at the beginning of the next set of hearings, and  
23 then if it starts to move a little bit faster, we might be  
24 able to present several more witnesses.

25 But as a practical matter, I think Mr. Fullerton will

1 agree, that even if there's just the two of us, myself and Mr.  
2 Fullerton here, and perhaps Mr. Koerber, if we don't resolve  
3 our differences with his client, probably six witnesses a day  
4 is going to be about the maximum we could get on.

5 MR. FULLERTON: I would suggest that in fairness to Mr.  
6 Lavelle, I don't want to be in a position to try to press him.  
7 I think working out the amendments is something that we can do  
8 after the prehearing. We have sufficient time to do a little  
9 horse trading.

10 JUDGE NEMEC: I think what we'll do is -- well, it's  
11 basically up to both of you, but after you've had your  
12 discussion, if you just informally tell me approximately the  
13 number of days you feel you're going to need, then we'll  
14 attempt to schedule them.

15 MR. FULLERTON: That's okay with me.

16 JUDGE NEMEC: It sounds like we need to schedule a  
17 couple of blocks of days, both for applicant and for  
18 protestant, and we can do that.

19 MR. LAVELLE: Would you want to -- I agree with Mr.  
20 Fullerton. Rather than take a break here and try to discuss  
21 our possible restrictions and then hold everybody, yourself  
22 and the reporter here for another hour to do that, that's what  
23 I would suggest. Our number of witnesses, where we would hold  
24 them, get this out of the way now, and then perhaps you won't  
25 want to close the prehearing conference officially at that

1 point, and Mr. Fullerton and I could then sit here at our  
2 leisure and do this either now or in the future, and I have to  
3 get to Mr. Koerber, and based on what he had represented to me  
4 his interests were, and discuss it further with him.

5 JUDGE NEMEC: I think that's fine.

6 MR. LAVELLE: I think --

7 JUDGE NEMEC: I mean, basically at this point, now that  
8 we understand what the scope of the application is going to  
9 be, I think that pretty much clarifies the issues. It sounds  
10 like you're going to have quite a few witnesses, so we need to  
11 schedule some blocks of days. Beyond that, if you can reach  
12 some agreement with protestants, that's fine. I'd ask you to  
13 informally let me know approximately the number of days you  
14 feel both applicant and protestants are going to need, then  
15 we'll attempt to schedule it.

16 MR. LAVELLE: Would you want us to do that --

17 JUDGE NEMEC: You can do that either today or later. It  
18 needn't be formally. Either call or drop me a note.

19 MR. FULLERTON: Depending on how many is left in, we  
20 will determine how many days you need. If there are only  
21 three or four protests left, it's not going to be like if  
22 there were eight or ten because the cross, at least, is going  
23 to be more limited.

24 MR. LAVELLE: Right.

25 MR. FULLERTON: Plus the presentation of protestants.

1 MR. LAVELLE: Right.

2 JUDGE NEMEC: Anybody think of anything else you want to  
3 place on the record at this time?

4 (No response.)

5 JUDGE NEMEC: If not, we'll adjourn this prehearing  
6 conference and I'll await to hear from you in terms of number  
7 of days that you feel we need for presentation of both  
8 applicant's and protestants' cases. I thank you for your  
9 attendance.

10 MR. FULLERTON: Thank you.

11 MR. LAVELLE: Thank you.

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15 (The hearing adjourned at 10:55 o'clock a.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

*Lisa J. Berkey*  
\_\_\_\_\_  
LISA J. BERKEY,  
Court Reporter

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