

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

KJR

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Application of McHale's Delivery Service, :
Incorporated. For the additional right to :
 transport, as a common carrier, office :
 products, office equipment, printing equip- :
 ment, clothing, non-bulk chemicals, and : Docket No.
 paper and printed items between points in : A-00105185,
 that part of Pennsylvania lying on and east : F002
 of U.S. Traffic Route 220 from the Maryland :
 state line to the New York state line, which :
 is to be in lieu of its contract carrier :
 permit. :
 :
 Prehearing Conference. :
 :
 ----- x

Pages 1 through 10

Hearing Room No. 3
North Office Building
Harrisburg, Pennsylvania

Wednesday, October 30, 1991

Met, pursuant to notice, at 10:05 a.m.

BEFORE:

LOUIS COCHERES, Administrative Law

RECEIVED

APPEARANCES:

NOV 20 1991

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PROPERTY OFFICE
Public Utility Commission

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Kinard Trucking Company; W.C. Kline, Inc.;
L&H Trucking Company; Penn's Best, Inc.; Posten
Taxi, Inc.; Powers Trucking Company; S&L Services,
Inc.; Transcontinental Refrigerated; West Motor
Freight Company of Pennsylvania; Yannuzzi Overland
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C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
(None)	--	--	--	--

E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>Applicant's</u> No. 1 (Amendment)	6	6

FORM 1

P R O C E E D I N G S

1 ADMINISTRATIVE LAW JUDGE LOUIS COCHERES: Good morning.

2 For those of you who don't already know, my name is
3 Louis Cocheres. I am the Administrative Law Judge assigned
4 to hear the matter of the application of McHale's Delivery
5 Service, Incorporated, at Commission Docket No. A-00105185,
6 Folder 2.

7 Today was originally scheduled to be a hearing. At
8 the request of the Applicant, it has been converted into
9 a prehearing conference. I think, based mostly on the repre-
10 sentation that we are standing on the threshold of, perhaps,
11 a rather lengthy, but effective restrictive amendment which
12 should do away with many of the protests that are involved
13 in this proceeding.

14 Before I begin asking Mr. Roberts some questions, I
15 would like to inform everyone that yesterday I received a
16 phone call from Mr. Ciemniecki. For the court reporter, I
17 will spell that. That is C-i-e-m-n-i-e-c-k-i. He is
18 representing the Protestant, Jāmour, Incorporated, trading
19 and doing business as Quick Courier Service.

20 Mr. Ciemniecki indicated to me that he had received a
21 comprehensive, restrictive amendment from Mr. Robert's office,
22 and that on behalf of his client, he was authorized to agree
23 to it. He asked if he could be excused from coming up here
24 today.

25 I granted his request and indicated to him he should

1 follow up his acceptance of the restrictive amendment in
2 writing: He said he would.

3 MR. FULLERTON: Can we go off the record?

4 JUDGE COCHERES: Yes.

5 (Discussion off the record.)

6 JUDGE COCHERES: Back on the record.

7 Thank you, Mr. Fullerton. I was just going to ask
8 if Mr. Petri was here because I don't recognize all counsel.

9 MR. FULLERTON: I will enter him.

10 JUDGE COCHERES: So you are here not only on behalf
11 of an extensive list of clients yourself, but also representing
12 J. C. Services, Incorporated?

13 MR. FULLERTON: Yes; Scott Petri for J.C. Services, Inc.

14 JUDGE COCHERES: Fine. Thank you. I do appreciate
15 that. With that in mind, I note that we have appearances
16 today by Mr. Roberts, representing the Applicant; Mr. Walter,
17 Messrs. Olsen and Olsen, representing Protestants;
18 Mr. Campbell, Mr. McQuaide and Mr. Fullerton, all
19 representing an extensive list of Protestants.

20 I believe during a previous telephone conversation,
21 Mr. Roberts tried to get me to either postpone or convert
22 today's hearing into a prehearing.

23 He represented to me that he has about 23 Protestants
24 in this case. I certainly believe him.

25 MR. ROBERTS: I believe it is a little more than that.

1 It is 25.

2 JUDGE COCHERES: When you pick a fight, you certainly
3 know how to pick one. How are we doing here, Mr. Roberts?
4 What can you tell me about this restrictive amendment?

5 MR. ROBERTS: Your Honor, as a preliminary matter, I
6 am having difficulty hearing, unfortunately. I have a double
7 ear infection, and my inner ear canals are swollen shut. I
8 can't hear well. So if people would just speak up, I would
9 appreciate it.

10 JUDGE COCHERES: Were you able to hear everything I
11 said?

12 MR. ROBERTS: So far, yes. You don't have to shout.
13 Just speak up a little bit, please.

14 JUDGE COCHERES: Fine.

15 MR. ROBERTS: I have submitted restrictive language
16 to all counsel, and I have had contact with Mr. Ciemniecki,
17 who indicated that he was satisfied with that. I have not
18 had any response from other counsel only because I assume
19 delay on my part in terms of getting it all together and
20 getting it to them.

21 So I am not aware what position opposing counsel would
22 have at the present time on the restrictive language.

23 JUDGE COCHERES: Why don't we go off the record for
24 a moment, although I see Mr. Walter has his hand up.

25 MR. WALTER: May I suggest two things, Your Honor?

1 May we make the amendment a part of the record, because I am
2 not so sure it is. Then I can withdraw and leave. I don't
3 want to participate in the discussions.

4 JUDGE COCHERES: All right.

5 Mr. Roberts, do you have a copy that you can submit
6 today?

7 MR. ROBERTS: Yes, I do, Your Honor.

8 JUDGE COCHERES: Would you happen to have a total of
9 three copies?

10 MR. ROBERTS: I do not, Your Honor.

11 JUDGE COCHERES: We will do with one then. We will
12 call that Applicant Exhibit 1. It is admitted.

13 (Whereupon, the document was
14 marked as Applicant's Exhibit
15 No. A-1 for identification,
and was received in evidence.)

16 JUDGE COCHERES: Recognizing the wisdom of Mr. Walter's
17 suggestion, is there anyone who would like to volunteer to
18 accept the restrictive amendment that has just been marked as
19 Applicant's Exhibit No. 1?

20 MR. WALTER: If no one else will, I will, of course.
21 The amendment, which I assume is the same amendment that was
22 attached to Mr. Roberts' letter of October 24th, would satisfy
23 the interest of my client, which is Way Services, Incorporated,
24 doing business as Way Messenger Service.

25 Upon acceptance by Your Honor of the amendment, we

1 would ask the protest of Way Services, Incorporated, be
2 withdrawn and that I be excused from further participation.

3 JUDGE COCHERES: That is fine. I assume you also want
4 to remain a party?

5 MR. WALTER: We do, in fact, prefer to remain a party
6 of record for service purposes; that is correct.

7 JUDGE COCHERES: I probably ought to take a look at
8 the amendment. I don't imagine there is anything in it.
9 Occasionally, I find something.

10 (Document handed to Judge Cocheres.)

11 (Pause.)

12 JUDGE COCHERES: Let's be off the record.

13 (Discussion off the record.)

14 JUDGE COCHERES: Back on the record.

15 I have had the opportunity to review the restrictive
16 amendment. I can't tell you that I have spent a lot of time
17 on it, but I don't see anything offhand that I find offensive.

18 Some things are real obvious, like limitations on the
19 amount of equipment that can be used or what have you, but
20 there is nothing like that in this.

21 So with that in mind, Mr. Walter, as far as I am
22 concerned, you may be excused at this time for the benefit
23 of your client.

24 MR. WALTER: Thank you, Your Honor. I appreciate that.

25 JUDGE COCHERES: Is there anyone else that is prepared

1 to accept the amendment in its present form?

2 (No response.)

3 JUDGE COCHERES: I see.

4 MR. CAMPBELL: Your Honor, I may be, but I haven't
5 had an opportunity to get authority to do that. Because of
6 not getting it until yesterday -- I was out of town on
7 Monday -- I haven't had a chance to get authority.

8 So I need to talk to Mr. Roberts and also my client
9 before I can officially withdraw.

10 MR. K. OLSEN: Your Honor, Kenneth Olsen. I would
11 also like an opportunity to talk to Applicant's counsel
12 regarding some language in the restrictive amendment before
13 I can make representations on the record about the protests
14 of my clients.

15 MR. FULLERTON: That is my position, too. I would
16 like to discuss briefly with the Applicant this.

17 JUDGE COCHERES: It sounds like we need time off the
18 record where the Judge disappears. So let's go off the record.
19 How about if I come back in about 15 minutes? Will that give
20 you enough time? If it is not, I can disappear again. My
21 office is only about 50 feet away.

22 (Discussion off the record.)

23 JUDGE COCHERES: Back on the record.

24 In our off-the-record discussions, the parties first
25 had the opportunity to discuss the restrictive amendment that

1 had been proposed. They, I believe, have come up with a
2 further restriction. I am not going to try to characterize
3 it other than to say that obviously a small amount of redraft-
4 ing is going to be necessary.

5 All of the Protestants' counsel that are present
6 have indicated that they are willing to recommend the new
7 language to their clients. So I have set November 12th
8 as a deadline by which time all of Protestants' counsels
9 will report to Mr. Roberts as to whether there is a settlement
10 or not. Then he will, in turn, on or before November 12th
11 report to me whether there is a total settlement of this
12 case or whether there is a need for a hearing. I think
13 it would be best to do that in writing so we can get something
14 off the ground here.

15 MR. ROBERTS: Very good.

16 JUDGE COCHERES: Counsel is also aware of the possibility
17 of the modified procedure in the event there is a total
18 settlement with the Protestants.

19 Are there any other matters we need to discuss on
20 the record today?

21 (No response.)

22 JUDGE COCHERES: All right then. I thank you for
23 coming. I appreciate your cooperation in trying to get
24 this settlement together.

25 (Whereupon, at 11:51 a.m., the prehearing conference
was concluded.)

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

By: Sandra Milus-Brown
Sandra Milus-Brown

FORM 1

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