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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; \*\*\*. Further hearing.

RECEIVED

SEP 15 1989

Pittsburgh, Pennsylvania  
August 24, 1989

SECRETARY'S OFFICE  
Public Utility Commission

DOCUMENT  
FOLDER

Pages 535 to 612, inclusive

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HOLBERT ASSOCIATES  
LISA J. BERKEY  
Suite 203, Cranberry Court  
212 North Third Street  
Harrisburg, Pennsylvania 17108

CERTIFIED ORIGINAL





1

INDEX TO WITNESSES

2

PROTESTANTSDIRECTCROSSREDIRECTRECROSS

3

Daniel J. McFarland

539

551

571

572, 573

4

William F. McQuaide

575

588

5

6

INDEX TO EXHIBITS

7

PROTESTANTSIDENTIFIEDADMITTED

8

Ex. No. P-18

540

551

9

Ex. No. P-19

541

551

10

Ex. No. P-20

542

551

11

Ex. No. P-21

543

551

12

Ex. No. P-22

545

551

13

Ex. No. P-23

546

551

14

Ex. No. P-24

547

551

15

Ex. No. P-25

549

551

16

Ex. No. P-26

576

17

Ex. No. P-27

577

18

Ex. No. P-28

578

19

Ex. No. P-29

579

20

Ex. No. P-30

583

21

Ex. No. P-31

584

22

Ex. No. P-32

609

(Late-filed)

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1 JUDGE PORTERFIELD: Good morning. This being August the  
2 24th, 1989, at approximately 10:00 a.m. in the Hearing Room  
3 No. 1 of the Pittsburgh State Office Building, it's the time  
4 and place set for the continued hearing of the matter briefly  
5 captioned Application of Pitt Ohio Express, Inc., at Docket  
6 A-00102471, Folder 1, Am-P. At the last day of hearing on  
7 June 19th, 1989, the applicant completed its case in chief,  
8 and today was scheduled for the purpose of having the  
9 protestants present their evidence.

10 This morning Mr. Lavelle, William J. Lavelle, Esquire,  
11 has entered an appearance on behalf of the applicant; and  
12 Christian Graf, Esquire, an appearance on behalf of the  
13 existing protestants; W.C. McQuaide, Inc., Ward Trucking  
14 Corp., Evans Delivery Company, who Mr. Graf has informed me  
15 before hearing is now Arrow Carrier Corp., or there's a  
16 transfer of a certificate or something of that nature in the  
17 works. Mr. Graf, are you ready to proceed this morning?

18 MR. GRAF: Yes, sir.

19 JUDGE PORTERFIELD: Would you present your first  
20 witness, please?

21 MR. GRAF: Mr. McFarland.

22 JUDGE PORTERFIELD: Raise your right hand, please.

23 DANIEL J. MCFARLAND, having been duly sworn, was  
24 examined and testified as follows:  
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DIRECT EXAMINATION

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BY MR. GRAF:

Q Would you give us your name and home address?

A My name is Daniel J. McFarland. My home address is  
713 Claybrook Drive, Altoona, Pennsylvania.

Q With what company are you connected?

A Ward Trucking, Corp.

Q What is its address?

A Post Office Box 1553, Altoona, PA, or Second Avenue,  
Greenwood Road, Altoona, PA.

Q What is your capacity with that company?

A I'm the traffic manager.

Q As such, are you familiar with its authorities,  
facilities and operations?

A I am.

Q And have you been authorized to appear?

A I have.

Q Does your company possess authority from this  
Commission at Docket A-68795?

A We do.

Q And have you caused to have a directory of those  
operating rights prepared in exhibit form?

A We have.

MR. GRAF: I request that this document be marked as  
Exhibit P-18 for identification.

1 JUDGE PORTERFIELD: It will be so marked, Mr. Graf,  
2 P-18, Exhibit No. P-18.

3 (Protestants' Exhibit No. P-18 was produced  
4 and marked for identification.)  
5 BY MR. GRAF:

6 Q With reference to Exhibit P-18, would you refer us to  
7 the page, folder and amendment numbers which are particularly  
8 applicable here?

9 A Okay. Page 14 and 15 in Folder 5, Amendment N and  
10 Amendment P.

11 Q Under that particular authority, are you in a  
12 position to serve all of the supporting witnesses in this  
13 case, commodity-wise and territorially?

14 A We are.

15 Q And that would cover any points in Pennsylvania?

16 A Any point in Pennsylvania.

17 Q All right. Do you also have interstate authority?

18 A Yes, we also have interstate authority.

19 Q And what is the MC number of that authority?

20 A Okay. It is 65916.

21 Q What sub would be pertinent?

22 A Sub 21 gives us all points in the continental United  
23 States.

24 Q That's with general commodities, with the usual  
25 exceptions?

A General commodities, usual exceptions.

1 Q You had intended to present that as an exhibit when  
2 you arrived here in Pittsburgh and you didn't have it?

3 A I left it back at the office, yes.

4 Q Okay. Are you agreeable, if Mr. Lavelle desires it,  
5 to submit it to him as a late-filed exhibit?

6 A Yes, I would be agreeable to send it.

7 MR. GRAF: Bill, do you want a copy of it for the record?

8 MR. LAVELLE: If you want to put it in.

9 MR. GRAF: We could reserve a number at the end.

10 JUDGE PORTERFIELD: If you want to designate that at the  
11 end, that would be fine.

12 MR. GRAF: Stick it at the end because I don't know  
13 where we're going to end up yet.

14 MR. LAVELLE: Just mark it in sequence as you talk about  
15 it.

16 JUDGE PORTERFIELD: That would make sense, yes.

17 MR. GRAF: Mark it P-19, and you see that I get it and  
18 the appropriate parties get copies of it, all right?

19 (Protestants' Exhibit No. P-19 was identified.)

20 BY MR. GRAF:

21 Q I presume since you have authority you also have  
22 certain equipment?

23 A We do.

24 Q Have you prepared a list of the equipment showing its  
25 basic location, the number thereof and the types of equipment?



1 A Yes, we have.

2 MR. GRAF: I request that the equipment exhibit be  
3 marked for identification as Exhibit P-19.

4 JUDGE PORTERFIELD: P-20.

5 MR. GRAF: I'm sorry, P-20.

6 JUDGE PORTERFIELD: That's all right.

7 (Protestants' Exhibit No. P-20 was produced and  
8 marked for identification.)

9 BY MR. GRAF:

10 Q Would you, with reference to Exhibit P-20, explain  
11 the first column under power equipment? Make sure that I have  
12 correctly described it.

13 A Okay. Under trucks, that would be straight truck  
14 type equipment. The second column, tractors, would be a  
15 tractor, either a single axle or a twin screw.

16 Q What are the designations beginning with Altoona and  
17 ending with Scranton? What's the significance of those?

18 A Those are the various terminals we have.

19 Q I see. And that's the number then, in the column  
20 opposite, that are based there normally?

21 A Right.

22 Q And under trailers, is that basically  
23 self-explanatory?

24 A Yes.

25 Q I presume that you have an exhibit showing your

1 terminals and personnel?

2 MR. GRAF: I would request that it be marked as exhibit  
3 P-21 for identification.

4 JUDGE PORTERFIELD: So marked, Mr. Graf.

5 (Protestants' Exhibit No. P-21 was produced and  
6 marked for identification.)

7 BY MR. GRAF:

8 Q Will you briefly explain Exhibit P-21 for us?

9 A Okay. We have the terminals within Pennsylvania  
10 marked, starting with Allentown and ending with Scranton,  
11 their location, phone number, whether it's an owned facility  
12 or a leased facility, number of doors and total number of  
13 employees.

14 Q Is there somewhere a summary of how many employees in  
15 total are represented here, or did you count them up for us?

16 A No, I didn't assemble it on here. I did total it up,  
17 though. We have a total of 345 Pennsylvania employees at the  
18 terminals. We have 143 other employees working in other  
19 terminals, that is people working in the garage facilities,  
20 maintenance facilities and our general office, which is, like  
21 I said, 143. That gives us a total of 488 employees within  
22 the State of Pennsylvania.

23 Also, not marked on the exhibit is 152 points -- or 152  
24 employees that are employed outside of Pennsylvania, giving us  
25 a total of 640 employees.

1 Q Are all the terminals listed on here currently in  
2 use?

3 A Yes, they are.

4 Q You do have a terminal in the Pittsburgh area, I  
5 assume, in Greensburg?

6 A That's correct.

7 Q Does your company have a safety program?

8 A Yes, we do.

9 Q And will you explain that program briefly, beginning  
10 with telling us what your insurance coverage would be?

11 A Okay. We have an insurance coverage with Liberty  
12 Mutual Insurance Company. We have a million dollars with  
13 riders, up to \$10 million coverage.

14 Q Now, what do you do for safety?

15 A We have a safety program. We have a person  
16 responsible for it in the capacity of director of safety. We  
17 also have various awards, such as ten years safe driving  
18 awards. Our employees would receive a watch. If they drive  
19 20 years safely, we give them \$1,000.00 savings bond. We also  
20 have various incentive programs that we run from time to time  
21 which gives people -- give the employees like safety jackets,  
22 T-shirts and other types of --

23 Q Has the interstate -- or the U.S. Department of  
24 Transportation advised you of your interstate safety record?

25 A Yes. We have a satisfactory rating for safety.

1 Q And have you brought copies of the documentation for  
2 that?

3 A I have.

4 MR. GRAF: I request that the letter from the U.S.  
5 Department of Transportation be marked as Exhibit P-21.

6 JUDGE PORTERFIELD: 22, Mr. Graf. We goofed you all up  
7 taking that one. We'll identify it, if it's all right with  
8 you, as P-22.

9 MR. GRAF: I'll have to learn to count, too.

10 JUDGE PORTERFIELD: That's all right.

11 (Protestants' Exhibit No. P-22 was produced and  
12 marked for identification.)

13 BY MR. GRAF:

14 Q Now, along the line -- going back for a moment, what  
15 services in general do you make available to shippers?

16 A We're a general commodities carrier and we would  
17 offer any service, you know, in that line. We pick up same  
18 day, we offer some overnight deliveries. We operate five days  
19 a week. If need be, we can deliver on Saturdays and in  
20 special cases, even Sundays we have, but basically Saturdays.  
21 We handle collect prepaid freight, order notifies, C.O.D.'s.  
22 We have job site deliveries, can spot trailers, and certain  
23 times we can provide heater service.

24 Q What do you mean either? I don't follow you.

25 A Heater service.

1 Q Oh, heater. I'm sorry. I thought you said either  
2 and I was wondering what the either meant. Go ahead. I'm  
3 sorry.

4 A Protective coverage. You know, like I said,  
5 basically anything, any general commodities carriers provide.

6 Q Do you handle truckload and less than truckload  
7 freight?

8 A We handle both truckload and LTL freight.

9 Q I think your equipment exhibit shows that you have  
10 van equipment available?

11 A We do.

12 Q Now, have you provided service for some of the  
13 supporting shippers in this case?

14 A Yes, we have.

15 Q And have you prepared an exhibit which would indicate  
16 the date, the pro number, the shipper, the destination,  
17 commodity, weight and revenue for those you have served  
18 between February and the end of June, 1989?

19 A I have.

20 MR. GRAF: I request that this exhibit be marked as  
21 Exhibit P-23 for identification.

22 JUDGE PORTERFIELD: So marked.

23 (Protestants' Exhibit No. P-23 was produced and  
24 marked for identification.)

25 BY MR. GRAF:

1           Q Now, for the period reflected on this exhibit, does  
2 this reflect all of the shipments, whether inter or  
3 intrastate, that you've handled for these shippers?

4           A Yes, it has.

5           Q Now, have you also prepared an exhibit covering all  
6 shipments involved in the territory of this application for  
7 people who did not support this application for a single day?

8           A Yes, I have.

9           Q And what day was selected and how was that date  
10 selected?

11           A July 31st was selected. Basically, it was a random  
12 date picked on a day that we had to complete pros, when we  
13 were going to do the survey.

14           MR. GRAF: I request that this exhibit be marked for  
15 identification as Exhibit P-24.

16           JUDGE PORTERFIELD: So marked.

17           (Protestants' Exhibit No. P-24 was produced and  
18 marked for identification.)

19 BY MR. GRAF:

20           Q Now, do you have the documents that underlie Exhibit  
21 P-24 available here for review if requested?

22           A Yes, I do.

23           Q I'd like to ask you next whether you have any  
24 indication of solicitation for any of these supporting  
25 shippers, and if --

1 A I did not bring that along.

2 Q You did not bring that?

3 A No, I did not.

4 Q Referring to Exhibit P-23 for a moment, I note that  
5 the total revenue for a five month period, plus one day in  
6 August, was \$1990.27, and from Exhibit P-24 for a single day,  
7 in the area of this application, your revenue was \$3265.56?

8 A Right.

9 Q Now, what bearing does that have on the reasons for  
10 your protesting this application, if any?

11 A Well, in five months the supporting carriers have  
12 given us only \$1990.00 in revenue and all the other accounts  
13 in that area has given us \$3,265.00 in one day, going into the  
14 area the authority is sought. Well, in a five month period,  
15 that would amount to approximately \$324,000 -- or \$326,000.00.

16 Q What are you figuring, 20 days per working --

17 A \$20.00 per month times five.

18 Q Twenty days?

19 A Twenty working days per month times five months,  
20 which is a hundred days. That would give us approximately  
21 \$326,000.00, and that is a difference of \$324,000 between what  
22 the supporting shippers have given us versus what the  
23 potential loss could be if the application would be granted.

24 Q Now, there was a shipper by the name of Aristech who  
25 appeared in this application, a Mr. Soltis. Did you ever

1 receive any communication from that company?

2 A Yes, we have.

3 Q Did it relate to traffic?

4 A Yes, it did.

5 Q Have you brought copies of that communication with  
6 you?

7 A Yes.

8 MR. GRAF: I request that a copy of the letter from  
9 Aristech be marked as Exhibit P-25 for identification.

10 JUDGE PORTERFIELD: So marked.

11 (Protestants' Exhibit No. P-25 was produced and  
12 marked for identification.)

13 BY MR. GRAF:

14 Q With respect to Exhibit P-25, I'd like to invite your  
15 attention to several items in that letter, if I may. First of  
16 all, I take it this is an invitation to bid on traffic?

17 A Yes, it is.

18 Q And did it carry a time limit within which rates must  
19 be applicable and remain applicable?

20 A The rates would have to apply for a one year period.

21 Q It did give you the information from the  
22 classification to find out what the commodities were?

23 A Yes, it did.

24 Q And it also requested you to apply the standard scale  
25 of class rates and determine what discount you're going to



1 give?

2 A You're right.

3 Q And were the commodities and the locations of  
4 destinations to which rates were to apply contained in the  
5 final four pages, as well as the class rate which was to  
6 govern those commodities?

7 A Yes, it was.

8 Q Did you submit a bid?

9 A Yes, we did.

10 Q Was it accepted?

11 A No, it was not.

12 Q Now, does your company publish any discounts that are  
13 applicable in Pennsylvania?

14 A Yes, we do.

15 Q And in what tariff is it to be found?

16 A We publish our discounts in the Middle Atlantic  
17 Conference Tariffs, the MAC 105 Tariff.

18 Q Had you previously had your own discounted tariff on  
19 file?

20 A Yes, we do.

21 Q And that has been withdrawn and you're now Hmiddle  
22 Atlantic?

23 A Right.

24 Q Other than the one reason you've already given us,  
25 why are you opposing this application?

1           A We're opposing it to the -- as we gave before, but  
2 then also, if they're already servicing the area through  
3 Cleveland, I don't see any need why they -- I'm sorry  
4 Cumberland, Maryland, I don't see any reason why they would  
5 have to have this authority.

6           MR. GRAF: I tender the witness for cross examination  
7 and offer, subject thereto, Exhibits P-18 through 25, with the  
8 understanding that we will furnish Exhibit P-19 as a  
9 late-filed exhibit.

10           JUDGE PORTERFIELD: They're accepted on --admitted on  
11 that basis, Mr. Graf, the exhibits indicated.

12           MR. LAVELLE: Your Honor, may I request about a 10 to 15  
13 minute -- ten minute recess to take a look at the underlying  
14 documents that support the two traffic exhibits and to look at  
15 this letter? I haven't had a chance to read it through yet.

16           JUDGE PORTERFIELD: Yes, sir. Let's go off the record,  
17 then, for ten minutes.

18           (A brief recess was taken.)

19           JUDGE PORTERFIELD: Mr. Lavelle, are you ready to  
20 proceed with the cross examination of Mr. McFarland.

21           MR. LAVELLE: Yes, I am.

22           JUDGE PORTERFIELD: Okay.

23                                   CROSS EXAMINATION

24 BY MR. LAVELLE:

25           Q Mr. McFarland, would you look first at your Exhibit

1 P-20? That's the equipment list. You have, under the power  
2 equipment, have explained the two columns have to do with  
3 straight trucks and tractors. The first entry in the lefthand  
4 column there under tractors, it says over-the-road. You show  
5 85.

6 A Um-hum.

7 Q What does that signify?

8 A They're unassigned to any terminal.

9 Q They float through the system?

10 A Well, they're -- more or less, from terminal to  
11 terminal. Such a road -- if a driver goes from Altoona to New  
12 York, or whatever, they would take an over-the-road tractor.

13 Q Look at the second entry opposite Altoona. You show  
14 two straight trucks. Am I correct that those are used in your  
15 pickup and delivery operations?

16 A Right.

17 Q Under the righthand column, under tractors, you show  
18 16 for Altoona.

19 A Right.

20 Q Are those tractors used in pickup and delivery  
21 operations?

22 A Right.

23 Q And whatever the terminal area of Altoona is, is  
24 where those tractors are assigned and they operate in that  
25 geographical area?

1 A Right.

2 Q And the same is true for all the other terminals?  
3 The tractors you show are used in the pickup and delivery  
4 operations?

5 A That's correct.

6 Q The application here is restricted against  
7 transportation in flatbed trailers. In your opinion, would  
8 that also exclude open top trailers?

9 A Flatbeds are not open tops. That wouldn't exclude --  
10 flatbeds would not exclude open tops.

11 Q You show four open tops. That's why I was wondering  
12 if you thought they were relevant. Apparently you think they  
13 are?

14 A Yes, they are.

15 Q You also show converter dollies, 118 of them. What  
16 exactly are they?

17 A Whenever you have twin trailers, that couples those  
18 together.

19 Q So these are not actual trailers capable of handling  
20 freight, they're just the connection between two short  
21 trailers?

22 A Right, correct.

23 Q In describing your services, you went through a  
24 lengthy list of items. One of them, you said you provide  
25 heater service at certain times. What did you mean by that

1 qualification?

2 A Well, if it is requested by the customer, we will  
3 provide the service, and basically into that area where we're  
4 talking -- you know, where the application is for, we can  
5 provide that service.

6 Q Are any of the trailers shown on your equipment list  
7 equipped with permanent heaters?

8 A No, they are not.

9 Q Then how do you provide the heater service?

10 A We'll either pull it into our terminal in Altoona, we  
11 have heated bays there and use that, or we will put like a  
12 propane type heater on it.

13 Q Are those portable type heaters available at all your  
14 terminals?

15 A They can be made available, but they are not at all  
16 times.

17 Q Are most of them, in fact, at Altoona?

18 A Most of them are at Altoona.

19 Q What happens if a shipper, let's say located in  
20 Western Pennsylvania, Beaver County, has occasion to have a  
21 shipment moved by Ward Trucking which requires heater service?  
22 You don't have any heater there and they want service, as you  
23 said, pick up the same day or next day? How do you  
24 accommodate that?

25 A Depending on where it was going, we could have some

1 heaters at the Pittsburgh terminal, Greensburg. You know, we  
2 would run it -- if it was going into the Altoona area or  
3 DuBois area, it would go into our Altoona terminal, though,  
4 and put into the heater -- or into the heated garage or bay.

5 Q Will you pick up shipments that require heater  
6 service five days a week?

7 A We basically only want to pick them up Monday Tuesday  
8 and Wednesday, but if the shipper requires or gets into  
9 something that it has to be picked up on the other days, we  
10 would pick them up.

11 Q Do you want to pick them up on Monday, Tuesday and  
12 Wednesday so that you can make sure they're delivered before  
13 the weekend?

14 A Make sure they're delivered before the weekend and  
15 not have to hold it over the weekend.

16 Q Your Exhibit 25 is the letter having to do with  
17 Aristech and solicitation of a bid for some traffic. I just  
18 wanted to know, you apparently made a bid on this?

19 A Yes, we did.

20 Q Did you select the rate and the discount applicable,  
21 if at all, to that --

22 A We did not select a rate. We selected a discount  
23 that we would apply off the rate that they requested.

24 Q They gave you the class category?

25 A They told us what tariffs and sections, and et

1 cetera, to use and we could put in the discount based on their  
2 rate.

3 Q In looking through some of the underlying documents  
4 of your two traffic exhibits, and we'll get into that in a  
5 moment, I notice that you have shown on those documents  
6 certain discount levels, is that correct?

7 A That is correct.

8 Q And the discount varies, percentage-wise, from 20  
9 percent up to 60 percent, at least I found in a couple of  
10 cases, is that right?

11 A I'm not aware of 60 percent. That might be in there,  
12 but --

13 Q Well, we'll look at that, but in any event, for  
14 purposes of this question --

15 A Well, discounts range from no discount to unlimited.  
16 Sixty percent, I guess.

17 Q Well, I'll show you an example. You can explain  
18 whether or not I'm accurate, but in any event, you're saying  
19 that those discounts are provided for in one of your tariffs,  
20 some tariff that you have on file?

21 A Right, yes.

22 Q Now, that is the MAC Tariff 105?

23 A Within the State of Pennsylvania.

24 Q Right. Okay, Pennsylvania points. How long have you  
25 been a participant in that particular tariff in Pennsylvania,

1 for discount purposes I'm talking?

2 A Before that we were in a write-in tariff which, by  
3 the Commission, had to be canceled, and I believe it's two and  
4 a half months now, and before that we published discounts in a  
5 write-in tariff that we had, or if the discounts were higher  
6 than what we had provided in the write-in tariff, we provided  
7 that right in our own PUC 46 Tariff as a discount, an  
8 exception type rating.

9 Q When you talk about a write-in tariff, is this the  
10 type of tariff that provides a base level of rates and then  
11 the shipper, in a sort of informal arrangement with the  
12 carrier, selects, based on a volume of freight, a discount  
13 rate that's applicable?

14 A Basically, yes.

15 Q And the Commission challenged that type of discount,  
16 that proposal?

17 A Yes. It came in and told us that we had to rescind  
18 that tariff.

19 Q And then that's when you joined the MAC 105 Tariff?

20 A Right, right.

21 Q You've presented two traffic exhibits. The first  
22 one, your No. 23 exhibit, as I understand it, for the period  
23 from February through at least the middle of August, 1989,  
24 this is intended to show all the traffic during that period  
25 that Ward handled for shippers who testified in support of



1 this application?

2 A That is correct. Basically, from February to June is  
3 when we took the survey, and I just happened to find a bill  
4 for August, so I threw that in.

5 Q And you indicated that this includes both interstate  
6 and intrastate traffic?

7 A That's correct.

8 Q With respect to the shipments in the destination  
9 column that show a Pennsylvania location, we're not to read  
10 that as being shipments within the scope of this application  
11 necessarily, are we?

12 A Not necessarily.

13 Q In fact, if you look at the third grouping under  
14 Neville Chemical Company, the third entry with a date of May  
15 -- May 5 -- I'm sorry, May 10, 1989, in the destination you'll  
16 see it says Bloomfield, PA. The next one also shows  
17 Bloomfield, but New Jersey. Is, in fact, Bloomfield in the  
18 State of Jew Jersey? I can show you the underlying documents.

19 A There is a Bloomfield, PA also. The secretary may  
20 have made an error there. I believe it is New Jersey. Yes,  
21 it is New Jersey. I see the first one is that way.

22 Q If you just want to verify it, that is the group of  
23 bills that pertain to it, and it's --

24 A That's correct. The zip code confirms it.

25 Q So that should be --

1 A New Jersey.

2 Q -- New Jersey, instead of Pennsylvania?

3 MR. GRAF: Why don't we just correct the exhibit?

4 MR. LAVELLE: Do you just want to correct the exhibit to  
5 show Bloomfield, New Jersey for the entry on May 10, 1989?

6 MR. GRAF: There is a Bloomfield in Perry County, so I  
7 didn't challenge it when I saw it.

8 BY MR. LAVELLE:

9 Q The shipment immediately preceding that, showing a  
10 destination of Muncy, Pennsylvania, you're aware that Muncy is  
11 east of U.S. Highway 15? I can show you a map.

12 A I believe it.

13 Q Our boundary line here is points west of U.S. Highway  
14 15, as far as the central part of the state is concerned?

15 A Okay. I mean, I'll take your word for it.

16 Q Then in the fourth grouping, with a shipper Lincoln  
17 Aluminum Distributing Company, there are five shipments with a  
18 destination of Gilbertsville, Pennsylvania?

19 A Correct.

20 Q Would you agree that's in Montgomery County, down  
21 near Philadelphia?

22 A I believe so.

23 Q And the third entry there, with a destination of Glen  
24 Rock, Pennsylvania, Glen Rock is in York County, and again, I  
25 can show you a --

1 A Correct. I'm --

2 Q -- map that indicates that's also east of U.S. 15.

3 A Right.

4 Q And the last shipment there, for the shipper Watson  
5 Standard Company, showing Bloomsburg, Pennsylvania as a  
6 destination, that's also east of U.S. 15, is it not?

7 A That's correct.

8 Q So on this entire exhibit, then, if my analysis is  
9 correct, the only shipment that has an origin and a  
10 destination within the scope of this application is the first  
11 shipment for Lincoln Aluminum Distributing Company, having a  
12 destination of State College, Pennsylvania?

13 A That's correct.

14 Q Everything else is outside the scope of the  
15 application?

16 A That's correct.

17 Q Now, if you'll turn next to Exhibit P-24. This is  
18 the exhibit, as I understand it, that was made for the single  
19 day of July 31 of 1989, and is supposed to show all shipments  
20 handled on that day relevant to this application for  
21 non-supporting shippers?

22 A For non-supporting shippers, yes.

23 Q What I've done is gone through your documents  
24 supporting that exhibit and compared them both to a  
25 Pennsylvania highway map and to an index I have of all the

1 cities and counties in the State of Pennsylvania.

2 A Um-hum.

3 Q And I'd like to ask you some questions concerning  
4 that, and I can show you those underlying items I have, the  
5 index and the map, if you want them. The very first -- first  
6 of all, on your exhibit you just show origin zip and  
7 destination zip code? You don't show the actual points  
8 involved.

9 A Okay.

10 Q Those you have to go to the underlying documents for,  
11 is that right?

12 A That's correct.

13 Q If you look at the very first one there -- and I'll  
14 just refer to these by the last three digits of the pro  
15 number, for simplicity's sake -- No. 876. I'll give you the  
16 documents as we talk about them. The origin there is  
17 Shippenville, is it not?

18 A That is correct.

19 Q And the destination is Oakdale?

20 A Oakdale.

21 Q Oakdale is in Allegheny County, right?

22 A Oakdale is -- I'm familiar -- yes, is Allegheny  
23 County.

24 Q Now, let me show you the index I was working with at  
25 least, which shows Shippenville to be in Clarion County, does

1 it not?

2 A Yes, it does.

3 Q So those two origin and destination points on that  
4 one are both west of U.S. Highway 219?

5 A Okay. Yes, I agree with that.

6 Q Okay. So that shipment is not really involved in  
7 this case, is it?

8 A No.

9 Q Now, the next six shipments in order, going down that  
10 page, I'll give you the bill on the very first one with No.  
11 744. Would you, from your bill, just read what is printed in  
12 the block saying shipper?

13 A General Electric, Louisville, Kentucky, Altoona, PA.

14 Q So under the shipper it shows General Electric Co.,  
15 Louisville, Kentucky?

16 A EX-Altoona, PA. That is originated in Altoona,  
17 Pennsylvania.

18 Q That's under --

19 A Point of origin.

20 Q -- the block showing point of origin. EX-Altoona,  
21 PA, what does that mean?

22 A That means the shipment originated in Altoona,  
23 Pennsylvania.

24 Q It doesn't -- the EX doesn't indicate an interline  
25 shipment?

1           A No, it does not. Interline would be under where it  
2 says transferred from.

3           Q So you're saying this one went from Altoona --

4           A To Lendora (phonetically).

5           Q -- to Lendora? The shipper is showing a Louisville,  
6 Kentucky location. Why is that?

7           A That is their main office.

8           Q The next couple of shipments have a different  
9 shipper, but they show EX-Altoona, PA, with an out-of-state  
10 location for the shipper. Is the explanation --

11          A Same explanation, right.

12          Q That, then, applies to those six shipments I was  
13 referring to, through No. 758?

14          A Correct.

15          Q Just so we're clear on that, why do you put an EX  
16 before Altoona on those bills?

17          A EX stands for exit point. That's where the shipment  
18 originates.

19          Q On the very first bill we were talking about, where  
20 it just shows the point of origin as Shippenville, PA, there  
21 is no EX. Why the difference?

22          A That is where the peoples' offices are. That's where  
23 it gets billed to, Shippenville.

24          Q EX in no way, then, reflects -- I thought we covered  
25 this -- an interline shipment?

1 A In no way, no shape, or form.

2 Q Look, if you will, at the -- it's the third actual  
3 grouping. There's two shipments in it, and it's the pro  
4 number, last three digits are 248, about a third of the way  
5 down on the page. The origin on that is shown as Somerset,  
6 Pennsylvania, destination Turtle Creek, Pennsylvania. Let me  
7 show you a map.

8 A Okay. I see that.

9 Q I don't want -- I'm not going to try to mislead you  
10 at all, but I'm going to tell you when shipper witnesses  
11 appeared who are in Somerset, there was a question raised as  
12 to whether or not that point would be in or out of the  
13 application, either whether it was east or west of our  
14 dividing line of U.S. Highway 219. I want you to have the  
15 background on this question so that you know that.

16 On that particular shipment, then, looking at the map,  
17 is it your position that the City of Somerset is either in or  
18 outside this application?

19 A Okay. I was going here to Somerset. If that's the  
20 city right there, Somerset, then it would be a little bit west  
21 of 219.

22 Q Okay. So if the shipper and Somerset is west of 219,  
23 then this particular shipment would not be involved?

24 A If it was west of 219, it would not be involved.

25 Q On the other hand, if for some reason 219 cuts too

1 close to the shipper's location, it could conceivably be on or  
2 east, so it would be relevant?

3 A Right.

4 Q You don't happen to know where this particular  
5 shipper is located, do you?

6 A I do not.

7 MR. GRAF: What's the name of it, Bill?

8 MR. LAVELLE: Coleman Company. He's got an R.D. 2  
9 number -- address, so I don't know.

10 JUDGE PORTERFIELD: I had forgotten we had this  
11 discussion in this case. It was a good one.

12 BY MR. LAVELLE:

13 Q Okay. Down in the two groupings farther down, Pro  
14 No. 224, see that for business forms, in your point of origin,  
15 the shipper here is Keystone Business Forms. The point of  
16 origin has two designations. It says EX-Warrendale, PA and  
17 Williamsport, PA is also in that same block.

18 A Williamsport should be out. Apparently the address  
19 was too long. The computer ran out of room and put the  
20 Williamsport over here, but the point of origin is actually  
21 EX-Warrendale, PA. That's the same basis. The general, main  
22 office is in Williamsport, PA.

23 Q And the destination here is Bucknell University in  
24 Lewisburg, which I think is in the central part of the state?

25 A Lewisburg, yes. That would be Milton or Williamsport



1 area. Lewisburg is in Union County, I think.

2 Q It's apparently right on the line. Okay. I was  
3 confused as to which of those two points, Williamsport or  
4 Warrendale, was the origin. You're saying it is Warrendale,  
5 Allegheny County?

6 A Right. Again, it has the EX, which stands for exit.

7 MR. GRAF: That was 224?

8 MR. LAVELLE: 224, so that apparently is in the area.

9 BY MR. LAVELLE:

10 Q On this particular bill there's a discount indicated  
11 of 40 percent --

12 A Correct.

13 Q -- is that correct?

14 A Um-hum.

15 Q Now, if you go down in that same grouping to the next  
16 to the last one there, Item 243, again,, the origin was  
17 Pittsburgh, the destination was Somerset, and the same  
18 discussion we had earlier would apply to this one, I assume,  
19 right?

20 A That's correct.

21 Q In the next group, the second shipment, 768 shows  
22 Muncy as a destination. I think we agreed that Muncy is east  
23 of U.S. Highway 15?

24 A Yes.

25 Q So that one is not relevant, is that correct?

1 A Yeah.

2 Q In that same group, the third shipment from the end  
3 of the group, No. 780, first of all, on that one it shows  
4 Monaca in Beaver County as an origin point and Littleton as  
5 the destination. The index I have would show Littleton as  
6 being in Adams County. Would you check the map that I have  
7 given you, though, and see if it's east or west of U.S. 15?

8 A That would be east.

9 Q East. So that shipment would not really be involved  
10 either, is that correct?

11 A That's correct.

12 Q On that particular bill there's a 60 percent discount  
13 shown, is that right?

14 A Yes, that's correct.

15 Q These shipments were on July 31. Is that the time  
16 that you were with -- a participant in the MAC 105 Tariff?

17 A July 31st, yes, we were.

18 Q And would the 60 percent discount rate be in that  
19 tariff?

20 A It would either be in that tariff or our PUC 46  
21 Tariff. I'm not sure. The PUC 46 we publish as an exception  
22 rating, but show it as a discount on the bill for certain  
23 accounts which has been --

24 Q I misunderstood you, then. I thought that you had --  
25 prior to joining this 105 Tariff, I thought you had either the

1 write-in tariff or the No. 46, which is your own tariff.

2 A Which is our own tariff.

3 Q I thought you then discontinued both of those and  
4 went to MAC 105?

5 A No, we did not.

6 Q You still have the two tariffs?

7 A The one tariff, 105, is strictly a discount tariff,  
8 and the PUC 46 is a class and commodity tariff.

9 Q Why would you then look at No. 46 Tariff as opposed  
10 to the MAC 105 Tariff?

11 A Before the write-in tariff went up to a certain  
12 percentage discount and we published anything. However, that  
13 base level in the 46 Tariff as a commodity type item --

14 Q Does that No. 46 Tariff then refer to a 60 percent  
15 discount?

16 A I'm not sure which tariff that would be published in.

17 Q Let's assume you had to look at the No. 46 Tariff,  
18 just for argument's sake. Would there be a provision there  
19 that called for a 46 percent discount?

20 A It would be published in there, yes, I believe so.

21 Q What did you say a minute ago, that you were able to  
22 show it --

23 A Through an informal opinion, the PUC said you could  
24 publish a percentage of rates and then apply that discount,  
25 show it as a discount on your bill.

1 Q Could you explain what that means, a percentage of  
2 rates?

3 A In other words, you would -- say you apply 60 percent  
4 of the rates and then you -- that would amount to a 40 percent  
5 discount. In other words, if you had a \$10.00 rate and you  
6 applied 60 percent of that rate, it would be a \$6.00 rate. So  
7 instead of applying a \$6.00 rate, you would apply a \$10.00  
8 rate and put a 40 percent discount in, which amounts to the  
9 same thing.

10 Q So correct me if I missed something here, but in your  
11 example the tariff shows \$10.00 as the rate?

12 A Correct.

13 Q With some provision, that says you apply a 40 percent  
14 discount?

15 A Correct.

16 Q But the net number is not then shown in the tariff?  
17 In other words, the \$6.00 doesn't appear in the tariff?

18 A No.

19 Q In effect, what you then do is show on your freight  
20 bill under the rate column the full amount of the rate?

21 A Correct.

22 Q And then you show the discount?

23 A Correct.

24 Q And then you deduct that from the total freight bill  
25 and you get a net, which is what the shipper owes?

1 A Correct.

2 Q But that total amount that the shipper owes is  
3 nowhere contained in a tariff as such, you go through this  
4 formula --

5 A Correct.

6 Q -- to get there?

7 A Correct.

8 Q And that's done outside the tariff? The application  
9 of the discount to base rates is something that's done outside  
10 the tariff?

11 A Correct.

12 MR. GRAF: No, I don't agree with that. It's done --  
13 the calculation is outside the tariff, but the percentage is  
14 mentioned in the tariff.

15 MR. LAVELLE: Well --

16 JUDGE PORTERFIELD: It's consistent with the tariff.

17 MR. LAVELLE: That's what I meant to say. The formula  
18 is set out in the tariff, but the actual net number that's  
19 charged is done outside.

20 MR. GRAF: That's the way most discount tariffs are.  
21 You take a certain percentage of whatever class is specified,  
22 so you have to compute them from that.

23 (Brief pause.)

24 MR. LAVELLE: I have no further questions.

25 JUDGE PORTERFIELD: Any redirect, Mr. Graf?

1 MR. GRAF: One.

2 REDIRECT EXAMINATION

3 BY MR. GRAF:

4 Q You've referred several times to a write-in tariff  
5 and I'd like to clarify that. You had published a discount  
6 tariff, labeled as a discount tariff, as Freight PA PUC 41,  
7 and that was the one the Commission directed be canceled, is  
8 that correct?

9 A Yes, sir.

10 Q And is that what you're referring to as a write-in  
11 tariff?

12 A Yes.

13 Q And the reason you call it in write-in, the shipper  
14 had to write you a letter and say I want to participate in  
15 your discount in column, whatever number it was?

16 A That's correct.

17 Q And then you had to respond to the shipper and tell  
18 him your discount is accepted at the level you've requested?

19 A That is correct.

20 Q Just so that's clear.

21 A Yes.

22 Q And that's the tariff that you canceled when you went  
23 into MAC 105?

24 A Right.

25 MR. GRAF: I think that clears it a little better.

1 MR. LAVELLE: I'd like to ask a follow-up just to  
2 clarify that.

3 RE CROSS EXAMINATION

4 BY MR. LAVELLE:

5 Q Did the Commission tell you, in effect, that that  
6 tariff was not acceptable because there was no way, from the  
7 tariff itself, to figure out what discount was going to apply  
8 to any given shipment, since the correspondence that was  
9 exchanged was between the two parties, the carrier and the  
10 shipper, and the Commission might not have access to that  
11 information?

12 A That is one of the reasons. Another reason also was  
13 the effect that there was no way of applying it to all  
14 customers. In other words, you applied it just to a specific  
15 customer with no so-called basis.

16 Q So it was a potentially discriminatory type tariff?

17 A Correct.

18 Q They wanted it canceled for that also?

19 A That's correct.

20 MR. LAVELLE: I have nothing else.

21 JUDGE PORTERFIELD: Mr. Graf, you have another witness I  
22 presume.

23 MR. GRAF: Yes.

24 JUDGE PORTERFIELD: Can we take a very short break,  
25 five, six minutes just to freshen up?

1 MR. GRAF: You bet.

2 (A brief recess was taken.)

3 JUDGE PORTERFIELD: Back on the record.

4 MR. LAVELLE: Your Honor, we had an off the record  
5 discussion here about a point that Mr. McFarland made, and we  
6 have agreed that he can go back on the stand for just a couple  
7 of clarifying questions.

8 JUDGE PORTERFIELD: Real fine.

9 MR. GRAF: You don't want to do it by agreement?

10 MR. LAVELLE: Well, I'll ask him a couple questions.

11 MR. GRAF: Go ahead.

12 JUDGE PORTERFIELD: It's always better out of the  
13 witness' mouth, right, Mr. Lavelle?

14 MR. GRAF: Unless there's a stipulation of counsel.

15 FURTHER RECROSS EXAMINATION

16 BY MR. LAVELLE:

17 Q Mr. McFarland, on your Exhibit 24 we were talking  
18 about six shipments on that exhibit, the No. 744 through 758.  
19 Those were the ones that had either a Kentucky or an Alabama  
20 address for the shipper and were marked EX-Altoona?

21 A Correct.

22 Q And I may have used the wrong terminology in asking  
23 the questions because I used the word interline at one point,  
24 and you said no, they're not interline shipments. You said  
25 the origin point was actually Altoona, the other out-of-state



1 designation was where the shipper was located, its office and  
2 so forth?

3 A Correct.

4 Q Did those shipments actually begin at a point in  
5 their transit outside the State of Pennsylvania, such as  
6 Alabama or Kentucky?

7 A As far as the transportation has begun, they came in  
8 on their company truck to Altoona and were given to us at  
9 Altoona, which would still make it PUC originating in Altoona.

10 Q Okay. But just so we can trace it, the shipments did  
11 begin their transportation move out-of-state and came into the  
12 State of Pennsylvania to Altoona to you, to your terminal?

13 A Right.

14 Q At that point, then, your company accepted the  
15 shipment for movement to the Pennsylvania destination?

16 A Correct.

17 Q So as far as Ward's involvement is concerned, it was  
18 between two points in Pennsylvania?

19 A Correct.

20 MR. GRAF: But you have to add the company --

21 MR. LAVELLE: I'm going to add it. I can only take one  
22 question at a time.

23 BY MR. LAVELLE:

24 Q The documentation that you had doesn't indicate on it  
25 how the shipment came into the State of Pennsylvania, whether

1 it was by regulated carriage or company truck of the shipper,  
2 or anything like that, does it?

3 A It does not.

4 Q Okay. So you don't have any documentation here on  
5 those particular six shipments to show that it was company  
6 truck or otherwise, but you're saying that your own knowledge  
7 is that that's the way it comes in?

8 A That's according to my knowledge, right.

9 MR. LAVELLE: Your Honor, I have no other questions. I  
10 just wanted to clarify that because I had asked the questions  
11 and I think the record was standing that the actual, physical  
12 origin point was in the State of Pennsylvania.

13 JUDGE PORTERFIELD: Thank you, Mr. Lavelle. Do you have  
14 anything further, Mr. Graf, with respect to Mr. McFarland's  
15 testimony?

16 MR. GRAF: No, I don't think so. He's made it clear  
17 that it was company truck.

18 JUDGE PORTERFIELD: Okay. Thank you, Mr. McFarland.  
19 Next witness, Mr. McQuaide?

20 MR. McQUAIDE: Yes.

21 WILLIAM F. McQUAIDE, having been duly sworn, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. GRAF:

25 Q Give us your name and home address?

1           A   William F. McQuaide, One Briarwood Drive, Johnstown,  
2           Pennsylvania.

3           Q   With what company are you connected?

4           A   W.C. McQuaide, Inc.

5           Q   What's its address?

6           A   153 MacRidge Avenue, Johnstown, Pennsylvania.

7           Q   What is your capacity with that company?

8           A   I'm the executive vice president.

9           Q   In that capacity, are you familiar with the  
10          authorities, facilities and operations of the company?

11          A   I am.

12          Q   Are you authorized, by virtue of your title, to be  
13          the witness in this proceeding?

14          A   I am.

15          Q   Does your company possess authority from this  
16          Commission at Docket 84290, of which Folder 7, Amendment RR is  
17          pertinent?

18          A   Yes.

19          Q   And have you caused to be prepared copies of that  
20          particular folder and amendment for use as an exhibit?

21          A   Yes.

22          MR. GRAF: I request it be marked as Exhibit P-26.

23          JUDGE PORTERFIELD: So marked.

24          (Protestants' Exhibit No. P-26 was produced and  
25          marked for identification.)

1 BY MR. GRAF:

2 Q Mr. McQuaide, does this authority grant you statewide  
3 authority in Pennsylvania, except for household goods and  
4 office furniture in use, bulk commodities, mobile homes, heavy  
5 hauling and refrigerated -- mechanically refrigerated  
6 equipment?

7 A It does.

8 Q Accordingly, can you serve any of the shippers  
9 involved in this proceeding, both territorially and  
10 commodity-wise?

11 A Yes, we can.

12 Q Do you also have authority from the Interstate  
13 Commerce Commission at Docket MC-116280, Sub 32?

14 A That's correct.

15 Q And have you made copies of that authority for use as  
16 an exhibit?

17 A Yes.

18 MR. GRAF: I request that this document be marked as  
19 Exhibit P-27.

20 (Protestants' Exhibit No. P-27 was produced and  
21 marked for identification.)

22 BY MR. GRAF:

23 Q Turning to Exhibit P-27 --

24 JUDGE PORTERFIELD: Do you have another one there, Mr.  
25 Graf?

1 MR. GRAF: Sure. Didn't I give you one?

2 JUDGE PORTERFIELD: No, I don't think so.

3 MR. GRAF: I thought I did.

4 JUDGE PORTERFIELD: Thank you.

5 BY MR. GRAF:

6 Q Mr. McQuaide, under Exhibit P-27, could you serve all  
7 of these supporting shippers to this application, as well as  
8 in interstate commerce?

9 A Yes.

10 Q Have you brought with you an exhibit which would set  
11 forth your terminal locations and facilities, employees, and  
12 set forth the categories in which they are employed?

13 A Yes.

14 MR. GRAF: I request that this document be marked for  
15 identification as Exhibit P-28.

16 JUDGE PORTERFIELD: So marked.

17 (Protestants' Exhibit No. P-28 was produced and  
18 marked for identification.)

19 BY MR. GRAF:

20 Q Mr. McQuaide, it appears from this exhibit that as to  
21 Pennsylvania you have two terminals, one at Johnstown and one  
22 at Bethel, is that correct?

23 A That's correct.

24 Q Now, do you have any equipment points at other points  
25 in Pennsylvania at which you store equipment, but do not

1 maintain the usual terminal facilities?

2 A Yes, we do.

3 Q And where, if any, are they located?

4 A Pittsburgh, Erie, Williamsport, Scranton,  
5 Philadelphia.

6 Q As far as full terminals are concerned, these are the  
7 two?

8 A That's correct.

9 Q And is the information shown on Exhibit P-28 correct?

10 A Yes, it is.

11 Q Have you also brought with you in exhibit form an  
12 equipment summary showing the owned and leased equipment of  
13 various types?

14 A Yes.

15 MR. GRAF: I request that this document be marked as  
16 Exhibit P-29 for identification.

17 JUDGE PORTERFIELD: So marked.

18 (Protestants' Exhibit No. P-29 was produced and  
19 marked for identification.)

20 BY MR. GRAF:

21 Q Mr. McQuaide, is the information shown on Exhibit  
22 P-29 correct?

23 A Yes, it is.

24 Q Now, it does show flatbed equipment, which I  
25 understand has been excluded from this application, but you

1 nonetheless have it?

2 A That's correct.

3 Q And it does show vans, which numerous witnesses  
4 requested?

5 A That's correct.

6 Q Now, does your company have a safety program?

7 A Yes, we do.

8 Q And beginning with the insurance coverage, will you  
9 tell us what that coverage is?

10 A We have our insurance through the Home Insurance  
11 Company. It's a million dollars coverage with an excess  
12 umbrella.

13 Our insurance -- our safety program begins with initial  
14 hiring of the driver, checking his past references. He takes  
15 both a written test and a road test. If he is hired, he's  
16 assigned to a driver trainer for a period of not less than one  
17 week to familiarize himself with our equipment and facilities.

18 From there on he's eligible for safety awards from the  
19 ATA and company awards, required to attend safety meetings.  
20 Anybody that's had an accident goes before a safety committee  
21 to try to determine what happened and how we can avoid it in  
22 the future.

23 Q Do you have your award program involving Green  
24 Stamps, or did you give that up?

25 A We gave that up. It used to be popular when the

1 stores were giving them, but it became less effective and so  
2 we went with other incentives.

3 Q And as to equipment, how do you maintain the safety  
4 of that?

5 A The equipment is -- a driver is paid one-half hour a  
6 day to inspect his vehicle. Then the truck is gone through --  
7 goes through our safety lanes for inspection of brakes,  
8 windshield wipers, lights, horn. It's gone over bumper to  
9 bumper in what we call our DOT inspection monthly and, of  
10 course, it has the state inspection twice a year.

11 Q Are you under safety investigation or suspension?

12 A No, we're not.

13 Q How do you arrange for communication between your  
14 Johnstown terminal, for example, and your equipment when it is  
15 out on the road?

16 A We have a two-way base radio station in Johnstown.  
17 The dispatcher can key his mike and speak to any truck  
18 anywhere in Pennsylvania.

19 Q Well, normally they have a limited range, don't they?

20 A Yes, they do, but we have both owned and leased  
21 towers located throughout the state that have repeaters on  
22 them, so in one simultaneous broadcast, the dispatcher is in  
23 constant contact anywhere in the State of Pennsylvania.

24 Q And I assume you --

25 A We're also using cellular telephones in a number of



1 the cities.

2 Q I see. You have tariffs on file and that you paid  
3 all the assessments, filed all the annual reports?

4 A We have.

5 Q Now, have you checked -- first of all, on the matter  
6 of discounts, you have had a discount tariff on file?

7 A That's correct.

8 Q And do you remember the number of it?

9 A PA PUC 17.

10 Q And that's the one the Commission directed cancel?

11 A That's correct.

12 Q And that will be replaced, if it hasn't been already?

13 A That's correct.

14 Q What do you propose going with, Middle Atlantic?

15 A Yes.

16 Q In connection with the service that you make  
17 available to shippers under your authority as set forth on  
18 Exhibit P-26, what type of service do you regularly hold out  
19 to them?

20 A Regular service is same day pickup, overnight  
21 delivery. We do same day service where possible. We offer  
22 both LTL and truckload shipments. We accept C.O.D.'s, order  
23 notify bills, government bill of lading. We offer scheduled  
24 pickups, scheduled deliveries, multiple pickup, multiple  
25 deliveries, van equipment, heated equipment.

1 Q How about job site deliveries?

2 A Yes, we offer job site delivery.

3 Q If a shipper wants you to handle both inbound and  
4 outbound, can you do that?

5 A Yes, we can.

6 Q If he wants you to combine interstate with intrastate  
7 traffic, can you do that?

8 A Yes. We do that on a daily basis.

9 Q Suppose they want you to spot equipment, would you do  
10 it if the volume were sufficient?

11 A Yes.

12 Q And you file your own tariffs at present, do you not?

13 A Yes, we do.

14 Q Do you have commodity rates in --

15 A Yes.

16 Q -- for certain accounts?

17 A Yes.

18 Q Now, have you prepared an exhibit which, for the year  
19 1988, reflects the traffic you have handled for the companies  
20 that supported this application?

21 A Yes.

22 MR. GRAF: I request that this exhibit be marked for  
23 identification as Exhibit P-30.

24 JUDGE PORTERFIELD: So marked.

25 (Protestants' Exhibit No. P-30 was produced and  
marked for identification.)

1 BY MR. GRAF:

2 Q Have you prepared a similar exhibit for the year  
3 1989?

4 A Yes.

5 MR. GRAF: I request that that exhibit be marked as  
6 Exhibit P-31 for identification.

7 JUDGE PORTERFIELD: So marked.

8 (Protestants' Exhibit No. P-31 was produced and  
9 marked for identification.)

10 BY MR. GRAF:

11 Q Turning first to Exhibit P-30, during the entire year  
12 it looks like you handled, for the supporting shippers, 50  
13 shipments involving some 26,816 pounds. There are two revenue  
14 figures shown, and I don't know the significance of those.  
15 What is the significance of the second figure of \$66.78?

16 A I don't know.

17 Q It seemed odd to have two figures of totals shown,  
18 and it relates back to Highway Equipment shows a double figure  
19 and so does A.R. Chambers.

20 JUDGE PORTERFIELD: It could be an accessorial charge of  
21 some sort.

22 THE WITNESS: It's something like that, but I'm not  
23 certain. I can't give you an accurate --

24 BY MR. GRAF:

25 Q Well, let's take the larger figure.

1 A All right.

2 Q Okay. Now, Exhibit P-31 just shows 37 shipments, but  
3 we're only up to the month of August, so it would look like  
4 you're going to come out about the same average or close to  
5 it. Looking at the very first shipment on Exhibit P-30, there  
6 were two shipments both going to New Brighton, and in  
7 combination weighed 772 pounds, and that's combined revenue?

8 A That's correct.

9 Q Would the same explanation apply in any case where  
10 the figure in the extreme righthand column is other than one?

11 A That's correct.

12 Q Would the same explanation apply as to Exhibit P-31?

13 A That's correct.

14 Q Now, in P-31 there are two with blank. Alling &  
15 Cory, Camp Hill and Erie, does not show weight, revenue or  
16 number of shipments. The same for Philadelphia. Is there any  
17 explanation for that?

18 A They didn't make any shipments.

19 Q What?

20 A They didn't make any shipments in 1989.

21 Q Oh, they called you, but you didn't get any traffic,  
22 is that it?

23 A They didn't call. It's just that I had requested the  
24 number of shipments from those locations and they were all  
25 zero. There was no shipments.

1           Q I see. So they are significant. The same would be  
2 true of Exhibit P-30 for Alling & Cory, Erie?

3           A That's correct.

4           Q Mr. McQuaide, why are you opposing this application,  
5 in view of the fact that the revenue appears to be rather  
6 insignificant?

7           A If the application were limited to the supporting  
8 shippers, I wouldn't be protesting it, but it -- the  
9 application is far more reaching. We've been in business for  
10 54 years and have acquired our various authorities from this  
11 Commission over that period of time, both by purchase and  
12 through application.

13           I have millions of dollars in equipment and terminal  
14 facilities involved here and we are already experiencing a  
15 significant amount of competition. The applicant is presently  
16 serving this territory through his interstate terminals, and  
17 so I don't see any need for the additional authority. We're  
18 not operating at capacity and we fear diversion of revenue.

19           Q What's your total gross revenue for 1988, do you  
20 know?

21           A It's about 24 million.

22           JUDGE PORTERFIELD: Does that include interstate  
23 revenues?

24           THE WITNESS: Yes, it does. It's about 50/50, about 12  
25 million PUC and about 12 million interstate.

1 BY MR. GRAF:

2 Q And for '89 so far?

3 A It's been about the same.

4 Q It's running about the same level?

5 A Yes, around \$2 million a month.

6 Q Have you solicited the accounts involved in this  
7 application?

8 A Yes, we have.

9 MR. GRAF: I tender the witness for cross examination  
10 and offer, subject thereto, Exhibits P-26 through P-31.

11 MR. LAVELLE: May I inquire if there are documents to  
12 support Exhibits P-30 and 31?

13 MR. GRAF: Here it is.

14 JUDGE PORTERFIELD: I knew that was coming. Do you want  
15 to take five or six minutes initially to see where you are?

16 MR. LAVELLE: Yeah. Maybe Mr. McQuaide can tell me  
17 where I'm supposed to look in here.

18 JUDGE PORTERFIELD: Can we go off the record for a few  
19 minutes?

20 MR. LAVELLE: Yes.

21 (A brief recess was taken.)

22 JUDGE PORTERFIELD: Back on the record. Mr. Lavelle has  
23 had an opportunity to review the underlying documents  
24 supporting Exhibit Nos. P-30 and P-31, I presume. Is that  
25 correct, Mr. Lavelle?

1 MR. LAVELLE: Yes, I have.

2 JUDGE PORTERFIELD: You may proceed with cross  
3 examination.

4 CROSS EXAMINATION

5 BY MR. LAVELLE:

6 Q Mr. McQuaide, when you were testifying about your  
7 terminal locations, you mentioned you had equipment points at  
8 five cities in the State of Pennsylvania?

9 A I named five, yes.

10 Q What exactly do you have, let's say, in the City of  
11 Philadelphia?

12 A I just have rented space where I can keep tractors,  
13 and we normally run twin trailers in, break them apart. The  
14 driver takes them in, goes off duty, two other drivers take  
15 the tractor that brought the twin trailers in, plus the one  
16 that's parked there, and they go out and peddle freight, bring  
17 them back, hook the two trailers together and then the driver  
18 takes them back to Johnstown.

19 Q So that there's no physical handling over a dock of  
20 the freight at that location?

21 A No.

22 Q All of that is done at what, either the Bethel or  
23 Johnstown terminals?

24 A That's correct.

25 Q Is that the same general type of operation you have

1 at the other four locations as well?

2 A Yes.

3 Q Do those operations involve both LTL and truckload  
4 shipments, or --

5 A Just LTL.

6 Q Just LTL?

7 A Yes.

8 Q You made brief mention about your discount tariffs,  
9 cancellation of your own No. 17 tariff, and either you have or  
10 are in the process of joining the MAC 105 Tariff, I take it?

11 A That's right.

12 Q Is the reason why that one tariff was canceled and  
13 you're entering other tariff basically the same as the witness  
14 prior to you testified about?

15 A Yes.

16 Q You heard his testimony and it's essentially the same  
17 reasoning?

18 A That's correct.

19 Q Your Exhibit 27, that's the ICC general commodities  
20 certificate, which is a 48 state operation.

21 A Yes. This is the --

22 Q What I want to show you and ask you a couple  
23 questions about is a brochure which was put out apparently by  
24 your company called Direct Service Points. Do you recognize  
25 it?



1 A Yes.

2 Q Is it relatively current?

3 A It's a looseleaf, and I can't tell whether it's  
4 current or not.

5 Q I didn't see any dates on the pages, so I wasn't  
6 sure. It does show your equipment location points in  
7 Pennsylvania, if that's of any help, if that's a recent  
8 development. I don't know. For example, Pittsburgh and  
9 Williamsport are shown on one of the pages. I don't know how  
10 long you've had them.

11 A Well, for example, they're showing Wilkes Barre.  
12 It's now Scranton.

13 Q Okay. Well, in any event, let me ask you a question  
14 about this. The brochure that I have has tabs in it with  
15 names of the surrounding states. Do you see that?

16 A That's correct.

17 Q And then with each one of those tabs there is a  
18 listing of points served, and the title on the front of this  
19 is Direct Service Points. Does that mean that you don't serve  
20 all 48 states on a direct basis? In other words, you don't  
21 offer service to all points in the United States on a direct  
22 service?

23 A At the present time we're not. Now, what we have  
24 done for certain customers is gone into Texas, Oregon, into  
25 Florida on a direct basis, but as a general rule, we would

1 pick up a shipment, maybe take it to Baltimore and give it to  
2 another carrier going down to Florida.

3 Q Okay. Where you have maybe taken it to Texas for a  
4 customer, that would probably have been a truckload shipment,  
5 would it not?

6 A It would have.

7 Q You're not operating that extensively on an LTL  
8 basis?

9 A No, we're not.

10 Q Insofar as the State of West Virginia is concerned,  
11 which is one of the items in this brochure -- let me back up a  
12 minute. There is a -- in the front of this brochure there's a  
13 depiction of the State of Pennsylvania and the surrounding  
14 states, and you pointed out earlier Wilkes Barre is now  
15 changed to Scranton?

16 A That's correct.

17 Q Surrounding certain of those states there is a red  
18 line. Do you see that?

19 A Yes.

20 Q I assume your company put that on there. What does  
21 that designate? What's that supposed to indicate for us?

22 A Basically, we're giving direct service to all the --  
23 to Pennsylvania and the counties in the surrounding states  
24 that would be within that red line.

25 Q Okay. It goes a little bit beyond the border of the

1 states, which I assume is meant to just differentiate the  
2 state line from your line, the red line we're talking about,  
3 red and blue line. For example, it takes in the entire State  
4 of Ohio?

5 A Yes.

6 Q Every point in Ohio is a direct point?

7 A Yes.

8 Q In New York it seems to be what I'll call the lower  
9 tier, is that right?

10 A That's correct.

11 Q What about the State of West Virginia? Is that  
12 basically the northern half of the state?

13 A Approximately, yes.

14 Q Now, on a general basis, if you have LTL freight  
15 going into the northern half of the state, including  
16 designated points on this map of Wheeling, Morgantown,  
17 Clarksburg, Parkersburg, would that be a direct or interline  
18 service?

19 A That would be a direct service.

20 Q Then if you go to the southern half of the State of  
21 West Virginia, which would be Charleston or Bloomfield --

22 A That would be an interline.

23 Q Where would the interline point be?

24 A It could vary. It could be Pittsburgh, might be  
25 Wheeling, might be Zanesville, Ohio.

1 Q What, is the interline point dependent on the  
2 destination of the traffic?

3 A That's correct.

4 Q And the carrier with whom you concur?

5 A Right.

6 Q Wherever that other carrier has -- at least in the  
7 panhandle and Ohio, it would be wherever the other carrier has  
8 a location?

9 A That's correct.

10 Q If it's Johnstown or -- I don't know about  
11 Pittsburgh, but maybe it would be your own facility where you  
12 interline -- or you wouldn't interline at your own terminal.  
13 It would have to be the other carriers?

14 A No, no. It would be the other carriers.

15 Q On your equipment list, P-29, you show 75 leased  
16 tractors. Do you know how many of those tractors would be  
17 domiciled and used essentially in those five satellite  
18 terminal areas, I'll call them?

19 A None of them.

20 Q None of them?

21 A No.

22 Q Do you have company-owned equipment there?

23 A Yes.

24 Q To what use do you put the leased tractors? Is there  
25 a particular use?

1           A   At one time they were used exclusively in our special  
2 commodities division. To a large extent they still are,  
3 hauling of solid loads, refractory seal, pipe, that sort of  
4 thing.

5           Q   I note that you have 38 flatbed trailers on your list  
6 also.

7           A   That's correct.

8           Q   Would 38 of those flatbed trailers be leased from a  
9 party that also has a tractor on lease to you?

10          A   Yes.

11          Q   And would that combination, then, basically be used  
12 for iron and steel traffic or refractory, or some of those  
13 type of products you mentioned?

14          A   That's correct.

15          Q   You have 16 vans. Are they, likewise, leased from an  
16 owner-operator or a fleet owner who also leases power  
17 equipment to you?

18          A   Yes.

19          Q   Then you have 21 power units, apparently, that are  
20 leased to you without trailers, just the power unit itself?

21          A   I didn't count them up, but --

22          Q   Well, I'm just taking the leased tractors and  
23 subtracting the leased trailers, so apparently there's 21  
24 leased power units without trailer equipment?

25          A   That's correct. Some owner-operators have both

1 flatbed and van equipment.

2 Q Okay. So to that extent, you might have more than 21  
3 power units alone leased --

4 A That's correct.

5 Q -- from an individual or fleet owner?

6 A Which would pull company trailers.

7 Q Now, the two traffic exhibits you gave us, Exhibits  
8 P-30 and P-31, they are intended to indicate the traffic  
9 handled by your company during either 1988 or the first, what,  
10 seven months of 1989, for companies that supported this  
11 application?

12 A That's correct.

13 Q Are the exhibits supposed to indicate traffic that is  
14 relevant to this application, in the sense that the origin and  
15 the destination are both within the scope of the authority  
16 being applied for?

17 A I believe it just indicates traffic that we've  
18 handled for them during those periods.

19 Q So that looking at your Exhibit 30, for example,  
20 which covers the year 1988, you show total weight and a total  
21 revenue figure of some \$2859.00. Am I reading that right?

22 A Yes.

23 Q That does not necessarily indicate that all of that  
24 traffic and revenue is subject to diversion by this  
25 application, though, does it, if there's traffic going to or

1 from non-application points?

2 A That's correct. As I had indicated, if the  
3 application were amended to serve just these customers, we  
4 would withdraw our protest.

5 Q You had given me the book of large computer printout  
6 which had shipments by all shippers, apparently in some  
7 fashion in there, and then in an off the record discussion you  
8 indicated that you had extracted from that information that  
9 showed for each of the entries on your two exhibits by  
10 customer the actual origin, destination, weight and revenue of  
11 each particular shipment, right?

12 A That's correct.

13 Q From which you took, then, the totals that appear on  
14 your Exhibits 30 and 31?

15 A That's correct.

16 Q All right. And you're satisfied that the summary  
17 documents that I was given are a true representation of what  
18 is in the full blown study?

19 A Yes.

20 Q Using those second step documents, I'll call them, as  
21 the underlying documents here for Exhibit 30, let's start with  
22 that one, the third entry down has to do with Highway  
23 Equipment Company. In the third column it shows Somerset,  
24 Pennsylvania. Is that supposed to be the origin or the  
25 destination of the traffic involved, or how do we interpret

1 that?

2 A It would be the origin.

3 Q Now, in all cases, is the town listed in that column  
4 supposed to be the origin?

5 A Yes.

6 Q Let me show you the documentation that we're using to  
7 support Exhibit 30, and it has to do with the Highway  
8 Equipment account with a Somerset designation. Now, first of  
9 all, are you taking the position that Somerset is, in fact, a  
10 point on or east of U.S. Highway 219, for purposes of this  
11 application?

12 A Fifteen years ago 219 ran through Somerset. Today it  
13 doesn't. It would be my understanding that if the point would  
14 be the customer location, whether it was west of 219 or east  
15 of 219, would be the pertinent --

16 Q Well, do you know whether or not this entry having to  
17 do with Highway Equipment located on Route 601 North is inside  
18 or outside of our application, so as to even make this traffic  
19 relevant?

20 A I don't know that.

21 Q Also, is it -- you have multiple locations for  
22 Highway Equipment Company. Four of them, in fact. You know  
23 that Highway Equipment Company did not send a witness with  
24 respect to the Somerset location?

25 A I didn't attend the hearings. I'm not aware of that.



1 I did read the reports, but I wasn't aware of that.

2 Q The witness was from the Zelianople plant, which is  
3 your second entry. But in any event, on this exhibit the  
4 first -- I'm looking at the underlying document. The first  
5 shipment would seem to show a customer located in Roaring  
6 Springs, is that correct?

7 A That's correct.

8 Q Do you know what county that is in?

9 A Blair County.

10 Q Now, if the shipper in Somerset here is located on  
11 and west of U.S. Highway 219, then the destination is on the  
12 eastern side of 219 and would make that shipment relevant,  
13 right?

14 A That's correct.

15 Q On the other hand, if that shipper is located to the  
16 east of U.S. Highway 219, we have both the origin and the  
17 destination within the central part of the state?

18 A That's correct.

19 Q Which would make it non-relevant?

20 A That's correct.

21 Q Do you understand that?

22 A I understand.

23 Q I'm going to go with some other examples with some  
24 other shippers along the same lines here. The second shipment  
25 goes to a customer in Morris, PA which, according to the index

1 I've used, and you can look at it here, and the map, would be  
2 in Tioga County. Would you happen to know where Morris itself  
3 is, though?

4 A I never heard of it.

5 Q The reason I ask is our eastern boundary, U.S.  
6 Highway 15, splits the county and I didn't know whether the  
7 point was east or west of U.S. Highway 15. I found a point on  
8 the map Morris Run, which it's east of U.S. Highway 15.

9 JUDGE PORTERFIELD: Do you want me to check the county  
10 map?

11 THE WITNESS: I see Morris Run there. Is Morris listed?

12 JUDGE PORTERFIELD: Tioga County?

13 MR. LAVELLE: Yes. The Pennsylvania highway map Mr.  
14 McQuaide is looking at shows a Morris Run, and I think we  
15 agreed that that's east of U.S. Highway 15, which would take  
16 it out of this application.

17 THE WITNESS: It's not even listed.

18 MR. LAVELLE: My index shows two towns, one Morris, the  
19 other Morris Run, both of them in Tioga County, so unless we  
20 can find it on the map --

21 JUDGE PORTERFIELD: Is it toward the southern portion of  
22 Tioga or the northern portion of Tioga, along 215 -- along 15,  
23 right, not 215?

24 MR. LAVELLE: Morris Run is about two miles east of U.S.  
25 15, about a third of the way from the southern border.

1 THE WITNESS: Near Blossburg.

2 MR. LAVELLE: Just east of Blossburg.

3 THE WITNESS: Morris doesn't seem to appear on -- yes,  
4 Morris is west of 219. It's in --

5 MR. LAVELLE: We found a Morris also which is west, so  
6 that makes that shipment okay. Two other destinations were  
7 Roaring --

8 JUDGE PORTERFIELD: On this map it shows Morris Run as  
9 clearly east of 15 and Morris clearly west.

10 MR. GRAF: Morris is west.

11 MR. LAVELLE: Morris is west, and I think his document  
12 shows Morris, not Morris Run, so we'll have to assume it's the  
13 one that's involved.

14 BY MR. LAVELLE:

15 Q There are two other shipments, Roaring Springs and  
16 Hollidaysburg. I think they're both in Blair County. Again,  
17 that would be the same discussion that applies with the first  
18 shipment?

19 A That's correct.

20 Q May or may not be, depending on where the shipper is  
21 located?

22 A That's correct.

23 Q You also have an entry on here from the Highway  
24 Equipment account, apparently in McKean. They must have an  
25 office in McKean?

1 A Right.

2 Q Do you know what county McKean is in.

3 MR. GRAF: According to your witness, it's Erie County.  
4 That's what he testified.

5 MR. LAVELLE: Okay. So that would be a relevant point.

6 BY MR. LAVELLE:

7 Q Let's drop down to the Pittsburgh Mack Sales account  
8 on that same exhibit. The underlying document shows that that  
9 company is located in Pittsburgh. I think you pointed out to  
10 me that there is a shipment on there going to Hagerstown, is  
11 that right?

12 A That's correct.

13 Q Weighing, what, 200 pounds and a \$3500.00 revenue?

14 A That's correct.

15 Q That would not be involved here, would it?

16 A This underlying document wouldn't show -- wouldn't  
17 list that shipment in P-30. Then I'm having a little bit of a  
18 problem with the documents here because your Exhibit 30 shows  
19 a total of seven shipments.

20 A Okay.

21 Q The actual underlying document, if I read it  
22 correctly, including that Hagerstown shipment, only shows six.

23 A Okay. So that one shipment should come out, that  
24 \$3500.00 worth of revenue. That Hagerstown would be in  
25 Maryland.

1 Q Do you know where Hanover, Pennsylvania is located?

2 MR. GRAF: York County.

3 MR. LAVELLE: York.

4 BY MR. LAVELLE:

5 Q If you look at the Pennsylvania map, then, would you  
6 agree that Hanover is well east of U.S. Highway 15?

7 A Yes.

8 Q So that shipment is really not involved, is it?

9 A No.

10 Q Looking at the underlying documents, then, you agree  
11 that we have a total for that Mack Sales account of four  
12 relevant shipments?

13 A That's correct.

14 Q Rather than seven?

15 A That's correct.

16 Q Which would require some adjustment in the weight and  
17 revenue figures, and I haven't done that, frankly, and if you  
18 want to do it, that's up to you, I suppose, either on or off  
19 the record.

20 MR. GRAF: I think he stated earlier that this was not  
21 necessarily confined to the scope of the application, but was  
22 traffic handled for the supporting shippers, regardless. That  
23 was my understanding of what he testified on direct.

24 MR. LAVELLE: Well then, Your Honor, we can shortcut  
25 this, I suppose, by agreeing that the traffic shown on

1 Exhibits P-30 and P-31 includes --

2 JUDGE PORTERFIELD: Shipments outside the area?

3 MR. LAVELLE: -- shipments outside -- to or from a point  
4 outside the State of Pennsylvania, or shipments within the  
5 State of Pennsylvania going beyond the scope of the  
6 application, so that --

7 MR. GRAF: Or shipments which are in dispute as to  
8 whether they are within or without.

9 MR. LAVELLE: Okay, as to Somerset. All right.

10 JUDGE PORTERFIELD: And even maybe some within.

11 MR. LAVELLE: I'll even say there are some shipments  
12 within, but in those three situations, two of which are  
13 clearly beyond and one of which may or may not be in, if we  
14 could stipulate that because of those possibilities with  
15 these, we can't conclude from these exhibits the extent to  
16 which shipments, weight or revenue --

17 JUDGE PORTERFIELD: Would be subject to diversion?

18 MR. LAVELLE: -- would be subject to diversion and,  
19 therefore, these exhibits and these figures cannot be used at  
20 any stage in this proceeding to try to support such a  
21 proposition. I'll stipulate to that and we'll go from there.

22 MR. GRAF: I don't know whether I'll stipulate to your  
23 conclusion, but I'll stipulate to everything else he said.

24 MR. LAVELLE: Well, I can't --

25 JUDGE PORTERFIELD: They can be used to the extent that

1 some -- I mean, they support the general proposition that some  
2 revenues would be subject to diversion.

3 MR. GRAF: From these accounts.

4 JUDGE PORTERFIELD: From these accounts. That's about  
5 the strongest statement that could be made, based on the  
6 exhibits.

7 MR. GRAF: Right.

8 MR. LAVELLE: With the understanding there could be one  
9 shipment with one dollar of revenue.

10 MR. GRAF: I'd say more than one because you've gone  
11 through some of these that apparently you've satisfied  
12 yourself on, and on Somerset, of the five --

13 JUDGE PORTERFIELD: Why don't we do this? Why don't you  
14 -- since you've obviously thoroughly researched it and you're  
15 not getting a lot of disagreement from the witness, perhaps  
16 you could put forth what your study found and if they have  
17 anything different, then put the burden back on them coming  
18 forward with it. That would save --

19 MR. GRAF: We didn't offer it for what you're --

20 JUDGE PORTERFIELD: If it's not all that painful of a  
21 thing to Mr. McQuaide, it would certainly expedite things if  
22 you would state the results of your perusal of the underlying  
23 documents.

24 MR. LAVELLE: I really can't, without going through each  
25 exhibit one-by-one. I can state it one-by-one and if Mr.

1 McQuaide as an objection to what I say, he can say so.

2 JUDGE PORTERFIELD: That's a possibility, just to --

3 MR. LAVELLE: Your Honor, I don't know how else to  
4 dispute the figures shown on this exhibit, without either  
5 getting a stipulation as I suggested or going through it.

6 JUDGE PORTERFIELD: I think you would acknowledge that  
7 your stipulation overreached somewhat, what the evidence might  
8 show.

9 MR. LAVELLE: I thought it was relatively fair.

10 JUDGE PORTERFIELD: That's all in the eye of the  
11 beholder, I guess.

12 MR. GRAF: It went a little too far on the conclusion.

13 JUDGE PORTERFIELD: Let's go off the record just a  
14 second.

15 (A discussion was held off the record.)

16 JUDGE PORTERFIELD: Let's go back on the record, and Mr.  
17 Lavelle is going to propose a stipulation and we think there  
18 is agreement with Mr. Graf as to the stipulation. Mr.  
19 Lavelle.

20 MR. LAVELLE: As I understand it, the agreement, or  
21 stipulation would be that Exhibits 30 and 31 of the protestant  
22 are intended to show the extent to which McQuaide Trucking  
23 Company is, or has handled traffic for any of the shippers  
24 that supported the application.

25 The exhibit is not intended to show specifically traffic



1 for any of those shippers that moved within the scope of this  
2 application, or the extent to which either number of  
3 shipments, weight or revenue of these shippers would be  
4 subject to diversion by approval of the application.

5 MR. GRAF: Agreed.

6 MR. LAVELLE: And that from what's developed already on  
7 the record, the total number of shipments, weight and revenue  
8 on each of these exhibits is not totally accurate because of  
9 either interstate shipments, shipments moving within the State  
10 of Pennsylvania to or from points beyond the scope of the  
11 application, or shipments, such as involving Somerset, which  
12 may be questionable. And for those reasons that we've  
13 identified there, at least three, these totals are higher than  
14 they should be.

15 MR. GRAF: No, I can't agree they're inaccurate. That's  
16 where the mistake is. I will agree that the number of  
17 shipments and the revenues are not totally applicable to the  
18 area of this application, but include shipments which are  
19 beyond the scope thereof and shipments which are questionable  
20 due to the location of the shipping point, and that they do  
21 not represent the total number of shipments or revenue which  
22 would be subject to diversion upon approval of the  
23 application. That's essentially what you're saying, and that  
24 I agree to.

25 MR. LAVELLE: Okay.

1 JUDGE PORTERFIELD: I don't think you lose anything with  
2 going along with his stipulation.

3 MR. LAVELLE: No. Just with one further clarification,  
4 and that is when you say they don't show totally the revenue  
5 and the shipments that could possibly be diverted --

6 MR. GRAF: That's right.

7 MR. LAVELLE: If anything, they show a higher figure and  
8 not a lower figure than the actual.

9 MR. GRAF: Well, if they don't show the total amount  
10 subject to diversion --

11 JUDGE PORTERFIELD: It could be either, is his point.  
12 The way you stated it was there could be many more dollars  
13 theoretically subject to diversion.

14 MR. GRAF: These figures would be reduced within the  
15 scope of the application area or the territory. That would be  
16 fine.

17 MR. LAVELLE: We agree with that.

18 JUDGE PORTERFIELD: I think there's an understanding.  
19 It's just a matter of stating what our thought is.

20 MR. LAVELLE: I would agree with that, and with that --

21 JUDGE PORTERFIELD: Forgo further cross examination on  
22 P-30 and P-31?

23 MR. LAVELLE: Yes. That would shorten it by an hour and  
24 a half.

25 JUDGE PORTERFIELD: Thank you, Mr. Lavelle and Mr. Graf.

1 MR. LAVELLE: I have no further cross examination of Mr.  
2 McQuaide either.

3 JUDGE PORTERFIELD: Any redirect, Mr. Graf?

4 MR. GRAF: No. I think we beat this one to death.

5 JUDGE PORTERFIELD: Okay. Thank you, Mr. McQuaide.

6 MR. GRAF: I do have a statement with respect to the  
7 protest of Evans Delivery Company which has participated by  
8 representation through me throughout this hearing.

9 Subsequent to the last day of hearing, in fact, about a  
10 week or ten days ago, I received a letter from Albert Evans,  
11 Jr., president of Evans Delivery Company, advising me that the  
12 company had been -- the authority had been sold to Arrow  
13 Carrier Corporation and that this order was final, and that  
14 accordingly, he did not wish to participate as Evans any  
15 further, and suggested that I write to Arrow Carrier Corp.,  
16 which I did. But he didn't give me the address of Arrow so I  
17 used their old one, which I think was in Carlstadt, New  
18 Jersey, only to find that the letter came back.

19 And then I received a letter from Arrow saying what's  
20 this case all about, and please write and tell me. So I wrote  
21 and told him the scope of it. I dictated the scope of it as  
22 amended and sent him the hearing reports of all of the  
23 hearings, and said please let me know whether you intend to  
24 attend the hearing or whether I am to withdraw the protest, or  
25 what you wish me to do.,

1 I have not had any response. Accordingly, I cannot do  
2 anything at this time with respect to Arrow Corporation,  
3 except to suggest that we should incorporate the Evans  
4 Delivery Company's operating authority which was attached to  
5 the protest which they filed, we did not, or I would have run  
6 copies.

7 And as soon as I find out what their position is, I will  
8 let everybody know. If they want to withdraw the protest,  
9 we'll withdraw it. If they want to leave it hang in limbo,  
10 we'll let it hang in limbo. But I will not request an  
11 additional day of hearing. They had adequate notice of it.

12 JUDGE PORTERFIELD: Let's identify for the record -- I  
13 suspect Mr. Lavelle has no objection to admitting a copy of  
14 Evans' authority, or now Arrows' authority, and we'll identify  
15 that, if it's attached to the protest as Mr. Graf represented  
16 it is, P-32.

17 MR. GRAF: And you want me to get copies of it and mail  
18 it out?

19 JUDGE PORTERFIELD: Yes, to at least the reporter. I  
20 have a copy and I'm sure Mr. Lavelle would appreciate a copy.

21 (Protestants' Exhibit No. P-32 was identified as a  
22 late-filed exhibit.)

23 MR. GRAF: I am also willing to do this, if they can  
24 send it to me. The order of the Interstate Commerce  
25 Commission under Section 113-43 (e) would be the one which

1 would confer the right to the Evans intrastate, as well as  
2 interstate authority, and if they have that order, I'd be glad  
3 to have it identified as Exhibit P-33.

4 JUDGE PORTERFIELD: Okay.

5 MR. GRAF: But if they don't send it to me, I have no  
6 way of getting it really, except a long, laborious process of  
7 writing the ICC and hoping they don't lose my letter. With  
8 that, I have nothing further to present.

9 JUDGE PORTERFIELD: Okay. The other matter -- it seems  
10 like this case -- was this case reassigned to me or did I have  
11 it from day one? It seems like it's been going on for a long  
12 time. I would presume counsel would want to file briefs. Is  
13 there any -- is there a strong desire not to file briefs?

14 MR. GRAF: I think I better file one, after seven days  
15 of --

16 JUDGE PORTERFIELD: Okay. Let's set briefing up. Does  
17 anybody object to 30 and 15 after receipt of transcript? Is  
18 that acceptable, or would you like something quicker than  
19 that? It won't get longer than that. It would get quicker.

20 MR. LAVELLE: Well then, let's go with 30 and 15.

21 MR. GRAF: Thirty and 15. If we need extensions, I  
22 don't suppose there would be a problem with that. You never  
23 know what's going to happen.

24 JUDGE PORTERFIELD: That's true, Mr. Graf. I'll send  
25 out a briefing letter, but basically, the briefing letter will

1 reflect our understanding that main briefs would be due 30  
2 days after receipt by the Secretary's office of the transcript  
3 of today's hearing, and reply briefs 15 days after the final  
4 date on which main briefs would be due. That is to say,  
5 counsel being prompt in filing their main briefs won't hasten  
6 the due date for the reply brief. Anything else today, Mr.  
7 Graf?

8 MR. GRAF: No, I have nothing.

9 JUDGE PORTERFIELD: Mr. Lavelle?

10 MR. LAVELLE: No, sir.

11 JUDGE PORTERFIELD: Thank you, gentlemen.

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15 (The hearing adjourned at 1:20 o'clock p.m.)

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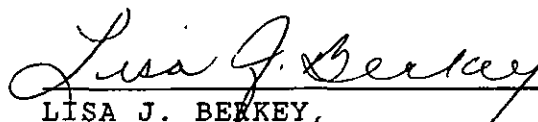
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1 I hereby certify that the proceedings and evidence are  
2 contained fully and accurately in the notes taken by me during  
3 the hearing of the within cause, and that this is a true and  
4 correct transcript of the same.

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