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March 14, 1985

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MAR 15 1985

SECRETARY'S OFFICE
Public Utility Commission

Honorable Jerry Rich, Secretary
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. Box 3265
Harrisburg, PA 17120

Re: Application of J. F. Lomma, Inc.; Docket No. A. 105101

Dear Secretary Rich:

Enclosed please the original and nine (9) copies of the Brief of Applicant, J. F. Lomma, Inc., which is being filed in connection with the above-captioned proceeding.

Copies of the enclosed have been served upon Administrative Law Judge Joseph J. Klovekorn and upon all parties of record.

Very truly yours,

James W. Patterson
JAMES W. PATTERSON

JWP/mkk
Enclosure

cc: Joseph J. Klovekorn, Administrative Law Judge
Alan Kahn, Esquire
William A. Chesnutt, Esquire
John A. Pillar, Esquire
Angelo M. Monaco

DOCUMENT
FOLDER

ORIGINAL

Before The

PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

APPLICATION OF

:

DOCKET NO.

J. F. LOMMA, INC.

:

A. 105101

MAR 15 1985

SECRETARY'S OFFICE

Public Utility Commission

**BRIEF OF APPLICANT
J. F. LOMMA, INC.**

J. F. LOMMA, INC.

By: James W. Patterson
Edward L. Ciemniecki

**DOCUMENT
FOLDER**

DOCKETED

MAR 15 1985

Of Counsel:

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ORIGINAL

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I. STATEMENT OF THE CASE

By application filed on or about September 23, 1983, J. F. Lomma, Inc. ("Lomma" or "Applicant") sought the following common carrier operating authority:

Property, which because of size or weight requires the use of rigging, special handling or special equipment, between points in Pennsylvania.

Eleven (11) carriers filed protests in opposition to the application. At the initial hearing held in this proceeding on June 26, 1984, Applicant submitted a Restrictive Amendment, limiting the authority requested herein to the following:

Property, which because of size or weight requires the use of rigging, special handling or special equipment, between points in Pennsylvania

Provided that no right, power or privilege is granted:

1. To provide service in connection with any shipment weighing less than thirty-five (35) tons to or from the Monroe County facilities of:

a. Pocono Fabricators, Division of Patterson-Kelly Company, Inc.

b. Patterson-Kelly Company, Inc., Division of Harsco Corp.

c. International Boiler Works

2. To transport bulldozers, graders, draglines and other earth moving and coal moving equipment between points in and west of the Counties of Potter, Clinton, Centre, Blair and Bradford.

Following submission of the Restrictive Amendment all but four (4) of the protests were withdrawn. The application is now opposed by Frank W. Hake, Incorporated ("Hake"), David Graham Company ("David Graham"), Daily Express, Inc. ("Daily Express") and Moore-Flesher Hauling Company, Inc. ("Moore-Flesher").

Hearings were held before Administrative Law Judge Joseph J. Klovekorn on June 26 and 27, October 9, and December 6, 1984 in Philadelphia, and on August 20, 1984 in Pittsburgh. Lomma presented the testimony of one

operating witness and witnesses from sixteen (16) ^{1/} supporting shippers. A witness appeared and testified on behalf of each of the four remaining protestants.

At the conclusion of the final hearing the parties were instructed to file briefs. This constitutes the Main Brief of J. F. Lomma, Inc.

II. SUMMARY OF TESTIMONY

A complete Digest of Testimony of the witnesses who testified in this proceeding is attached to this Brief as Appendix 1.

III. APPLICABLE LAW

The evidentiary standards by which this application is to be judged are found in the provisions of Section 41.14 of Title 52 of the Pennsylvania Code (52 Pa. Code §41.14). ^{2/} This Section provides as follows:

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

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

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

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be

^{1/} Fifteen (15) witnesses testified in support of the application. One witness, Charles W. Rhinier, testified on behalf of two supporting shippers — Schramm, Inc. and Pneumatic Electric and Equipment Company.

^{2/} 52 Pa. Code §41.14 is applicable to all applications filed after January 1, 1983. (12 Pa. Bulletin 4282). The current text of this Section finds its source in The Transportation Regulatory Policy promulgated at Docket M-820319 on November 19, 1982.

contrary to the public interest. (52 Pa. Code §41.14)

Stated otherwise, it is Lomma's burden to establish that the transportation service it proposes will serve a useful public purpose, responsive to a public demand or need and that Lomma has the technical and financial ability to provide the proposed service. When and to the extent Lomma satisfies that burden, the application is to be granted commensurate with the demonstrated public need unless: 1. it is established that Lomma lacks a propensity to operate safely and legally; or 2. it is established that the entry of Lomma into the market would endanger the operations of existing common carriers to such an extent that allowing entry would be "contrary to the public interest."

A review and analysis of the record forces the conclusion that Lomma has satisfied its burden of establishing need and fitness and that there is no evidence of record which could justify the conclusion that significant adverse competitive impact will occur to protestants as a result of a grant of the application, let alone adverse impact sufficient to be characterized as contrary to the public interest. Lomma therefore seeks a grant of the application in its entirety.

IV. BACKGROUND INFORMATION - HEAVY HAULING TRANSPORTATION

In order to properly evaluate the evidence presented in this proceeding, it is necessary to have a thorough understanding of the nature of "heavy hauling" transportation as that term is utilized within the context of Pennsylvania intrastate commerce.

As noted in Section I above, the instant application seeks authority to transport "property, which because of size or weight requires the use of rigging, special handling or special equipment, between points in Pennsylvania." This is the traditional operating authority phrasing used by the Pennsylvania Public Utility Commission to describe the specialized field of motor carrier service

referred to in the parlance of the trade, as "heavy-hauling" or "size and weight" transportation. The Commission has determined that operating authority so phrased permits the transportation of "heavy and bulky items such as road building equipment, machinery, huge tanks and other fabricated items which could not be readily transported upon ordinary motor vehicles." Application of Jacoby Transportation System, 44 Pa. P.U.C. 809, 817, 823 (1970).

In endeavoring to mark the line of demarcation between heavy-hauling service and regular carrier service, the Commission, in a number of cases, has interpreted the phrase "rigging, special handling or special equipment." This word-formula has been deemed to refer to both 1. the vehicles used and 2. the loading and unloading devices employed. Pennsylvania Public Utility Commission v. John P. Sorice, t/d/b/a John P. Sorice Trucking, 48 Pa. P.U.C. 268 (1974); Pennsylvania Public Utility Commission v. C.F. Sanguigni, t/a/ Sanguigni Sons Company, 25 Pa. P.U.C. 535 (1946). "Special equipment," as utilized in the word-formula, includes "lowboys, pole trailers, drop trailers, trailers which can be expanded in length and other specialized vehicles," but does not include regular flatbed trailer equipment. Jacoby, supra. at 817. The "loading and unloading equipment" encompassed within the term "special equipment" include cranes, booms and other similar equipment, but not if this equipment is provided by the shipper and consignee of the involved shipment. Western Pennsylvania Intrastate Steel Haulers' Conference v. John P. Sorice Trucking, 42 Pa. P.U.C. 110 (1965).

In sum, in order to qualify as heavy-hauling the transportation service must require and actually take place on specialized transportation equipment, or, if specialized transportation equipment is not required and used, the carrier or an agency brought to bear by the carrier (other than the shipper or consignee) must supply and use specialized loading/unloading equipment to handle the shipment.

The service proposed by Lomma in this proceeding is squarely within

this tightly defined field of service. The evidence presented in the instant proceeding will be dealt with in light of this definition of the heavy-hauling field of service.

V. ARGUMENT

A. Lomma Has Established That The Proposed Service Will Be Responsive To A Public Demand Or Need

An applicant for a Certificate of Public Convenience and Necessity bears the burden of proving a need for the proposed service. It is well-established that an applicant, in proving need, has only to establish that the proposed service is reasonably necessary for the accommodation and convenience of the public - proof of absolute necessity for the service is not required. Pennsylvania Public Utility Commission v. Purolator Courier Corp., 24 Pa. Commw. 301, 355 A.2d 850, 852 (1976); Application of Ward Trucking, 43 Pa. PUC 689, 700 (1968); Carl R. Bieber, Inc. v. Pennsylvania Public Utility Commission, 3 Pa. Commw. 236, 281 A.2d 351 (1971); Zurcher v. Pennsylvania Public Utility Commission, 173 Pa. Super. 343, 98 A.2d 218 (1953).

The elements of proof which may constitute a showing of a need for service depend upon the locality involved and the particular circumstances of each case. Noerr Motor Freight, Inc. v. Pennsylvania Public Utility Commission, 181 Pa. Super. 322, 330, 124 A.2d 393 (1956). Moreover, the sufficiency of the evidence to support a grant of authority is directly related to the nature and extent of the authority sought. Chemical Tank Lines, Inc. v. Pennsylvania Public Utility Commission, 193 Pa. Super. 607, 619-620, 165 A.2d 668 (1960).

Although inadequacy of existing service is no longer an issue in proceedings such as this, an applicant may introduce evidence that the existing service does not satisfy the public need and that the proposed service would tend to correct or substantially improve that condition, as a means of proving public need for the proposed service. Morgan Drive Away, Inc. v. Pennsylvania Public

Utility Commission, 16 Pa. Cmwlth. 293, 298, 328 A.2d 194 (1974); Zurcher, 173 Pa. Super. at 349; Kulp v. Pennsylvania Public Utility Commission, 153 Pa. Super. 379, 382, 33 A.2d 724 (1943).

An applicant for operating authority is not required to demonstrate a necessity for service in every square mile proposed to be served. Rather, a showing of a more generalized need for service is sufficient. Reeder v. Pennsylvania Public Utility Commission, 192 Pa. Super. 298, 162 A.2d 231 (1960); Application of Lyons Transportation Lines, Inc., 42 Pa. P.U.C. 605 (1966).

The foregoing standards measuring the burden placed upon an applicant have developed as a result of numerous Court interpretations of the Public Utility Code since 1937. It is important to note that each of the cases cited above predates the Commission's adoption of the Transportation Regulatory Policy ("TRP") effective January 1, 1983. The thrust of the TRP is directed toward easing the evidentiary requirements placed upon an applicant for operating authority and toward lessening an applicant's burden in terms of the issues to be addressed. (See Docket No. M-820319, Order entered November 22, 1982). It is evident, in short, that the intent of the Regulatory Policy was to make it easier to obtain operating authority. As the Commission stated in its December 17, 1982 Order (On Petitions for Reconsiderations) in M-820319

The substance of the proposal was to eliminate an applicant's burden of establishing the inadequacy of the existing service. Instead, a protestant would assume the burden of showing that the entry of a new carrier would endanger the operation of an existing carrier to such an extent that, on balance, granting the application would be contrary to the public interest.

In light of the Commission's post-TRP, relaxed entry standards and in view of the specialized nature of the proposed service, the evidence presented herein is more than sufficient to support a grant of the application.

Lomma presented the testimony of sixteen (16) supporting shippers

who testified to their desire to employ its service in the application territory. Their testimony, particularly when considered within the context of heavy hauling service as outlined in Section IV above, is sufficient to support a finding of a public need for Lomma's service.

Attached to this Brief as Appendix 2 is a listing of origins and destinations specifically identified by the supporting shippers. A review of Appendix 2 reveals that the supporting shippers have indicated a need for Applicant's service throughout Pennsylvania. Thirty-eight (38) origins of traffic were specifically identified, while fifty-eight (58) destinations covering the entire application territory were cited by the supporting shippers.

In addition to the specific origins and destinations identified in the record, several shippers testified to a need for Lomma's service throughout Pennsylvania. For example, the witness from Fuller Company testified that "wherever the cement industry is concentrated we could be shipping" and that he ships to whatever point the contracting customer requires a delivery to be made. (T. 117, 118). Similar testimony was offered by the witness from Erie Strayer Company who testified that Erie Strayer's "destinations are unpredictable" and that Erie Strayer ships "to any site where a concrete batching plant is being constructed." Seco/Warwick's witness testified that "(a)ny point at which a new manufacturing facility is being constructed is a potential destination for our [industrial furnaces] traffic." (Exhibit A-10, p. 1; Exhibit A-13, p. 2). Metropolitan Edison's witness indicated that his company maintains transformers in hundreds of substations interspersed throughout its service territory (which includes a large section of eastern Pennsylvania) and that these transformers move to and from maintenance facilities as well as between various points within Met Ed's service area. (T. 44-47). Finally, the witness from Schramm, Inc. and PEECO testified that those companies ship directly to customers that can be

situated at any point in Pennsylvania and that they were therefore "fully supporting J.F. Lomma for statewide authority." (Exhibit A-12, p. 2).

It is clear from this brief review of the evidence that the shippers who appeared in this proceeding have presented sufficient evidence to provide an ample basis for a finding that there is a need for service throughout the entire application territory.

Not only have the supporting shippers indicated that they require service to and from points spread throughout Pennsylvania, their testimony also reflects a significant volume of traffic moving within the scope of this application. Volume figures identified by the witnesses range from one shipment every 2 to 3 months (Keeler/Dorr-Oliver) to 25 to 50 shipments per year (Fuller Company). (T. 73, 115-116). Most of the supporting shippers indicated an average of 1 to 2 Pennsylvania intrastate heavy hauling shipments per month. (T. 43-43, 98, 238-239; Exhibit A-5, p. 2; Exhibit A-7, p. 2; Exhibit A-9, p. 2; Exhibit A-10, p. 2; Exhibit A-12, p. 2; Exhibit A-13, p. 2; Exhibit A-14, p. 2). In addition to the stated traffic volumes, several supporting shippers testified that they expect their Pennsylvania heavy hauling volume to increase and cited this increased volume as one of the bases of their support for the instant application. (T. 73, 98, 223; Exhibit A-9, p. 2; Exhibit A-15, pp. 2-3).

While the traffic volumes cited above might not be deemed significant were this an application seeking general property authority, the stated volumes of traffic are substantial in light of the specialized nature of the transportation involved in this proceeding. The Commission in Rule Against W.J. Dillner Transfer Company, 30 Pa. P.U.C. 362 (1952) recognized that when the type of service proposed is limited, the territory within which such service is to be provided must be correspondingly broad.

The type of service offered by and the rights granted to the so-called "heavy haulers" has been limited

to the transportation of extremely heavy or bulky machinery, equipment or materials such as are commonly used in or in conjunction with construction projects. The transportation of such property is a specialized transportation service, which requires for its efficient conduct inherently special vehicular equipment. The temporary or permanent attachment of blocks, chocks or chains to an otherwise ordinary truck or trailer does not transform it into such special equipment. We have always recognized that heavy machinery, equipment or materials do not move with regularity or frequency, between definite points. We have recognized, too, that the specialized equipment necessary to perform such service requires a heavy initial investment which would be difficult to recoup if the heavy-hauler were confined to a relatively small service area. The Commission's policy under the circumstances therefore has been to grant heavy-hauling rights throughout a wide territory, between unspecified points of origin and unspecified points of destination over any routes available. Dillner, supra. at 367 (emphasis added); See, also, Application of Allied Asphalt Co., Inc., 43 Pa. P.U.C. 622 (1968).

Lomma has produced shipper testimony which is more than adequate to establish that the service proposed by Lomma — specialized, heavy hauling service — would be responsive to a public demand or need.

As indicated above, an additional means by which an applicant can satisfy its burden of proving a need for the proposed service is by establishing that the existing service does not satisfy the public need and that the proposed service would tend to correct or substantially improve that condition. Morgan Drive-Away v. Pennsylvania Public Utility Commission, 16 Pa. Commw. 293, 298, 328 A.2d 194 (1974); Zurcher v. Pennsylvania Public Utility Commission, 173 Pa. Super. 343, 98 A.2d 218 (1953). The instant record is replete with examples of service problems which the supporting shippers have encountered in their use of existing service. The following is a brief listing of some of the service difficulties identified by the supporting shippers in this proceeding:

Supporting Shipper

Service Problem

1. Keeler/Dorr-Oliver Dan Barkley provided an inappropriate trailer and had an improper permit, resulting in delayed delivery. (T. 78-80); Damage claim with McCormick Dray Line. (T. 83).
2. Zurn Industries Daily Express has problems handling shipments which are more than 21 feet in length. (T. 94).
3. Fuller Company David Graham incapable of handling larger heavy hauling shipments. (T. 120); Hake's equipment is occasionally tied-up. (T. 120); Daily unable to handle certain types of shipments. (T. 120-121).
4. Metropolitan Edison Witness has called carriers for service and been advised that they could not handle the shipments in question. (T. 50).
5. Pennsylvania Electric Coil, Inc. Shipper has lost availability of one of its major carriers. (Exhibit A-5, p. 2).
6. Duquesne Electric Has difficulty obtaining double-drop lowboy trailers. (T. 198).
7. Westinghouse Electric Has experienced difficulty in obtaining the type of equipment that it requires. (Exhibit A-11, p. 2); Unable to acquire equipment on short notice. (T. 262); It took David Graham 1 week to provide the type of tractor required to handle a certain shipment. (T. 232-233).
8. Seco/Warwick Present carrier's inability to properly handle traffic forces this shipper to ship products in a "knocked-down" condition with resulting increased costs. (Exhibit A-13, pp. 2-3); Contacted Daily Express for service 12 times in a 1 year period and each time was advised that Daily had no equipment available. (T. 301).
9. Pittsburgh/Des Moines Feels that existing carriers have insufficient equipment to handle all of his traffic. (T. 348).

The above summary clearly indicates that existing service has been unable to meet all of the supporting shippers' transportation needs. Moreover, these shippers have indicated their intention to turn to Lomma in order to cure

the service deficiencies. (T. 50, 78, 100, 122, 261-262; Exhibit A-8, p. 2; Exhibit A-13, p. 3; Exhibit A-15, pp. 2-3). The inadequacy of existing service and the manner in which the authorization of Lomma would help cure that inadequacy is further evidence of a public need for the proposed service.

In addition to the evidence presented directly by the shippers who appeared and testified in this proceeding, it may logically be inferred that the advantages of Lomma's service identified by the supporting shippers will be equally beneficial to other shippers in the application territory. This principle was enunciated by the Commission in Application of Ward Trucking, Inc., 43 Pa. P.U.C 689, 703 (1968).

Aside from the public shipper witnesses presented by applicant in this case, it is not an unreasonable inference that the advantages referred to by the witnesses will apply to other shippers in the considered territory. See Kulp v. Pa. P.U.C., 153 Pa. Super. 379, 383 (1943). An examination of the testimony offered discloses that many were fairly representative of other industries and businesses similarly situated. See Sayre v. Pa. P.U.C., 161 Pa. Super. 182, 185 (1947).

As in Application of Ward Trucking and Sayre v. Pa. P.U.C., an examination of the testimony presented by the witnesses in the instant proceeding is convincing that they were representative of shippers of commodities requiring heavy-hauler service. The commodities shipped include such diverse items as transformers, motors, steel weldments, concrete batching plants, pneumatractors, furnaces and entire buildings sections. An individual shipment can require special equipment because it is overdimensional (whether or not heavy) (T. 169), or because it weighs more than normal trailer equipment can accommodate, or both. The transportation needs of the supporting shippers therefore clearly reflect the needs of "size and weight" shippers as a whole. It is entirely logical and proper to infer that the benefits to be derived as spoken of by the testifying witnesses would flow to other, similarly-situated shippers. Indeed, without such an inference these

cases would involve a virtually endless procession of shipper-witnesses in order to cumulate testimony. The need for Lomma's service, as described by the supporting shippers, is representative of a need for its service throughout the application territory. Lomma has established the existence of a public need for its proposed service.

B. Approval Of Lomma's Application Will Serve A Useful Public Purpose And Result In A Public Benefit

Not only has Lomma clearly established the existence of a public need for the proposed service, it has also shown that approval of the instant application will result in a public benefit. As noted by the Commission in Application of Richard L. Kinard, Docket No. A. 00095829, F. 1, Am-D (Order entered October 22, 1984), an applicant for common carrier authority must go beyond the mere presentation of supporting shipper testimony in order to satisfy the burden placed upon it by 52 Pa. Code §41.14(a). The Commission determined that in addition to establishing a public need, an applicant must also show that approval of the application would "serve a useful public purpose" or provide a "public benefit." Kinard, supra. at 6. The "useful public purpose" or "public benefit" standard is reached by establishing that approval of the application would satisfy one or more of the "alternatives to inadequacy" set forth in the Kinard decision. A review of the testimony presented in this proceeding is convincing that Lomma has satisfied several of the "alternatives to inadequacy" in the instant proceeding.

In addition to handling "regular" heavy hauling shipments, Lomma has indicated its intention to handle "super heavy loads - those exceeding 35 to 40 tons - which are generally not handled by conventional heavy haulers. (Exhibit A-1, p. 8). This type of "exotic" transportation service has been identified as a shipping requirement by several of the supporting shippers. (T. 96-97, 122, 128-129). Also, Lomma has shown its ability to provide specialized equipment on a short-notice basis. Other carriers, on occasion, take up to a week to supply the required

specialized equipment. (T. 77, 232-233). Lomma's ability to provide a more prompt service — a service not consistently available from existing carriers — qualifies Lomma's proposal as a "different service" as that term is defined in the Kinard decision. Moreover, the addition of Lomma's equipment to the pool of specialized equipment available to Pennsylvania-based shippers is clearly beneficial to the public.

Lomma presented evidence of nineteen (19) Pennsylvania origins and nineteen (19) Pennsylvania destinations to and from which it provided heavy hauling service in interstate commerce during the first six months of 1984. The listed points were representative only and did not amount to a complete compilation of all points served by Lomma in the period. (Exhibit A-1, pp. 3-4). Lomma presently serves twenty-two (22) Pennsylvania-based shippers in interstate commerce. (Exhibit A-1, p. 9). Lomma already operates over Pennsylvania highways originating or terminating "size and weight" shipments at a variety of Pennsylvania points. Approval of this application would allow those vehicles to be utilized in intrastate commerce and would allow Lomma to serve its existing Pennsylvania customers on an intrastate basis. The results that would flow from a grant of the requested authority to Lomma — increased equipment utilization, aligning of Lomma's intrastate authority with its interstate authority and conferring upon Lomma authority to provide a complete (interstate and intrastate) service for its existing Pennsylvania customers — satisfy the "efficiency," "shipper competition," "ICC authority" and "benefit to applicant" Kinard alternatives to inadequacy.

Several of the supporting shippers indicated that they anticipated that their intrastate traffic volumes would increase in the near future and that Applicant's availability to handle the increased volume would be helpful to them. For example, the witness from Keeler/Dorr-Oliver noted that his company is now

"in a very extensive growing situation" and is planning to spend \$15 million on expansion in the next five years. (T. 73). Erie Strayer's witness testified that he expected his traffic volume to increase in the foreseeable future (T. 223), while the witness from Tippins Machinery indicated that he expects his business in Pennsylvania to improve and "would like to have Lomma's service available to handle the expected increase in traffic." (Exhibit A-9, p. 2). Similar testimony was offered by the witnesses from Zurn Industries and Pittsburgh/Des Moines. (T. 98; Exhibit A-15, p. 2-3). This evidence of increasing traffic volumes is sufficient to satisfy the Kinard decision's "future need" inadequacy alternative.

Finally, Lomma has satisfied the "backup service" alternative as well. The witness from Schramm and PEECO indicated that he considers Daily Express to be his primary carrier but, on occasion, would call Lomma for service before contacting Daily. (T. 283-284). Many of the shippers testified that there was a shortage of specialized equipment available and requested that Lomma be certificated so as to help insure the availability of equipment when it is needed. (T. 47-50, 100, 121-122, 198, 261-262, 348-349; Exhibit A-5, p. 2; Exhibit A-10, p. 2; Exhibit A-13, p. 3).

This summary makes it clear that Lomma has established that approval of its application will serve a "useful public purpose" and result in "public benefit" as those terms are used in the Kinard decision

C. Applicant Possesses The Technical And Financial Ability To Provide The Proposed Service And Has Established Its Willingness To Operate Safely And Legally

Lomma is able and willing to provide the service proposed by the instant application and is experienced in providing heavy hauling service, having done so pursuant to its interstate operating authority. (Exhibit A-1, pp. 2-3).

Lomma maintains its principal terminal in South Kearny, New Jersey. This facility is owned by the Applicant and consists of corporate offices, a five

bay maintenance facility, a parking area for equipment and warehouse space. (Exhibit A-1, p. 4).

Lomma also maintains facilities in Shrewsbury, Massachusetts and Baltimore, Maryland, and has recently opened a terminal facility, near Pittsburgh, in Bridgeville, Pennsylvania. These facilities are utilized in connection with Lomma's heavy hauling operations. (Exhibit A-1, pp. 4-5; T. 167).

All terminals are linked by WATS lines. All local equipment is two-way radio equipped while the remainder of Lomma's fleet is in the process of being so equipped. (Exhibit A-1, p. 5).

Lomma operates a substantial amount of specialized equipment which is specially designed to perform the service proposed by this application. It operates a total of 38 tractors, all of which are suitable for heavy hauling service. Of these, one has been refurbished and rebuilt with power train rears and is capable of hauling loads in excess of 250 tons, and 5 other tractors have special rears and transmission systems and are 4-axle units. (Exhibit A-1, Appendix 3; T. 13-14).

Lomma operates the following specialized trailer equipment: 7-reinforced flatbed trailers capable of holding 50 tons of freight on a 12 foot loading area; 1-dolly system which is used to raise, lower or steer equipment; 39-level-deck lowboys, 10 of which have extendible and/or stretch capabilities; 9-stretch flatbed trailers; 17-double-drop trailers; 1-75 ton detachable gooseneck trailer with interchangeable decks and interchangeable rear bridge suspension systems; 1-50 ton four-axle stretch lowboy designed to accommodate extremely long loadings of extreme weight; and 1-trailer equipped with an hydraulic winching system and ramps capable of transporting an operable railcar. (T. 13-20, 27-32). It is indisputable that Lomma has the type of equipment, in sufficient numbers, to provide the service proposed by this application.

The drivers employed by Lomma are experienced in providing heavy hauling service. Lomma utilizes company-employed drivers and helpers rather than owner-operators or independent contractors because the utilization of company employees maximizes its ability to directly control operations. (Exhibit A-1, p. 5).

Lomma believes that the terminal, equipment and personnel which it already has in place in Pennsylvania, in conjunction with that based at its principal terminal in South Kearny, NJ, are adequate to provide the service proposed by this application. A reading of the instant record militates the conclusion that Lomma possesses the technical expertise necessary to provide the proposed service.

Applicant's financial fitness is similarly beyond question. At December 31, 1983, Lomma had total assets of \$1,110,784 and retained earnings of \$950,803. For the year ending December 31, 1983, Lomma generated revenues of \$2,813,226 with total operating expenses of \$2,608,561. The Applicant's net profit (after taxes) for 1983 was \$174,735. (Exhibits A-4, A-5). It is clear that Lomma possesses the ability to provide the proposed service in an efficient manner and maintains the financial capability necessary to carry out the proposed operation.

Lomma has established its willingness to operate safely and legally. Applicant has designed a formal program of Preventive Maintenance and Inspection which is vigorously followed for all vehicles and which utilizes fixed time and mileage schedules for the physical inspection, adjustment, and/or correction of all component systems on each vehicle in addition to regular daily inspections. Lomma employs a Safety Supervisor who monitors the safety program and who is responsible for driver training, reviewing driving procedures and insuring compliance with D.O.T. regulations. Lomma's drivers are specifically trained in order to insure competence in handling overdimensional and heavy

weight loads. (Exhibit A-1, pp. 6-7).

Lomma carries public liability insurance in the amount of \$10 million (combined single limit) and cargo insurance in the amount of \$1 million. To the extent additional coverage is required for a given job it is obtained on an "as needed" basis. (Exhibit A-1, p. 7).

Lomma makes every effort to insure that its operations are conducted in accordance with all applicable regulations and, to the best of its knowledge, Lomma is presently in compliance with the regulations of each regulatory body to which it is subject. (Exhibit A-1, p. 7).

Lomma submits that it has satisfied its burden of establishing its willingness to provide the proposed service in a safe and lawful manner.

D. Approval Of This Application Will Not Endanger Or Impair The Operations Of Protestants Contrary To The Public Interest

It is a well-established principle that no carrier has an absolute right to be free from competition. Pennsylvania Public Utility Commission v. Purolator Courier Corp., 24 Pa. Cmwlth. 301, 355 A.2d 850 (1976); Noerr Motor Freight, Inc. v. Pennsylvania Public Utility Commission, 18 Pa. Super. 332, 338, 124 A.2d 393 (1956). Rather, the extent to which there should be competition in intrastate freight transportation is an administrative question which is left to the discretion of the Commission. Modern Transfer Co., Inc. v. Pennsylvania Public Utility Commission, 139 Pa. Super. 197, 12 A.2d 458 (1940); Alko Express Lines v. Pennsylvania Public Utility Commission, 152 Pa. Super. 27, 30 A.2d 440 (1943).

At the outset, it must be emphasized that the Commission's primary concern is with the public interest. As the Court stated in Modern, supra., at 202:

The basis of the action of the Commission is the interest of the public as distinguished from the interest of the corporation or individual making the application . . . or the interest of the competing carriers.

It is submitted that a grant of authority to Lomma will have little, if

any, adverse effect upon the protestants. The record in this proceeding is devoid of probative evidence regarding the amount of traffic, if any, that would be diverted from the protestants or of the adverse consequences that would befall protestants as a result of such diversion, if the instant application is granted.

The evidence presented by Protestant Hake indicates that it has solicited 6 of the supporting shippers within the last two or three years and has provided service for four of the supporting shippers — Fuller Company, Metropolitan Edison, Schramm and Ecolaire. However, the witness for Hake could not recall the last time his company provided service for Fuller Company. He indicated that no service has been provided for Metropolitan Edison within the past year, and that neither Schramm nor Ecolaire have been solicited or served within the past two years.

No attempt was made by Hake to describe, even in broad terms, the amount of Pennsylvania intrastate heavy hauling service that Hake has provided for these shippers, the revenues generated by such service, or the percent of Hake's total revenue that service for these shippers comprised. As a result, it is impossible to determine the impact that the loss of the four accounts for which service has been provided would have upon Hake's overall operation.

In 1983, Hake had Pennsylvania intrastate motor carrier revenues of approximately \$188,000, while its gross operating revenues were between \$10 million and \$11 million. Hake generated a profit from its motor carrier operations in 1983. (T. 376-377). It is clear that this Protestant, with its heavy emphasis on non-carrier operations and its profitable motor carrier business, will not be greatly impacted by a grant of the requested authority.

A similar conclusion can be drawn with respect to Protestant David Graham. Graham has provided intrastate service for only 1 of the sixteen supporting shippers. (T. 411-412). Although Graham indicated that it has invested

\$3.5 million in power equipment, none of this equipment is utilized in intrastate commerce. (T. 397, 409). Only 12 of Graham's tractors are registered in Pennsylvania (and therefore available to provide intrastate service), and even the 12 which are Pennsylvania registered are used for both interstate and intrastate service. (T. 404-406). Finally, of \$11.5 million of total revenue generated by Graham in 1983, only \$622,000 was derived from intrastate service and only a portion of this latter revenue was derived from heavy hauling service. (T. 413, 399-400). David Graham's intrastate heavy hauling service is only a minor segment of its overall operations. In view of Graham's continued growth (its total revenues are expected to grow from \$11.5 million in 1983 to \$17 million in 1984 (T. 413-414)), it cannot be logically argued that the injection of Lomma as a competitor will have a material impact upon Graham. Moreover, Graham's minimal involvement in Pennsylvania intrastate heavy-hauling renders lifeless any contention that the impact of a grant to Lomma upon Graham could be contrary to the public interest. The public of Pennsylvania relies hardly at all upon Graham for heavy-hauling service.

An analysis of the operations and revenue sources of Daily Express establishes that it, like Graham, has little to fear from a grant of authority to Lomma. Daily Express provides a broad based common carrier service handling all sorts of traffic — not just heavy-hauler traffic.

In 1983, Daily generated Pennsylvania intrastate revenues of approximately \$1.5 million, which represented only about 3 1/2 percent of its systemwide revenues of \$40-42 million. (T. 446-448). The witness from Daily Express estimated that his company's 1984 intrastate revenue would amount to \$2 million — an increase of some 30 percent over its 1983 revenues. Similarly, the number of intrastate shipments handled by Daily Express for the first 10 months of 1984 amounted to 5,135 — an average of 513 shipments per month. This

represents an increase of approximately 37 percent from the average number of shipments handled per month during the first 8 1/2 months of 1983. ^{3/} (T. 446-448). Daily Express' Pennsylvania operation is obviously expanding tremendously as a result of its recent grant of statewide, general commodity authority and will be only minimally impacted by the specialized heavy-hauling service proposed by Lomma.

Daily Express' witness was unable to identify either the total number of heavy hauling shipments which Daily Express handled during the first ten months of 1984, or the revenue which was derived from such service during that period. (T. 450-453). Although the witness testified that Daily Express served 161 Pennsylvania shippers during 1984, he was unable to state how many of those shippers required heavy hauling service. (T. 463). Finally, although testimony was offered regarding a total of 10 intrastate shipments handled for supporting shippers Westinghouse Electric, Keeler/Dorr-Oliver, Fuller Company and Metropolitan Edison in 1984, only two of those ten shipments — one for Keeler/Dorr-Oliver and one for Metropolitan Edison — were definitively established to have been heavy hauling shipments. (T. 436-438; 461-464).

No attempt was made by Daily Express to indicate the amount of Pennsylvania intrastate heavy hauling service which it has provided, the revenues generated by such service, or the percentage that intrastate heavy hauling comprised of Daily's total revenues. Without this information it is impossible to quantify what effect, if any, the certification of Lomma to the extent requested in this application will have upon Daily Express.

The final Protestant, Moore-Flesher, attempted to argue that approximately thirty percent of its \$1.3 million gross revenue for 1983 was

^{3/} Daily Express handled 3,175 shipments during the first 8 1/2 months of 1983, an average of 373 shipments per month. (T. 446-448).

derived from heavy hauling service and that it operated at a loss for that year with an operating ratio of 102. (T. 531-532). This testimony was later shown to be very misleading. The percentage of gross revenue testified to by Moore-Flesher's witness included the transportation of non-heavy hauling traffic which moved in conjunction with heavy hauling shipments. (T. 534-536). If granted the authority requested herein, Lomma would not be authorized to handle the non-heavy hauling traffic — that traffic is not subject to diversion. The actual percentage of Moore-Flesher's gross revenues that would be affected by this application approximates ten percent. The potential impact of the approval of this application upon Moore-Flesher's operation is much less than this Protestant would lead the Commission to believe.

The operating loss testified to by Moore-Flesher's representative similarly warrants close scrutiny. The amount of the loss actually equals the depreciation expense for 1983. (T. 541). Consequently, without the depreciation expense (which is not an out-of-pocket cost of operation), Moore-Flesher's operating ratio for 1983 approximated the break-even point of 100. In fact, on a company-wide basis, Moore-Flesher actually generated a profit of approximately \$104,000 in 1983. (T. 541).

Moore-Flesher is opposing Lomma's application in part because of the investment which it has made in its equipment. However, the present depreciated value of this Protestant's trailers is \$21,000, while all of Moore-Flesher's tractors have been fully depreciated. (T. 536).

Moore-Flesher is in the process of transferring all of its Pennsylvania intrastate operating authority to two buyers. (T. 465-468). The buyers — Moore-Flesher Trucking Corporation and W.D. Kerr & Sons — have not yet begun Pennsylvania intrastate operations pursuant to Moore-Flesher's authority. The success — or failure — of utilizing two companies to provide the service

previously supplied by Moore-Flesher has not yet been determined. If the instant application is approved protestant Moore-Flesher will not be in competition with Lomma. Rather, the progeny of Moore-Flesher will compete with Lomma. At this juncture it is impossible to determine the effect that Lomma's proposed service will have upon the buyers of Moore-Flesher's authority. In any event, one cannot infer, from the evidence presented in this record, that the injection of Lomma's service will negatively impact upon the buyers.

In considering the potential adverse effect that approval of this application would have on any of the Protestants, it must be borne in mind that traffic which the Protestants are presently handling in the application territory will be diverted to Lomma only if Lomma offers a better, more complete and more responsive service at competitive prices. To the extent that Lomma does not offer an improved service, it cannot hope to divert traffic from existing carriers. However, if Lomma's service is superior to that provided by Protestants and by other carriers, the public interest — the Commission's primary consideration in application proceedings — will be served by Applicant's availability in the application territory. In the absence of meaningful information regarding the size and shape of Protestant's interests combined with indicators of the volume and importance of the traffic Lomma is likely to divert, dire predictions of traffic diversion and impact are no more than self-serving speculation. No factual basis has been developed in this record upon which to conclude that Lomma's entry into the market will do material harm to the Protestants' interests.

The Commission has determined that a protestant's burden under 52 Pa. Code §41.14(c) — to demonstrate the adverse effect that approval of an application would have upon its existing operation — is quite heavy. Kinard, supra. at 5. Not only must Protestants demonstrate materially adverse

consequences, they must also establish that those consequences rise to the level of effecting the public interest. Protestants have not reached the first threshold, and cannot hope to approach the second, public interest, standard.

Lomma submits that Protestants failed to establish adverse competitive impact or to furnish the basic factual information from which to reason regarding impact, not because that issue was unrecognized by them — Protestants were represented by experienced and competent counsel — but rather, because it will not, in reality, occur. The unavoidable conclusion, taken from the record as a whole, is that there is a shortage of heavy-hauling service in Pennsylvania. This is a statewide application and is protested, after minimal amendments, by only four (4) carriers — one could not find a clearer indication of the dearth of entities interested in providing service similar to that proposed by Lomma. No one will be materially harmed by a grant of the authority sought and the public stands to benefit through the availability of Lomma's service. The pool of equipment available for intrastate heavy-hauling service will be increased. Lomma is not a novice. It will bring to bear years of experience in providing heavy-hauling service. There is, in sum, everything to be gained and very little to be risked as a result of allowing Lomma to ply its trade in Pennsylvania.

E. CONCLUSION

A review of the testimony presented in this proceeding must result in a granting of the application in its entirety. The Applicant has clearly established that approval of the application is "necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. §1103(a).

It is irrefutable that the Applicant possesses the technical and financial ability to provide the proposed service. In addition, Lomma has established its willingness and ability to operate safely and legally.

The testimony of the supporting shippers reveals the existence of a

need for the efficient, responsive and specialized service proposed by Lomma. Furthermore, approval of this application will serve a "useful public purpose" and result in a "public benefit."

Protestants, in view of their overall operations, have little cause for concern regarding approval of the instant application. However, the general public stands to benefit greatly from the availability of Lomma's service.

It is respectfully submitted that the application should be granted in its entirety.

VI. REQUESTED FINDINGS OF FACT

1. Applicant is a New Jersey corporation which is presently providing service in interstate commerce throughout a fifteen (15) state base territory which includes Pennsylvania.

2. By the instant application, Lomma seeks to provide traditional heavy hauling service such as the right to transport heavy and bulky articles on specialized vehicles or which require special handling.

3. Lomma is experienced in providing heavy hauling service, having done so in interstate commerce for approximately ten (10) years. Lomma is presently operating to and from Pennsylvania points on a regular basis in transporting interstate shipments.

4. Lomma maintains its principal terminal in South Kearny, New Jersey as well as additional facilities in Shrewsbury, Massachusetts, Baltimore, Maryland and Bridgeville, Pennsylvania.

5. Lomma operates an extensive fleet of specialized equipment capable of providing the proposed service.

6. Applicant has a formal program of preventative maintenance and inspection which is utilized for all vehicles.

7. As at December 31, 1983, Lomma had total assets of \$1,110,784.00 and retained earnings of \$950,803.00. For the period January 1, 1983 through December 31, 1983, Lomma generated net profits of \$174,735.00 on revenues amounting to \$2,813,226.00.

8. Lomma carries public liability insurance and cargo insurance in amounts which meet or exceed the levels required by this Commission.

9. Lomma is presently providing service to twenty-two (22) Pennsylvania companies in interstate commerce.

10. Fifteen (15) witnesses, representing sixteen (16) shippers, appeared and testified in support of the instant application.

11. The supporting shippers indicated that they have a substantial amount of traffic moving between a wide variety of points in the application territory.

12. The supporting shippers indicated some dissatisfaction with service provided by Protestants and other carriers.

13. Protestant Frank W. Hake, Incorporated ("Hake") engages in heavy hauling, primarily handling shipments in excess of 50 tons. Hake holds intrastate authority to provide heavy hauling service between points in Philadelphia and within an airline distance of 150 statute miles of City Hall in Philadelphia and in conjunction with shipments moving from railheads to other railheads or to points of installation, on a statewide basis.

14. Hake maintains a terminal in Eddystone, Pennsylvania which is equipped with a telecopying machine and a telex machine capable of obtaining permits from the Department of Highways.

15. Hake's principal business is the provision of rigging service as opposed to transportation services. It employs 16 people in transportation and 1,100 in its other businesses.

16. In 1983, Hake had gross carrier operating revenues of approximately \$216,000, with approximately \$188,000 of that amount derived from Pennsylvania intrastate service. Hake's overall revenues for 1983 were between \$10-11 million dollars; some 2% of Hake's revenue is generated by trucking service. Hake's motor carrier operations generated a profit in 1983; its non-carrier operations lost approximately \$245,000.

17. Protestant David Graham Company holds authority from the Pennsylvania Public Utility Commission which authorizes a range of motor carrier service, including heavy hauling service between points in the city and county of Philadelphia and points within 170 miles of said city and from this territory to the remainder of Pennsylvania and vice versa.

18. Graham maintains its main terminal in Tullytown, Pennsylvania, with an additional company-owned terminal in Harrisburg and agency terminals in Allentown, Smithton and Coraopolis.

19. Graham operates twenty-eight (28) company-owned tractors and utilizes two hundred (200) trailers, of which sixty-one (61) qualify as "specialized" as defined by the Pennsylvania Public Utility Commission.

20. In 1983, Graham generated Pennsylvania intrastate revenues of approximately \$622,000 and system operating revenues of approximately \$11.5 million. Pennsylvania revenues represent some 5% of Graham's total. An unknown amount of Graham's Pennsylvania revenues are attributable to heavy hauling service. Graham's total revenues for 1984 were projected to approximate \$17 million.

21. Daily Express holds authority from this Commission which authorizes transportation of property (excluding commodities in bulk and household goods in use) between points in Pennsylvania, subject to several additional restrictions.

22. Daily Express maintains its main office in Carlisle, Pennsylvania, with additional Pennsylvania terminals located in Allentown, Harrisburg, Johnstown, New Kensington, Towanda and Williamsport.

23. In the first 8 1/2 months of 1983, Daily handled 3,175 loads in Pennsylvania while for the first 10 months of 1984 it handled 5,135 such shipments. In 1983 Daily's intrastate revenue was approximately \$1.5 million while its systemwide revenue was between \$40-42 million. Daily Express' 1984 intrastate revenue was projected to be approximately \$2 million. An unknown amount of Daily Express' Pennsylvania revenues are attributable to heavy hauling service.

24. Moore-Flesher maintains its business office in Zelienople and holds authority from this Commission to provide a range of motor carrier services, including heavy hauling service between points in western Pennsylvania and from points in western Pennsylvania to points in eastern Pennsylvania, and vice versa.

25. Protestant Moore-Flesher is in the process of transferring its operating authority to two buyers: W. D. Kerr & Sons and Moore-Flesher Trucking Company.

26. In November 1983, Moore-Flesher handled 21 size and weight shipments between points in western Pennsylvania. Twenty-five percent of the shipments handled by Moore-Flesher are not subject to diversion in that they fall within the Restrictive Amendment which has been agreed to by Lomma.

27. A preponderance of Moore-Flesher's heavy hauling traffic is handled between points in western Pennsylvania. On an operating basis, in 1983, Moore-Flesher lost \$23,904. The loss is approximately equal to its depreciation expense (considered an operating expense) for that same year. Moore-Flesher generated a profit of \$104,000 in 1983, as a result of non-carrier income.

VII. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties involved in this proceeding.
2. The Applicant has the financial capacity, expertise and equipment necessary to render the proposed service.
3. The Applicant has established its willingness and ability to operate safely and legally.
4. The Applicant has met its burden of proving a reasonable necessity for the proposed service.
5. The benefits that will accrue to the public from the services proposed by Applicant far outbalance any potential to endanger or impair the operations of existing common carriers.
6. There being no probative evidence of adverse competitive impact, a grant of the authority sought would be consistent with the public interest.

VIII. PROPOSED ORDER

THEREFORE IT IS ORDERED:

1. That the Application of J.F. Lomma, Inc., at A. 105101 be and is hereby approved as follows:

To transport, as a Class D carrier, property, which because of size or weight, requires the use of rigging, special handling, or special equipment, between points in Pennsylvania.

Provided that, no right, power or privilege, is granted:

1. To provide service in connection with any shipment weighing less than thirty-five (35) tons to or from the Monroe County facilities of:
 - a. Pocono Fabricators, Division of Patterson-Kelly Company, Inc.
 - b. Patterson-Kelly Company, Inc. Division of Harsco Corp.
 - c. International Boiler Works

2. To transport bulldozers, graders, draglines and other earth moving and coal moving equipment between points in and west of the counties of Potter, Clinton, Centre, Blair and Bedford.

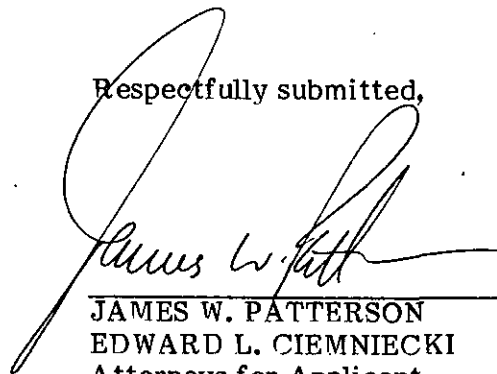
2. That the certificate holder shall comply with all of the provisions of the Public Utility Code as now existing or as hereafter may be amended, and all of the existing rules and regulations as may hereafter be prescribed by the Commission. Failure on the part of the certificate holder to so comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate.

4. That the Applicant shall not engage in any transportation granted herein (except with express permission from the Commission) until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing and acceptance of a tariff establishing just and reasonable rates.

5. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the carrier, shall not be construed as conferring more than one operating right.

6. That in the event said Applicant has not, on or before sixty (60) days from the date of service of this order, complied with the requirements set forth above, application shall be dismissed without further proceedings.

Respectfully submitted,



JAMES W. PATTERSON
EDWARD L. CIEMNIECKI
Attorneys for Applicant,
J. F. Lomma, Inc.

APPLICATION OF J.F. LOMMA, INC.

DOCKET NO. A. 105101

DIGEST OF TESTIMONY

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DIGEST OF TESTIMONY

Operating Witness

1. Angelo M. Monaco, Vice President

J. F. Lomma, Inc.

J. F. Lomma, Inc. is a New Jersey corporation domiciled at 286 Central Avenue, South Kearny, New Jersey. Lomma qualified to do business in Pennsylvania by registering with the Secretary of the Commonwealth in December of 1983.

Mr. Monaco is Vice President of Lomma and has been in that position since May, 1980. Mr. Monaco is familiar with the equipment, facilities, operations, finances and administration of Lomma. (Exhibit A-1, p. 1).

By this application, Lomma seeks to provide traditional "heavy hauling" service such as the right to transport heavy and bulky articles required to be handled on special vehicles such as pole trailers, winch trucks, lowboys, drop-decks and the like, or which require the carrier to employ special rigging or handling devices to load or unload the lading. The applicant is not seeking the right to transport general commodities or iron and steel on ordinary flatbed equipment. (Exhibit A-1, p. 2).

Lomma is providing service in interstate commerce and holds authority to transport general commodities throughout a 15 state base territory in the eastern United States including, among others, Pennsylvania and all states contiguous to Pennsylvania. Lomma also holds authority to provide service from that territory to the rest of the continental United States and vice versa. (Exhibit A-1, p. 2, Appendix 1). Lomma has been transporting "size and weight" commodities for approximately 10 years in interstate commerce. The applicant is a member of the Heavy and Specialized Carriers and Rigging Association, a conference of the A.T.A., and other similar organizations of size and weight carriers.

Lomma operates to and from Pennsylvania points on a regular basis in transporting interstate shipments. Mr. Monaco identified 19 Pennsylvania origins and 19 destinations to and from which Lomma provided interstate service during 1984. The specific points identified were representative of service provided by Lomma, and did not amount to a complete compilation of all points served during the stated period. (Exhibit A-1, pp. 2-4).

Lomma is best known for its services involving the transportation of super-heavy loads — loads in the 40 ton to 400 ton range. On a revenue basis, Lomma attributes somewhat less than 40% of its sales to the more exotic, super-heavy type of service. Approximately 60 to 65% of its revenue is attributable to more conventional heavy hauling involving the transportation of machinery and other articles of lesser size and weight. The applicant expects to participate in both types of heavy hauling service in Pennsylvania. (Exhibit A-1, p. 4).

Lomma maintains its principal terminal in South Kearny, Essex

County, New Jersey. The South Kearny terminal is owned by Lomma and consists of corporate offices, a 5 bay maintenance facility, parking area for equipment and warehouse space. The facility is located on 4 and 1/2 acres of ground. Lomma also maintains facilities in Shrewsbury, Massachusetts and Baltimore, Maryland. Both the Shrewsbury and Baltimore facilities are used in connection with Lomma's heavy hauling operation. Lomma has also recently opened a terminal in Pittsburgh, Pennsylvania. (Exhibit A-1, p. 4-5; T. 167). All terminals are linked by WATS lines. All local equipment is two-way radio equipped and the entire fleet is presently in the process of being two-way radio equipped. (Exhibit A-1, p. 5).

At the present time, Lomma employs 61 employees, broken down into the following categories: Management - 3; Supervisory - 5; Office - 6; Drivers - 32; Dispatchers - 3; Platform - 2; Mechanics - 7; and Sales - 3. During the first 10 months of 1983, Lomma employed approximately 33 people. Approximately mid-November of 1983, the applicant began increasing the number of employees. At present, it is still adding additional employees to its payroll. (T. 10).

With only an occasional exception, Lomma utilizes company-employed drivers and helpers. Owner-operators are not utilized because, in Lomma's view, the utilization of employees rather than independent contractors maximizes the ability of management to directly control operations. (Exhibit A-1, p. 5).

Lomma operates a total of 38 tractors, all of which are suitable for heavy hauling service. The applicant operates one tractor that has been totally refurbished and rebuilt with power train rears and which is utilized for extremely heavy loads (in excess of 250 tons). Lomma also has 5 other tractors that have special rears and transmission systems and are 4-axle units. (Exhibit A-1, Appendix 3; T. 13-14). Lomma also operates 29 flatbed and stretch flatbed trailers, several of which are specially designed for heavy hauling service in that they are heavy duty capacity and capable of handling shipments in excess of 35 tons. (T. 14).

Lomma has certain pieces of equipment that are utilized as a dolly system. This equipment is used to either raise, lower or steer equipment. On a majority of occasions, the dolly system would be located at the rear of the transport system or under the load at some designated stress point. The dollies are slid under a trailer to support extra weight. Lomma also operates level deck lowboy equipment, or drop-frame equipment as it is sometimes known. Included among this equipment are extendibles or stretch equipment and tri-axle configurations. (T. 15-16). Lomma also operates 17 double-drop trailers. A level deck drop-frame trailer generally has a loading platform not lower than 36 inches. A double-drop trailer would be one which is lower than 36 inches for its loading platform. On both the double-drop and the drop-frame trailers, the loading deck of the trailer is normally lower than the top of the rear wheels of the tractor. This type of equipment is utilized in order to keep a particularly high load under the maximum height requirements. (T. 11, 16-17).

Of the equipment shown on page 3 to Appendix 3 of Exhibit A-1, 7 of the trailers listed thereon are other than regular flatbed trailers. Those 7 trailers have a loading capacity of 50 tons for only 12 feet of loading platform. There is a premium of 18 to 24% above the price for a standard flatbed trailer for these specialized trailers. (T. 25-26). On pages 4 and 5 of that exhibit, all of the units from 302 through 341-S are level deck lowboys with a loading platform from 33 inches to 37 inches from the ground. Of the level deck lowboys, at least 10 of

them have extendible and/or stretch capabilities. (T. 28-29).

Lomma has a number of highly specialized pieces of trailer equipment. For example, it operates a 75 ton detachable gooseneck trailer with interchangeable decks and interchangeable rear bridge suspension systems. The interchangeable deck, which would be only 24 inches off the ground, is designed to enable Lomma to match the size and weight of the lading to the trailer's capacity. Lomma also has a specially-designed 50 ton four-axle stretch lowboy which is designed to accommodate extremely long loadings of extreme weight. The applicant also has a specially-designed trailer which was built overseas and, to Mr. Monaco's knowledge, is the only type of its kind in the United States. The trailer allows for the movement of an operable railcar vehicle over the road and to accommodate the loading and unloading of the railcar with no additional equipment required. It has a winching system and a hydraulic system involved with ramps which is manned by a specially-trained crew. This special trailer has been utilized well over 100 times in the past year and one half, and has been utilized to service Boeing, a shipper which is located in the suburban Philadelphia area. (T. 18-20).

Three trailers utilized by Lomma are designed as a transport system capable of handling various size or various shaped materials in order to permit the hauling of loading configurations based upon the client's needs. (T. 20).

All of the equipment utilized by Lomma is owned by a commonly-controlled leasing company (J.F.L. Leasing Co., Inc.). The equipment is not utilized to capacity and is available for the transportation service proposed. Should additional equipment be required to meet the demands for service made upon Lomma by shippers located in Pennsylvania, Lomma is financially capable of acquiring such equipment. (Exhibit A-1, pp. 5-6).

The applicant has designed a formal program of Preventive Maintenance and Inspection which is vigorously followed for all vehicles. The program utilizes fixed time and mileage schedules for the physical inspection, adjustment, and/or correction of all component systems on each vehicle in addition to daily inspection and maintenance routines. Lomma's ongoing safety program employs a Safety Supervisor to monitor the safety program, including driver training, review of driving procedures and DOT compliance. Drivers are specifically trained in order to insure competence in handling overdimensional and heavy weight loads, working in conjunction with rigging operations and operating the highly specialized transport systems utilized by Lomma. (Exhibit A-1, pp. 6-7).

As at December 31, 1983, Lomma had total assets of \$1,110,784 and retained earnings of \$950,803. For the period January 1, 1983 through December 31, 1983, Lomma generated net profits of \$174,735 on revenues amounting to \$2,813,226. (Exhibit A-1, Appendices 4 and 5).

Lomma carries public liability insurance in the amount of \$10,000 (combined single limit) and cargo insurance in the amount \$1 million. To the extent additional coverage is required for a given job, it is obtained on an "as-needed" basis. (Exhibit A-1, p. 7).

If this application is approved, Lomma intends to concentrate initially on the movement of super-heavy loads, those exceeding 35 to 40 tons. It expects

to somewhat more gradually become involved in more conventional heavy hauling service, transporting size and weight commodities such as machinery, electrical equipment, pollution control devices and chemical processing equipment of lesser weight. Its proposal includes planning (route of movement, bridges, loading and unloading, site evaluation, and so forth), preparation (bridge reinforcement; contact and coordination with utility companies whose facilities are located on, under or over the route of movement; and contact and coordination with state permitting agencies, engineers and police, and with local authorities), and use of professional, experienced riggers. (Exhibit A-1, p. 8).

Mr. Monaco identified 22 Pennsylvania companies for which it is presently providing service in interstate commerce. Lomma views this application as a natural extension of the service which it is presently providing to these customers. (Exhibit A-1, p. 9).

Mr. Monaco interprets special handling as that which goes beyond the requirements of a standard platform trailer in over-the-road transportation as well as that which is beyond standard loading by forklift or crane or unloading by forklift or crane. (T. 30). If and when Lomma receives Pennsylvania intrastate operating authority, it intends to seek legal advice with respect to the appropriate Pennsylvania definition of heavy hauling and the various types of equipment which may or may not fit that description, and intends to provide service pursuant to and in accordance with that advice. (T. 37-38).

All of service provided by Lomma in interstate commerce has been in the transportation of size and weight commodities. (T. 32-33).

Lomma does intend to provide transportation on conventional flatbed trailers where it provides the rigging services. (T. 35). Lomma owns one crane.

Supporting Shipper Witnesses

I. Joseph H. Kuhn, Traffic Administrator Metropolitan Edison Company

With respect to the instant application, Metropolitan Edison requires the transportation of transformers ranging in weight from 8,000 pounds to 200 tons. This shipper's service territory extends to all points east of a line drawn 20 miles west of Gettysburg, Pennsylvania and through Stroudsburg, Pennsylvania, with the exception of a small corridor in the Allentown area. Metropolitan Edison's facility for the shipping and receiving of traffic is situated at 2800 Pottsville Pike in Reading, Pennsylvania. (T. 41-42).

Metropolitan Edison has approximately 10 to 15 shipments of transformers per year moving to Pennsylvania points. Service would be required on either an emergency type basis when a transformer has failed, or when a transformer has to be returned for general maintenance or if a transformer has reached the end of its service period and the customer does not wish to extend their use of the transformer. Because of the large size of the transformers, maintenance cannot be done on-site. (T. 43).

Metropolitan Edison has its major facilities located in Reading, York, Lebanon and Easton, with generating stations in Portland and Reading. Metropolitan Edison also has transformers interspersed throughout its entire

service territory and in hundreds of other substations. When service is required on the transformers, they are transported to maintenance facilities in Philadelphia, Cannonsburg and the Pittsburgh area. (T. 44). Mr. Kuhn estimated that there were probably 20 to 30 instances when transformers had to be transported to a maintenance site within Pennsylvania during the past 2 to 3 years. (T. 45).

On occasions when Metropolitan Edison has to move a transformer of 50 tons or more, it expects the carrier that is chosen for the job to move the transformer off its stanchion and on to the vehicle. Metropolitan Edison also expects the carrier to unload the transformer at the other end of the job. When a transformer is taken in for maintenance, it is eventually returned to its location after it has been repaired and refurbished. (T. 46). Metropolitan Edison also has occasion to move transformers from place to place within its service territory. This would occur if the shipper suspects that a transformer is failing. Metropolitan Edison has additional spare transformers interspersed throughout the territory which it would move to replace the transformer that is in doubt. (T. 47).

Metropolitan Edison has a need for emergency service which comes about when a transformer fails. This occurs 2 to 5 times per year. (T. 47-48). When these situations arise, action must be taken that day in order to prevent extended power outages. (T. 48).

Metropolitan Edison has utilized the heavy hauling services of Daily Express for transformer movements within Pennsylvania. (T. 48). Mr. Kuhn has never heard of either Moore-Flesher Hauling or P. Liedtka. He has never utilized the services of Frank Hake, but has used David Graham Company within Pennsylvania. However, Graham has been utilized only for shipments under 40,000 pounds. (T. 48-49).

Metropolitan Edison is supporting the application of J. F. Lomma because it desires to have the option, especially in emergency situations, to have more than one or two carriers available. Because of the nature of the commodities shipped by Metropolitan Edison, they can tie up a carrier's equipment and leave them unavailable to provide any other service. There have been occasions when Metropolitan Edison has called a carrier for service within Pennsylvania, and they have indicated that they were unable to provide the requested service. (T. 50).

Of the 10 shipments of transformers that Metropolitan Edison would have within a year's time, approximately 8 would be of the less than 50 ton variety. Shipments of transformers in excess of 50 tons is a rather specialized event. (T. 52). The last time a carrier was utilized for such a movement, the carrier called for service was Kreitz. (T. 52-53).

From January to June of 1984, Metropolitan Edison had 3 or 4 shipments of transformers weighing between 8,000 pounds and 49 and 1/2 tons. Of these, the one shipment handled by Kreitz was an emergency movement handled on short-notice. (T. 54).

Metropolitan Edison utilized the services of J. F. Lomma in interstate commerce for the transportation of a transformer weighing approximately 200 tons.

On the movement of transformers weighing approximately 8,000

pounds, the carrier supplies the cranes or rigging and slides them onto the trailers. (T. 55). In all instances when Metropolitan Edison uses a motor carrier service it requires the carrier to supply the rigging with his own equipment or to arrange for the supply of the rigging service. (T. 55-56).

The transformers shipped by Metropolitan Edison have various configurations. The height of the item does not necessarily correspond to the weight. Therefore, there may be instances where an 8,000 pound transformer would require a lowboy for its proper transportation. (T. 59). Mr. Kuhn testified that any transformer over 8 feet in height would require special equipment. (T. 59). Mr. Kuhn indicated that a majority of the 10 transformer moves per year are of transformers over 8 feet tall. (T. 59-60).

Mr. Kuhn testified that Metropolitan Edison has 2 extra-heavy moves already scheduled for 1984. (T. 61).

2. William A. Miller, Traffic Manager
Keeler/Dorr-Oliver

This shipper is located in Williamsport, Pennsylvania which is the site of its manufacturing facilities. The shipper manufactures boilers with or without burners ("heat and power"), stacks and breachings — "whatever is involved in power and heat." (T. 67). The company has 250 employees and has approximately \$60 million in annual sales. (T. 68).

The shipper witness introduced Exhibit 3 consisting of a photograph of a new type boiler weighing 140,000 pounds and Exhibit 4 constituting a photograph of a stoker fuel section which burns garbage to produce heat and which weighs approximately 70,000 pounds. The heavy hauling with which it is involved consists of the boiler and stokers used by schools, hospitals and businesses — just about anyone that has a use for heat or power. (T. 71).

The shipper's smallest unit is 11'6" wide; 12'6" high; 17' long; and weighs roughly 40,000 pounds. Its largest unit is 12'2" wide; 12'2" high; 36' long and weighs 140,000 pounds. (T. 71). The smaller unit requires heavy hauling equipment (lowboys) more as a result of its height than its weight. (T. 71).

The witness testified that during 1983 Keeler shipped heavy hauling pieces every two to three months to such destinations as Swarthmore, Wilkes-Barre, Sayre and Philadelphia. (T. 73). Only 1% of its moves are handled by customer pick-ups. The company is growing — expanding to handle the increasing demand for the heavier types of boilers. (T. 74).

The shipper does not receive any inbound shipments; all shipments originate at the shipper's manufacturing facility in Williamsport. (T. 74).

The shipper has used David Graham but not for heavy hauling (T. 74); has used protestant Daily Express but not for the heavier pieces because Daily Express has not provided the low bid on any such piece. (T. 76). The shipper utilized Lomma twice this year for interstate traffic. (T. 77). On one 60,000 pound load, Lomma made a truck available immediately in a short-notice situation. (T. 77). The shipper would tender intrastate shipments to Lomma if Lomma is successful in this application and if it provides the low bid. (T. 78).

The witness testified that he was supporting this application because he would like to have one or two carriers he could depend upon — his delivery schedule is arranged with heavy rigging cranes at the receiving end necessitating efficient scheduling. (T. 78). The shipper witness related one bad experience with Dan Barclay, Inc. on a move from Williamsport to Wilkes-Barre. The shipment was delayed when 1. the trailer bellied out, 2. the replacement trailer was loaded too high for a bridge, and 3. the carrier was detained on the trip for two days because of an illegal permit. (T. 80).

The shipper has also utilized McCormick Dray Line on a move to Sayre, Pennsylvania, which resulted in a small damage claim. The witness also testified that if any of a number of carriers submitted the lowest bid and had the authority, the witness would select such carrier to handle heavy hauling movements. (T. 84).

3. Robert L. Frye, Traffic Manager
Zurn Industries - Energy Division

Zurn Industries, Energy Division ("Zurn"), manufactures steel power boilers and related equipment at its facility in Erie. (T. 90). The witness has been the company's traffic manager for two years and assistant traffic manager for two years prior to that period. (T. 89). Zurn employs 350 persons, and has \$50 million in sales per year. (T. 92). It is involved in a commercial relationship with Keeler/Dorr-Oliver, receiving steel on an inbound basis in oversized loads. Each steel piece is 10'6" wide and 15' long. This is overwide since it exceeds 8'6" in width and therefore requires a permit. (T. 91). Such steel is hotrolled and welded for Keeler and shipped out in pieces 60" in diameter; 40' long; and weighing 40,000 pounds or more.

The shipper also receives steel pieces inbound via rail from Lukens Steel in Coatesville, Pennsylvania. (The heavier pieces move by rail, although Frye criticized rail service throughout his testimony.) (T. 90). However, the witness testified on cross-examination that he could not recall ever specifying the carrier to be used by Lukens Steel (T. 104) and further testified that the steel companies very much control their outbound shipments. (T. 103). Zurn manufactures steel power boilers whose end-users are anyone needing a boiler to generate steam, to run equipment, turbines, air conditioning, heating, or other plant equipment, and to generate electricity. Zurn's customers include hospitals, schools, municipalities, institutions, large corporations and power companies. (T. 95).

Their smallest boilers are 8' wide; 15'10" long; 10-12' high and weigh 40,000 pounds. The largest are 20' high; 45' long; 15' wide and weigh up to 300,000 pounds. (T. 92).

Zurn ships field-erected units, but many component parts of the units also require heavy hauling service. (T. 93). All units are custom-made and built to the customer's specifications and needs. (T. 93).

Within the last year, Zurn has shipped to Pittsburgh, Philadelphia, Altoona, Allentown, the Marcus Hook area, Warren, Lock Haven and Coatesville. (T. 98). In 1982 and 1983, Zurn shipped approximately 12 heavy hauling shipments. The witness anticipated that his company would require the transportation of more loads this year within Pennsylvania. (T. 98). Normally,

Mr. Frye chooses the carrier utilized for service. (T. 98).

Although stating that he had a good working relationship with them, the witness criticized Daily Express for their handling of loads over 21' long. This is because stretching Daily's trailers to accommodate such length sacrifices their weight capacity and the middle of the trailer bellies out, hits the ground or breaks the trailer and damages the equipment. However, on cross-examination, the witness could not recall the last load carried by Daily Express and stated that no Daily trailer had ever bellied out. (T. 103).

It should be noted that the witness testified that he was unable to predict the users of the equipment on a move-to-move basis. (T. 95). Presently, anything over 14' in height, 25' in length, and with a weight of 60-70,000 pounds must be shipped by rail. (T. 96). However, the witness testified that the applicant had equipment which could handle heavier weights and bigger pieces than are presently handled intrastate by truck for the shipper. (T. 97). The witness is critical of Conrail's rail services and said that if he had a choice, he would chose truck over rail shipments. (T. 96). Specifically, the witness criticized the damages he has experienced in utilizing Conrail, which he stated were impossible to collect and further described Conrail as "difficult to deal with." (T. 96). Furthermore, Conrail's abandonment of rail lines is making it difficult for the shipper to find rail sidings proximate to shipment sites. (T. 98).

Other carriers used by the shipper for intrastate heavy hauling have been Gottry Corporation (T. 99), who handles the majority of the shipper's intrastate heavy hauling traffic, Hardinger, on materials warehoused with them (T. 106), and Preston Special Commodities Division, on a limited basis. (T. 107). The witness testified that his reason for supporting the application was the limited number of carriers in northwestern Pennsylvania, his desire for more competitive pricing and his need for more specialized equipment utilizing the most advanced technology and engineering. (T. 100).

The witness testified that the applicant is particularly attractive to the shipper because it can perform both rigging and transportation, which the witness stated was unusual in the business. (T. 100-101). Gottry Corporation is attractive to the carrier because it has a terminal in Erie, Pennsylvania; however, Lomma is working on establishing a terminal in Pittsburgh. (T. 105).

4. Joseph Paul Presto, Corporate Traffic Manager
Fuller Company, a Division of
General American Transportation Corporation

The witness has served 8 years as the corporate traffic manager for Fuller Company and selects the heavy haulers utilized by the company. The shipper manufactures large industrial processing equipment such as kilns, grinding mills, crushers, dryers, air pollution equipment and coolers for the processing industry, (primarily the cement industry). Other industries that utilize Fuller's products include members of the chemical, mining, paper and sugar industries.

The company's manufacturing facilities within Pennsylvania are located in Allentown, Catasauqua, and Manheim. (T. 113). Primarily, the Allentown and Catasauqua facilities are involved in shipping overdimensional and overweight heavy hauling pieces. (T. 116, 127). Heavy hauling moves primarily involve kilns, grinding machines, crushers and dryers. (T. 114). The pieces are

very large in size: from 10' to 16-17' in diameter; 40-50' long and 50-90 tons in weight. (Id.)

Moves are primarily to the processing industry and steel mills (T. 114) but the destinations vary unpredictably. The shipper is not involved in inventory or shelf items. Instead, the product is manufactured on an ad hoc basis, designed for a specific application. (T. 115).

Because Pennsylvania is fairly intensified in the cement and steel industries, service to Pennsylvania is frequent; the company has 25-50 shipments to Pennsylvania points per year (T. 115), which the witness estimated constitutes 10-15% of his total traffic. (T. 131). The Pennsylvania destinations to which the company ships are Evansville, York, Hanover, Wampum and other sites in northeastern and northwestern Pennsylvania, and other sites in a local area, including Nazareth, Copely and Whitehall. (T. 117). The shipper's sales force is located in Bethlehem. (T. 118). The shipper arranges for the carrier on its movements approximately 99% of the time. (T. 118).

The average shipment is 50 tons, with shipments ranging much higher and lower than the average. The company had two recent shipments to Evansville, Pennsylvania that weighed 110 tons and were 17' in diameter and 65' long. The lowest weight of a heavy hauling shipment that Fuller would ship in the light over-dimensional category would weigh 20-30 tons but would be 13-14' square and 20-40' long. (T. 116-117). The size or dimension of the product as well as its weight could give rise to a need for heavy hauling. (T. 117).

The company's primary heavy hauling carriers are Bob Young, David Graham and Daily Express. David Graham is limited in scope to specific areas of overdimensional loads, for example, a maximum of 14' in height. (T. 120). Despite requests for this shipper, Graham cannot handle anything larger. (Id.) The shipper has done business with Frank W. Hake and considers Hake is a good carrier. However, the witness recalled one recent move to Evansville which Hake was scheduled to carry but its equipment was tied up and Fuller was forced to use another carrier. (T. 120).

Daily Express is also a good quality carrier, but they are unable to handle certain types of shipments (specific types of size and weight combinations). (T. 121). The witness recalled one shipment in 1984 to Sharon, Pennsylvania that Daily could not handle. (T. 125-126). The shipment was 17' in diameter, weighed 60 or 70 tons and was 28-30' long. (T. 126). The witness testified that Daily was unable to handle other moves in the past which he was unable to specifically recall. (T. 127).

The witness testified that Fuller had used Lomma in interstate service 6 times or more in 1984. The witness is satisfied with the service provided by Lomma and has tendered shipments to Lomma that Daily has been unable to handle. (T. 122). Lomma has exotic special equipment capable of handling loads that are 17-18' in diameter, the kind of equipment that few carriers in the country can provide. (T. 128-129). Only two of the super-dimensional or super-weight loads in 1984 required the super exotic equipment (requiring "well-type lowboys"). (T. 129). However, the witness expects that the trend in the industry is towards the larger items which it offers, because the use of the larger equipment marketed by Fuller is a method of modernizing certain facilities. (T. 135).

The witness testified that he would have no objection to using Moore-Fletcher's service or P. Liedtka Trucking Company's services upon proper quotes from them. (T. 130, 133). He requires as many quality, dependable, service and cost-oriented carriers as possible. (T. 123). There is no question that they would pay slightly higher prices for good quality service, and would certainly tender freight to the applicant if this application is successful. (T. 123).

The witness feels that there is a lack of quality, cost-oriented carriers because some have gone out of business, and for that reason supports this application. He is unhappy with being tied to a limited number of carriers. (T. 124).

5. Charles Cochran, Traffic Manager
Ecolaire Heat Transfer Company

The witness has been traffic manager for 1-1/2 to 2 years, with full responsibility for all shipping functions, including the selection of carriers. He was employed in the shipping department for 5 years prior to becoming traffic manager. (T. 137-138).

Ecolaire manufactures steel condensers, heat exchangers and related types of vessels generally involving a tubed shell, and various related apparatus. (T. 138). All such items are manufactured and distributed from the West Easton facility. (T. 139).

Of the shipper's products, it is usually the steam condensers which require special handling and special equipment. (T. 140). They vary in size and weight, and are generally shipped in one piece except for the very largest which may be assembled in the field. (T. 140-141). Of the field-assembled pieces, some components require special handling and special equipment. (Id.) The product is shipped to subcontractors as well as to end-users. (T. 142).

There is no set pattern to the distribution movements. They are down to a handful in Pennsylvania. (T. 142). Although the witness testified that the average volume per month to Pennsylvania was 8,000 pounds, he stated on cross-examination that no size and weight loads had been shipped to Pennsylvania in 1983 or 1984 (T. 150) and in fact there had been no Pennsylvania heavy hauls since he became traffic manager. (T. 157).

The witness was aware of heavy hauling shipments which moved to Three Mile Island and the Berwick power station. (T. 144). However, he stated on cross-examination that he was not sure whether the shipments moved by truck or by rail. (T. 156).

Ecolaire controls 90-95% of the routings on outbound moves. (T. 143). It receives shipments of raw materials -- mostly steel plates -- inbound from suppliers, very often as wide loads, by rail or by truck. The witness recalls that steel plates had been purchased from Lukens Steel in Coatesville but could not say with certainty that they had received permit loads from Lukens. However, Mr. Cochran felt that he has received size and weight shipments inbound from Lukens because Ecolaire purchases a great deal of steel which does not move by rail and which is of a size which would require a permit for its lawful transportation. (T. 147). The witness was not certain that the Lukens facility in Coatesville was the only origin of Pennsylvania traffic received on an inbound

basis because he is primarily involved with outbound traffic, but tended to think that Ecolaire does receive traffic on an inbound basis from other suppliers in Pennsylvania. (T. 147). While Mr. Cochran stated that Ecolaire retained the right to select carriers used on inbound shipments because it paid the freight, he conceded that they generally go along with the steel supplier's choice of carrier. (T. 148).

The shipper has utilized Daily Express in the past; David Graham has brought supplies inbound to Ecolaire's facility, but the witness did not believe that such shipments involved permits. (T. 149-150). One of Ecolaire's subcontractors dealt with Hake, and Hake has solicited the shipper in the last couple of months. (T. 150-151). He testified that he might use Graham or Hake if solicited on future shipments, but he would more likely be inclined to use Daily Express. (T. 158).

The shipper has used Lomma on interstate movements; he estimated 6 movements in 1984, and maybe possibly 12 in 1983. (T. 152).

For the handling of its product, the shipper requires special equipment including stretch equipment, single-drop or double-drop trailers, and other types of equipment. (T. 152). Mr. Cochran discussed in detail one special trailer provided by Lomma that was particularly well-suited for Ecolaire's traffic. (T. 153). Lomma's cambered design single-drop stretch trailer — the first the witness ever saw — contains an upward bow built into the steel so that when an especially heavy load is put onto the trailer the trailer becomes flat and supports the full weight of the tube bundle in a flat manner. This makes the shipment rigid and very safe. (T. 154-155). The trailer was used on one particular trip involving four shell sections, each weighing 95-100,000 pounds, each 40' long, wide and high. This tube bundle was particularly flexible and required good support. An ordinary stretch trailer, when laden with such a load, might sag in the middle and belly out. In the past, such a shipment went by rail, but, because of the tie-down, the time involved and the likelihood of damage involved in rail shipments, Mr. Cochran prefers to move these types of shipments by truck. (Id.)

6. James H. Kramer, Sales Manager
Pennsylvania Electric Coil, Inc.

Pennsylvania Electric Coil is a subsidiary of Allis-Chalmers. In the near future, the name of this company will be changed to Siemens-Allis. However, Mr. Kramer's responsibilities in connection with choosing and paying for heavy hauler service will remain unchanged. (Exhibit A-5; T. 168).

Pennsylvania Electric Coil manufactures coils and repairs motors. It has 2 facilities, both situated in Pittsburgh, Pennsylvania. It employs 129 people and does approximately \$7 million of sales annually. (Exhibit A-5, p. 1).

Pennsylvania Electric Coil ships motors, generators and transformers, primarily to steel plants. Principal identified Pennsylvania destinations include Sharon, Brackenridge, Monessen, Allenport, Leechburg and Dravosburg. The average weight of a shipment is between 45,000 and 50,000 pounds. Outbound shipments of repaired equipment range from 0 to 4 shipments per month. (Exhibit A-5, pp. 1-2).

Pennsylvania Electric Coil receives motors and transformers requiring repairs on an inbound basis from the same facilities to which it ships.

Pennsylvania Electric Coil initiates the pick up and directs the movement of the inbound shipments approximately 90% of the time. (Exhibit A-5, p. 2).

Pennsylvania Electric Coil's need for heavy hauling transportation arises on an emergency basis as a result of a breakdown at a particular facility. This shipper initiates both pick up of an apparatus at the site and the delivery back to that site following repairs. Consequently, most jobs are undertaken on a "rush" overtime basis and immediate service, often on 4 hours notice, is a necessity. Because of the nature of heavy hauling, the possibility always exists that a carrier's specialized equipment may be tied up. That problem has been intensified due to the loss of one of Pennsylvania Electric Coil's principal carriers - Benkhart - which has gone bankrupt. Pennsylvania Electric Coil requires an additional carrier which it can depend upon for expeditious service. (Exhibit A-5, p. 2).

Mr. Kramer indicated that J. F. Lomma had opened up a terminal in Bridgeville, which is in the Pittsburgh area, just one week prior to his testifying in this proceeding. The location of a terminal near his facility was attractive to Mr. Kramer since it may assist him in acquiring service on an expedited basis. (T. 167-168).

Mr. Kramer testified that certain of his products, even though they are not overweight, would require lowboy trailers because they are overdimensional in nature. (T. 169).

Most of the heavy hauling traffic of Pennsylvania Electric Coil emanates to and from this shipper's Saw Mill Run Boulevard facility. That facility operates as the motor repair section. (T. 171).

The stators for which this shipper would require heavy hauling service could weigh anywhere from 15 to 60 tons and range from 12 to 20 feet in diameter. (T. 173-174).

The last heavy hauling shipment discovered by Mr. Kramer was the movement of a 25 ton generator from Pennsylvania Electric Coil's mill to United States Steel in Irwin. That shipment occurred in January of 1984, moved on a lowboy trailer and was handled by Moore-Flesher. This shipper also had 2 heavy hauler movements to Sharon Steel in May of 1983 and 1 to Dravosburg in June of 1983. The May 6, 1983 shipment to Sharon Steel was 32,000 pounds and moved on a lowboy trailer. That was handled by Benkhart. The other shipment to Sharon Steel was 36,000 pounds and was also handled by Benkhart. Mr. Kramer was not sure of the type of equipment that was used for the second shipment. In July of 1983, this shipper required transportation to United States Steel Irwin Works. Such service was provided by Moore-Flesher. (T. 175-177).

The witness considers Moore-Flesher to be one of his principal carriers. (T. 178). Mr. Kramer was under the impression that he has utilized the service of Daily Express but does not know whether or not Daily has handled any intrastate shipments for him. He has never utilized any other western Pennsylvania local carriers besides Moore-Flesher and Benkhart. (T. 179). There has not been any service that Pennsylvania Electric Coil has required that Moore-Flesher has not been able to provide. (T. 179).

Mr. Kramer controls both the inbound and the outbound routings of his

traffic. (T. 179-180). Shipments that do not require the use of a heavy hauler are handled in private carriage. (T. 180).

The heavy hauler shipments to which Mr. Kramer testified were shipments destined to only 2 of his customers - Sharon Steel of Farrell, Pennsylvania and U.S. Steel Irwin Works in Dravosburg. Mr. Kramer indicated that he has 8 to 10 additional files for other customers such as Allegheny Ludlum, and Babcock & Wilcox. (T. 181-182).

7. James J. Malani, Traffic Manager
Ionics, Inc.

Ionics, Inc. manufactures steel weldments used by the nuclear power industry. A steel weldment can vary from a frame, to a cylinder, to a vessel. They are fabricated in accordance with the customers' designs. (Exhibit A-7, p. 1; T. 185).

Ionics maintains a facility located in Bridgeville, Pennsylvania. It ships its steel weldments from this facility to nuclear power facilities located at such points as York and Mechanicsburg. The average weight of a shipment would be approximately 50,000 pounds. These shipments are frequently oversized, with the dimensions varying dramatically from piece to piece since each piece is custom-made to the customer's specifications. Ionics has approximately 2 to 3 heavy hauling shipments per month outbound, with 1 to 2 of those shipments being destined to a Pennsylvania point. (Exhibit A-7, pp. 1-2).

Ionics has customers located in both York and Mechanicsburg. Ionics controls the routing of those shipments, and is presently utilizing the services of David Graham. Shipments moving to York and Mechanicsburg have been transported primarily on flatbed or lowboy trailers, depending upon the size of the equipment being transported. Normally, 90% of the shipments moving to those destinations require a heavy hauler. (T. 187-188).

Ionics has been utilizing the services of David Graham for approximately a year and one-half. Prior to that, Ionics utilized Benkhart. (T. 188-189).

Mr. Malani testified that he is sure that within the past 2 years Ionics has made shipments to points in Pennsylvania other than York and Mechanicsburg. However, he could not identify any other actual destinations of his Pennsylvania traffic. (T. 189).

Ionics has never utilized the services of either Daily Express or Moore-Flesher. In fact, Malani is not at all familiar with Moore-Flesher and has never been solicited by that company. (T. 189-191).

In addition to the weight of a given weldment, the dimensions of the shipment also determine whether or not Ionics requires specialized equipment. There may be weldments weighing less than 50,000 pounds that, because of their dimensions, require the use of specialized equipment. Ionics does ship this type of weldment in Pennsylvania. (T. 191-192).

8. Robert J. Casey, Jr., Vice President of Sales
Duquesne Electric and Manufacturing Co.

Duquesne Electric is a large dealer of used electrical equipment such as transformers and generators. As a dealer, it becomes involved in both the purchase and sale of these commodities. These products are purchased from companies engaged in the metal, mining, chemical and paper industries, as well as from the Federal Government. Included among the customers to which it sells its products are such companies as Bethlehem Steel and U.S. Steel.

Duquesne Electric's sole facility is located at 475 Butler Street in Pittsburgh. (Exhibit A-8, p. 1).

The specific commodities shipped and received by Duquesne Electric include AC/DC motors, transformers, electric switch gear, switches and motor generator sets. Of these, the motors, transformers and motor generator sets require special handling or special equipment. Duquesne Electric purchases this electric equipment and then remanufactures it for resale. (Exhibit A-8, p. 2; T. 196).

Duquesne Electric has approximately 3 shipments per month that require special handling or special equipment. An average "heavy hauling" shipment moving to a Pennsylvania point would range between 30,000 and 60,000 pounds, and would be between 8 and 10 feet wide. On an inbound basis, this shipper receives approximately 2 heavy hauling shipments per month, with total Pennsylvania inbound tonnage approximating 40 tons per month. (Exhibit A-8, p. 2).

Representative destinations of Duquesne Electric's traffic include Milton, Bethlehem, Sharon, Fairless Hills and Philadelphia. Included among the origins of shipments moving inbound to this shipper's Pittsburgh facility are the facilities of Bethlehem Steel in Bethlehem, those of Allegheny Ludlum in Brackenridge, and the facilities of U.S. Steel in Braddock, Duquesne, West Mifflin, Homestead, Fairless Hills and Johnstown. (Exhibit A-8, p. 2; T. 195).

Because of the weight of the motors and transformers for which transportation is required, Duquesne Electric requires 30 to 50 ton double-drop lowboy trailers. Approximately 20% of Duquesne Electric's freight utilizes this type of equipment. It is Mr. Casey's understanding that Lomma possesses this type of equipment. (Exhibit A-8, p. 2; T. 197).

Since federal deregulation of the motor transportation industry, Duquesne Electric has detected a noticeable decrease in the amount of specialty heavy hauling equipment available to transport its products. Smaller carriers that have been serving Duquesne Electric have either ceased operating or no longer provide the type of equipment that it requires. Specifically, Duquesne Electric is having difficulty obtaining double-drop lowboy trailers, and is supporting this application in order to acquire an additional source of specialty equipment. It therefore desires the availability of the service proposed by Lomma in order to help reduce or eliminate the problems it now encounters with respect to equipment availability. (Exhibit A-8, p. 2; T. 198).

Mr. Casey had a shipment which required a 30 to 50 ton double-drop lowboy trailer approximately 3 weeks prior to his testifying in this proceeding.

That was a shipment destined to Carnegie, Pennsylvania and which was handled by Haser Trucking. Haser has been utilized by Duquesne Electric approximately 1 to 2 times per month over the last 6 months. Mr. Casey testified that he has had difficulty obtaining equipment. One to two years ago Duquesne Electric utilized the services of Benkhart, but, with their demise, has relied solely on Haser. (T. 199-200). Haser has been utilized on a statewide basis. (T. 200-201).

Mr. Casey recognizes Moore-Flesher as a heavy hauler, but has not called upon that carrier for service. He was not familiar with Daily Express. (T. 203-204).

In addition to the other shipments testified to by Mr. Casey, he also had an overweight and overwidth shipment approximately 5 weeks prior to his testifying in this proceeding which moved to Carnegie, Pennsylvania. That shipment was handled by Haser. (T. 204-205).

9. John M. White, Traffic Manager
Tippins Machinery Co.

Tippins Machinery is a manufacturer and dealer of equipment utilized by metal processors, including members of the steel, aluminum, brass, titanium and copper industries. It maintains its main business office and manufacturing facility at 435 Butler Street, Etna, Pennsylvania. It also has 2 warehouse facilities situated in Pittsburgh. Outbound heavy hauling shipments originate primarily from the Etna facility. (Exhibit A-9, p. 1; T. 207-208).

The commodities shipped and received by Tippins Machinery in Pennsylvania include metal rolling mill machinery and machinery parts, metal processing machinery, electrical motors and generators, electrical control equipment, construction equipment and construction materials. All of these products, with the exception of the electrical control equipment, require special handling or special equipment. (Exhibit A-9, p. 2).

Tippins generally ships and receives its products as a result of projects entered into by its customers. As a result, the volume of traffic shipped fluctuates significantly based upon the customers' needs. During the past year, Tippins Machinery had approximately 12 "heavy hauling" shipments moving to Pennsylvania points. These shipments had an average weight of approximately 90,000 pounds, although some of the shipments can weigh as much as 160,000 pounds each. (Exhibit A-9, p. 2).

The 12 shipments referred to above were handled by Haser Trucking Company and Moore-Flesher. In the past, this shipper also utilized the services of Benkhart. It was Mr. White's understanding that Benkhart's authority had been acquired by Haser through Reinsfelder, a subsidiary. Mr. White has utilized the services of Reinsfelder, and recognizes that carrier as a heavy hauler. (T. 209). Mr. White considers Haser to be his primary carrier.

Tippins Machinery has shipments moving from its Etna manufacturing facility to its 2 Pittsburgh warehouses, as well as occasional shipments moving between the warehouses. In addition, it has shipments moving from the warehouses to other Pennsylvania points such as Washington, Brackenridge, Pittsburgh and Philadelphia. These destinations are intended to be merely representative of some of Tippins Machinery's more frequent shipping points.

The products shipped by Tippins Machinery are sometimes returned to it by its customers for servicing or repairs. Consequently, each of the destinations can also serve as an origin for inbound shipments. In addition, Tippins Machinery purchases used machinery from mills, and requires inbound transportation services to handle those types of movements. (Exhibit A-9, p. 2).

Haser has been providing service between Tippins Machinery's facilities as well as to Brackenridge, West Leechburg and Washington. (T. 210). In terms of volume, the primary move that Haser is involved in is a movement between Etna and Pittsburgh. Of the 12 moves requiring specialized equipment made by Tippins Machinery during the past year, at least half were handled by Haser. Of those handled by Haser, at least two-thirds were interplant movements. Moore-Flesher was utilized to Brackenridge. (T. 211).

The service provided by Moore-Flesher was the movement of armatures to and from Brackenridge. The service provided by that carrier was satisfactory. In connection with the armatures, additional equipment, motor parts, covers, bearings and bases were also transported. Some of these additional products moved on ordinary flatbed trailers. (T. 212-213).

In addition to having shipments which are extremely heavy, Tippins Machinery also has occasional shipments of equipment that can reach 15 feet in height. It requires the type of equipment that can properly transport these oversized loads over the highways. Tippins requires the availability of tri-axle, double-drop lowboy trailers. (Exhibit A-9, p. 2).

The past year, during which Tippins had 12 heavy hauling shipments moving to points in Pennsylvania, was a very "lean" year for this company. Mr. White thoroughly expects business in Pennsylvania to improve and would like to have Lomma's service available to handle the expected increase in traffic. (Exhibit A-9, p. 2).

Mr. White indicated that he was familiar with Daily Express, but had only utilized their services in interstate commerce. He was aware that they held Pennsylvania intrastate authority, but did not know that they were heavy haulers. (T. 214).

10. Edward Haynor, Materials Manager
Erie Strayer Company

Erie Strayer is fabricator of heavy construction equipment including concrete batching and mixing plants, material handling conveyors, and clamshell buckets. Erie Strayer is supporting this application for heavy hauling shipments moving outbound from its Erie, Pennsylvania facility. Such shipments would consist of concrete batching plants and material handling buckets to any site where a concrete batching plant is being constructed. These shipments are overwidth, overheight and occasionally overweight. The average weight of a heavy hauling shipment is between 35,000 and 40,000 pounds. Most of these outbound shipments are 12 feet in width, which necessitates the use of a carrier with heavy hauling capability. (Exhibit A-10, pp. 1-2; T. 219-220).

Erie Strayer averages approximately 10 to 15 heavy hauling shipments per month, with 1 to 2 heavy hauling shipments moving to Pennsylvania destinations. Because of the nature of the receivers of these products, Erie

Strayer's destinations are unpredictable. However, there has been a concentration of traffic in more urban areas, particularly Harrisburg and Philadelphia. (Exhibit A-10, pp. 2, 1).

Heavy hauling shipments have been handled by Hardinger Transfer and by Erie Strayer's own private fleet. Erie Strayer's private carriage operation handles approximately 10% of its total outbound heavy hauling traffic. Erie Strayer also loans equipment to Hardinger in order assist that carrier in providing heavy hauling service. Erie Strayer loans Hardinger drop-deck trailers and lowboys. (T. 20-21).

Mr. Haynor was not familiar with Moore-Flesher but has utilized the services of Daily Express in interstate commerce. Mr. Haynor was unsure as to whether or not he has utilized Daily Express' intrastate service, but did recognize Daily Express as a heavy hauler. Similarly, the witness recognized Gottry Corporation as a heavy hauling company, but has not called upon them for service. (T. 221-222).

Due to the limited number of heavy hauling carriers, Mr. Haynor feels that he requires another competitor in the marketplace which can offer competitive pricing and quality service. Because the possibility always exists that a carrier's special equipment is tied up when Erie Strayer requires service, an additional carrier capable of meeting this shipper's equipment needs would help insure dependable service. (Exhibit A-10, p. 2).

Mr. Haynor testified that he believes that his volume will increase and return to the volume that he had prior to the recession. He feels that this will result in an increase in his need for heavy hauling service. This is a result of the thousands of concrete batching plants situated within the state of Pennsylvania. Mr. Haynor said that he could conceivably have 6 loads in one week moving to one particular batch plant. It was Mr. Haynor's experience that such volume of traffic does occur. (T. 223-224).

11. Vincent G. Guinto, Manager of Traffic, Shipping and Receiving
Westinghouse Electric Corporation

Mr. Guinto is the manager of traffic, shipping and receiving for the large rotating apparatus plant of Westinghouse Electric Corporation. He is responsible for all transportation requirements of Westinghouse's East Pittsburgh facility.

As it pertains to this shipper's support for this application, Westinghouse Electric is a manufacturer of electrical generators. At its East Pittsburgh facility, Westinghouse manufactures heavy machinery which is shipped to points throughout the world. On an outbound basis, Westinghouse's East Pittsburgh facility ships turbine generators, turbine generator rotors, turbine generator stators, electric motors and reactor coolant pump motors. All of these commodities require either special handling or special equipment. (Exhibit A-11, p. 1). On an inbound basis, Westinghouse receives used generators, rotors, stators and motors.

Westinghouse Electric has between 10 and 20 heavy hauling shipments per month moving from its East Pittsburgh facility on an outbound basis. Of these, up to 6 shipments per month would be destined to Pennsylvania points. An

average heavy hauling shipment weighs approximately 70,000 pounds, with average monthly volume to Pennsylvania points averaging 200,000 pounds per month. Component parts can weigh as much as 1,000,000 pounds per unit.

Inbound shipments moving to the East Pittsburgh facility average 6 per month, with 2 originating in Pennsylvania. Approximate total inbound tonnage for Pennsylvania points would be approximately 200,000 pounds per month. (Exhibit A-11, p. 2).

Westinghouse Electric ships to, and receives from, various electric utility job sites within Pennsylvania. In addition, it ships to other major users of power such as pulp mills, paper mills and industrial complexes. Specific examples of past Pennsylvania destinations include Lester and Philadelphia.

The destinations of Westinghouse's traffic also serve as origins of inbound movements. Westinghouse also has its products move back to the East Pittsburgh facility for repairs. Once the repairs are completed, the product is returned to its original location. Westinghouse also has inbound movements of raw materials utilized in manufacturing its finished products. Inbound commodities such as forgings would require special equipment for their proper handling. Commodities moving on an inbound basis would originate at the facilities of such companies as U.S. Steel and Bethlehem Steel. (Exhibit A-11, p. 2).

Westinghouse requires any type of special equipment that can transport its products in a safe and efficient manner, including lowboy trailers, double-drop trailers and multi-wheeled vehicles. Westinghouse's products can be overdimensional in terms of height, width, length or weight. Consequently, the normal practice utilized by Westinghouse is to inform the carrier of the dimensions and weight of the particular item for which transportation is required and then allow the carrier to select the particular type of special equipment to be utilized based upon the weight and dimensions of the item to be transported. (Exhibit A-11, p. 2).

Westinghouse has experienced difficulty in acquiring the type of equipment it requires to safely move its products. Also, Westinghouse has discovered that some carriers possess incomplete authority and are therefore unable to meet all of this shipper's service needs. The approval of the Lomma application as applied for will insure the availability of additional equipment to Westinghouse, as well as affording the applicant the broad geographical coverage necessary to satisfy all of this shipper's intrastate heavy hauling requirements. (Exhibit A-11, pp. 2-3).

Westinghouse has utilized the services of Protestant Frank Hake, but not for heavy hauling service. Hake has solicited Westinghouse's "rigging" business, which is ancillary to the actual transportation. Westinghouse has not been solicited by Moore-Flesher within the past 10 years, and has therefore not utilized that carrier during that period of time. Westinghouse does utilize the services of David Graham, and has called upon that carrier to transport a generator from East Pittsburgh to Philadelphia. It took Graham approximately one week to furnish a tractor for Westinghouse's shipment. The only tractor that Graham has which is capable of hauling a 126,000 pound generator was in Texas at the time Westinghouse required service, and this shipper had to wait for that tractor to complete its Texas job and return to Pennsylvania. The one week delay in service caused aggravation for Westinghouse. Circumstances such as these are

part of the reason that Westinghouse is supporting the application of J. F. Lomma. (T. 231-233).

Westinghouse has not utilized the services of Daily Express for 10 to 12 years. This is due to the fact that Daily has not aggressively solicited Westinghouse's business, and this shipper has found alternative carriers that can satisfy its needs. (T. 233, 235).

Of the approximately 6 shipments per month that Westinghouse has moving to Pennsylvania destinations, 2 may move to Philadelphia for export and 2 may move on regular flatbed trailers. (T. 238-239). A majority of Westinghouse's inbound shipments are components being shipped by electric power plants to the East Pittsburgh facility for repairs. Since most of the electric utility companies do not have professional traffic departments, they allow Westinghouse to arrange for the transportation of those shipments moving to East Pittsburgh. (T. 239). Of the inbound shipments, approximately 30% move on regular flatbed trailers. (T. 240). In past year, in addition to Lester and Philadelphia, Westinghouse has had heavy hauling shipments to Shelocta, Erie and Scranton. There were probably additional Pennsylvania shipments, but Mr. Guinto could not identify the specific destinations. (T. 240-241).

Westinghouse has inbound shipments which originate at the U.S. Steel facility in Homestead, the Bethlehem Steel facility in Bethlehem and the Lukens Steel facility in Coatesville. Westinghouse pays the freight on approximately 95% of those inbound shipments, and selects the carriers for those shipments for which it pays the freight charges. (T. 242). Shipments moving inbound from Homestead occur on regular flatbed trailers, while some of the shipments coming from Bethlehem move on multi-axled trailers. The majority of the shipments moving into East Pittsburgh from Lukens Steel are handled on regular flatbed trailers. (T. 252-253).

Moore-Flesher has provided inbound service to East Pittsburgh on shipments routed by a utility. (T. 243-244).

Westinghouse does have a private carriage operation with limited heavy hauling capabilities. They have a couple of drop-frame trailers which are situated in High Point, North Carolina and which are utilized to serve all of Westinghouse's nationwide facilities. (T. 247-248). It is a rare occasion that Westinghouse uses its private fleet for heavy hauling shipments in Pennsylvania. This is because Westinghouse does not have the equipment available at the time that the East Pittsburgh facility requires it. Consequently, most of Westinghouse's heavy hauling shipments go by for-hire carriers. (T. 254).

David Graham was utilized to handle Westinghouse's most recent shipment to Lester. That occurred approximately 2 weeks prior to Mr. Guinto's testimony. That shipment was a component which weighed approximately 126,000 pounds and which moved on a multi-wheeled vehicle with a flat configuration. (T. 248).

The last shipment to Shelocta that was not transported on a flatbed trailer occurred approximately 2 years ago, and the most recent shipment to Erie occurred approximately 1 to 2 years ago. The heavy hauling shipment into the Scranton area occurred a couple of years ago, and was transported by Benkhart on a multi-wheeled vehicle. Westinghouse's most recent shipment to Philadelphia

occurred less than one year ago. (T. 250-252).

When Westinghouse's products move on flatbed trailers, they are always loaded in the plant by overhead cranes. Unloading is also done by overhead cranes or by various rigging means. Generally, it is the customer at the destination that makes the unloading arrangements. (T. 254-255).

Westinghouse had utilized the services of Moore-Flesher years ago. Moore-Flesher then elected to sell their interstate authority, and this resulted in Mr. Guinto's perception that Moore-Flesher has entrenched themselves to a few local customers. (T. 255-256). Equipment availability was a problem with Moore-Flesher on an interstate basis. It was Mr. Guinto's feeling that the sale of Moore-Flesher's interstate authority would impact upon their intrastate service because he believes they sold some of their equipment at the same time. In any event, following the sale of their interstate authority, Moore-Flesher's service deteriorated. (T. 263-264).

The weights and dimensions of Westinghouse's components determine whether they move on flatbed equipment or more specialized trailer equipment. They range in weight from 30,000 pounds to over 1,000,000 pounds. (T. 255-256).

Outbound shipments are determined by orders received by Westinghouse for the components. Westinghouse must send the components on time in order to satisfy the customer's requirements and to meet specific construction schedules. Inbound shipments from the power plants are generally on an emergency basis where the equipment is needed immediately. (T. 256-257). Mr. Guinto estimated that 50% of all of his loads required emergency service. (T. 269).

Mr. Guinto indicated that he is convinced that Westinghouse requires the availability of Lomma within Pennsylvania. This is due to the fact that, because of the nature of Westinghouse's business, it needs equipment on a moment's notice and it has been unable to obtain that type of service from existing carriers. Also, because Lomma has a facility in the Pittsburgh area, it will greatly enhance Westinghouse's ability to satisfy its customers and get Westinghouse's product to the electric power plants in a timely fashion. (T. 261-262).

12. Charles W. Rhinier, Manager - Traffic, Shipping and Packaging
Schramm, Inc.
and
Traffic Manager
Pneumatic Electric and Equipment Company

Schramm is engaged in the manufacture of heavy drilling equipment, portable, stationary and high-pressure air compressors and pneumatractors. Pneumatic Electric and Equipment Company ("PEECO") is a sales and service organization that is a wholly-owned subsidiary of Schramm. PEECO is involved in selling the products manufactured by Schramm, and PEECO's sales territory includes Pennsylvania. PEECO and Schramm require transportation of air compressors, and parts therefore, portable drilling equipment, parts and accessories, drill pipes for water-well drilling and portable tractors with back hoes. Their portable drills, portable tractors and high-pressure air compressors are all heavy, bulky items, with a single tractor weighing as much as 15,000

pounds and a single compressor weighing between 12,000 and 18,000 pounds. The drills, tractors and compressors all require special handling or special equipment. (Exhibit A-12, pp. 1-2).

Out of a total of 5 to 10 outbound shipments per month, 2 to 5 heavy hauling shipments move to Pennsylvania points. The average monthly total tonnage is 219,616 pounds, with tonnage to Pennsylvania points being 164,712 pounds per month. These volume figures represent traffic of both PEECO and Schramm. (Exhibit A-12, p. 2; T. 272). All of this Pennsylvania traffic moved on detachable gooseneck lowboys or drop-deck trailers. (T. 276-277).

PEECO and Schramm sell their products to a network of dealers and distributors and therefore require service to the facilities of these dealers and distributors on a regular basis. Also, Schramm dealers and PEECO have a need for delivery service directly to their customers. Schramm and PEECO customers can be situated in any point in Pennsylvania, and these shippers therefore fully support Lomma's application for statewide authority. Some representative destinations of past heavy hauling shipments include Clearfield, Oil City, Uniontown, Harrisburg, Downingtown and West Chester. These are locations of distributors as well as customers of dealers or distributors. In addition to these specific destinations, Schramm and PEECO have heavy hauling shipments moving to the facilities of the Pennsylvania Department of Highways and the Turnpike Commission. Those 2 customers receive the shipments at their maintenance garages, which are spread throughout Pennsylvania. (Exhibit A-12, p. 2; T. 272-273).

Schramm and PEECO require drop-deck stretch trailers which are required for handling portable tractors which can be as high as 108 inches. Also, these shippers have a need for detachable, gooseneck lowboy trailers. The need for these specialized trailers is particularly acute in connection with movements to customer jobsite locations. The detachable gooseneck facilitates the loading and unloading of the product at those jobsites. (Exhibit A-12, p. 2; T. 273-274).

Mr. Rhinier is supporting the application because of his belief that there a definite need for an additional carrier to handle the type of traffic for which he requires transportation. The authorization of Lomma in Pennsylvania will help these shippers insure the availability of the special type of equipment that Schramm and PEECO require, when they require it. Lomma has shown an ability to provide the proper equipment that Mr. Rhinier requires. (Exhibit A-12, p. 2; T. 274-275).

Mr. Rhinier considers Daily Express to be his primary carrier. He had supported the application of Robbins Transportation, but was unaware that they received the authority that they requested. No one from Robbins has contacted Mr. Rhinier since he testified on their behalf, and he therefore has not given that carrier any traffic. (T. 277-278, 282).

Mr. Rhinier could not recall the last time he had a shipment to any of the listed destinations. (T. 280). All of his traffic does originate in West Chester. (T. 280).

Approximately 5% of Mr. Rhinier's outbound intrastate heavy hauling shipments have been routed by his customers. (T. 283).

Mr. Rhinier is not supporting Lomma strictly as a back up carrier for

Daily Express. There will be instances when this witness contacts Lomma first for service before making any contact with Daily for service to Pennsylvania points. Mr. Rhinier is not aware of any other heavy hauling carriers that can provide service for him from his facilities to points in Pennsylvania. Even if this application is approved, Daily will probably remain his primary carrier. (T. 283-284).

13. J. R. Aylsworth, Traffic Manager
Seco/Warwick Corporation

Seco/Warwick is a manufacturer of industrial furnaces which are utilized in heat treating a variety of products. Its furnaces are utilized by such diverse companies as Caterpillar Tractors and Timex Watches as well as steel and aluminum mills. Also, as of May 18, 1984, Seco/Warwick moved the fabricating operation that was previously being conducted in Illinois to Meadville. (Exhibit A-13, p. 1; T. 286-287).

Seco/Warwick ships industrial heat treating furnances and aluminum holding furnaces, as well as parts for these products, from Meadville to points in Pennsylvania. Its furnaces are of the nature that they require special handling or special equipment for their proper transportation. For example, a single furnace can require 50 to 55 tractor-trailer movements for its complete transportation. Each of those movements could be of an overdimensional component part that would require special equipment or special handling. Also, this shipper has a case-master unit that measures 15 feet in height and 15 feet in width and is 30 to 40 feet in length and weighs between 100,000 and 120,000 pounds and requires specialized equipment. (Exhibit A-13, pp. 1-2).

Mr. Aylsworth estimated that his total outbound heavy hauler shipments approximate 20 per month, with 3 per month destined to Pennsylvania points. Each of these shipments averages approximately 50,000 pounds. In 1982, Seco/Warwick utilized specialized common carrier service to transport 6,873,000 pounds. This figure for 1983 was 4,566,000 pounds. (Exhibit A-13, p. 2; T. 287). Also, because of the transfer of the fabricating operation from Illinois to Meadville, it is anticipated that Meadville's outbound volume will double in the near future. Of the volume figures discussed above, approximately 70% required heavy hauling service. The percentage of heavy hauling shipments will increase as a result of the consolidation of the Illinois and Meadville operations. (T. 287-288). In actuality, the percentage of traffic that would be considered heavy hauling would be greatly increased because of the fact that they require specialized equipment although they are not extremely heavy in nature. (T. 289-290). Mr. Aylsworth indicated that there would be a significant increase in the number of heavy hauling shipments that he has because of his new understanding of the definition of heavy hauling in Pennsylvania, but he was unable to give specific volume figures. (T. 292).

With respect to movements to Pennsylvania points, Seco/Warwick has had shipments to York, Philadelphia and Pittsburgh. These destinations are not indicative of all of Seco/Warwick's Pennsylvania traffic, but are merely representative of points to which it has shipped in the past.

Seco/Warwick has sales representatives operating throughout the United States and throughout the Commonwealth of Pennsylvania. Any point at which a new manufacturing facility is being constructed is a potential destination

for this shipper's traffic. Seco/Warwick's traffic patterns are irregular, with shipments moving 10 miles from its Meadville facility one week and 300 miles the next. It is therefore fully supporting the statewide application of J. F. Lomma. (Exhibit A-13, p. 2).

Seco/Warwick has a distinct need for specialized transportation equipment. It requires double-drop, single-drop, stretch double-drop, and stretch flatbed trailers. Also, because of the enormous weight of some of its products, and in order to comply with Pennsylvania bridge and axle weight laws, Seco/Warwick sometimes requires equipment with more than five axles. It is Mr. Aylsworth's understanding that Lomma has available each variety of equipment that he requires. In addition to specialized equipment, Seco/Warwick also has special service requirements, including jobsite deliveries, and scheduled, date and time deliveries. (Exhibit A-13, p. 2).

On an intrastate basis, Daniel Transport is the only carrier which is presently being utilized. However, Daniel Transport does not have available the type of specialized equipment that Seco/Warwick requires. This forces Seco/Warwick to break down its shipments into component parts which is an unsatisfactory method of operating. The breaking down of shipments into component parts forces Seco/Warwick to employ construction crews to erect the unit "on site." The additional expense incurred in employing construction crews has adversely affected Seco/Warwick's profitability. In fact, Seco/Warwick has declined certain Pennsylvania business because of the absence of satisfactory intrastate carriers and the resulting increased costs involved in erecting furnaces that have been shipped piecemeal. Lomma would be utilized to handle a complete unit, thereby reducing Seco/Warwick's costs and enabling it to accept business that it previously declined.

Another basis for this shipper's support is the termination of rail service. Previously, it relied heavily upon Conrail for its intrastate transportation needs. However, within the past 24 months, Conrail's service has been almost totally non-existent. It therefore desires to use Lomma to replace its prior rail service. (Exhibit A-13, pp. 2-3).

In the past, some of Seco/Warwick's smaller units have been handled in conventional van type trailers or on flatbed trailers. However, because of the new federal law dealing with asbestos, Seco/Warwick has changed its transportation and installation procedures. Presently, most of their shipments are transported on detachable gooseneck trailers which facilitate the unloading of the equipment at a jobsite and eliminates the need for rigging at the destination point. (T. 293-294).

Of the volume figures given above, none of it moved to points in Pennsylvania. All of the shipments destined to Pennsylvania were knocked down and field erected. (T. 295-296).

In addition to the specific destinations of York, Philadelphia and Pittsburgh, Seco/Warwick also had heavy hauling shipments moving to Bloomsburg and to points in the Meadville vicinity. The movement to Meadville was handled on equipment leased by Seco/Warwick. This was done because Mr. Aylsworth was unable to find a carrier willing to handle the move because it was of a very short distance. Seco/Warwick has no plans to make other moves to Pennsylvania points on leased equipment. (T. 297-298). The fact that Seco/Warwick has made shipments in a knockeddown fashion has greatly increased its costs. (T. 298).

As a result of contact made by Mr. Aylsworth with the Pennsylvania Public Utility Commission, Mr. Aylsworth is aware of the availability of Daily Express. The witness testified that he has contacted Daily no less than 12 times within the last 12 months and was informed each time there was no equipment available. (T. 301). To Mr. Aylsworth's thinking, Daily Express is not available to him for service in Pennsylvania. (T. 314). Mr. Aylsworth has never heard of either Moore-Flesher or Reinsfelder. (T. 302).

Mr. Aylsworth has portions of shipments going on regular flatbed trailers and other portions of the same shipment being handled by heavy haulers. It would be most convenient for him to have the same carrier handle both aspects of the transportation. (T. 303-304). However, it is not essential for him to use the same carrier to handle both large components and the smaller components with respect to a particular installation job. Mr. Aylsworth indicated that it is certainly not unusual for him to use a number of carriers in connection with an installation job. (T. 314-315).

On outbound shipments, Seco/Warwick performs rigging at the origin and either uses its own construction group or hires a rigging outfit to unload the material at the drop site. (T. 305).

The witness testified that certain component parts for knockeddown equipment are overdimensional and require specialized trailer equipment. (T. 312-313).

The witness could specifically recall requesting service from Daily Express on a shipment to Louisville, Kentucky. He is certain that he had requested service in intrastate commerce, but could not identify the destination of those shipments. (T. 315-316).

14. Eugene S. Ackerman, Traffic Manager
H. H. Robertson Company - Ambridge Division

The Ambridge Division of H. H. Robertson Company is engaged in the development, manufacture and erection of non-residential metal building products. It manufactures component parts such as floors and exterior walls that are combined "on site" to produce a finished building. These products are utilized entirely for commercial purposes, including the erection of warehouses as well as floor systems for high rise office buildings and hospitals. All of the outbound traffic testified to by Mr. Ackerman originates at the Ambridge facility. (Exhibit A-14; T. 320).

The specific commodities shipped by H. H. Robertson include a variety of products utilized in metal buildings, including entire sections of those buildings. This would include both plain and corrugated steel roofing, steel beams, steel sheets and building construction sections, together with accessories for the metal buildings. These products can range up to 45 feet in length. Inbound shipments from Pennsylvania points would involve steel coils moving in 45,000 pound truckload shipments.

For the 34 weeks from January 1 through August 31, 1984, H. H. Robertson had a total of 2,029 shipments moving outbound from its Ambridge facility. Of this total, 152 went to Pennsylvania points. Shipments moving to points in Pennsylvania had an average weight of 20,825 pounds. During the period

in question, the average monthly volume to Pennsylvania points was 395,675 pounds. For this same 34 week period, H. H. Robertson had a total of 54 inbound shipment from Pennsylvania points out of 103 total inbound shipments. Total inbound tonnage for the period in question approximated 4,230,000 pounds. (Exhibit A-14, p. 2). This inbound volume is not limited to shipments originating in Pennsylvania, but includes traffic moving inbound to Ambridge from all sources. (T. 319).

The following is a listing of Pennsylvania points to which H. H. Robertson has had shipments: Philadelphia, Pittsburgh, Reading, Allentown, Upper Merion, Horsham, Enon, Erie, Shippingport, University Park, Ebensburg, Altoona, Johnstown and Midland. Inbound shipments originate primarily at Irwin, Allenport and Fairless Hills, Pennsylvania. (Exhibit A-14, p. 2).

H. H. Robertson requires timed, scheduled deliveries. For example, it may require that a certain delivery be made at 8:00 a.m., a second delivery at 9:30 a.m., and a third delivery at 1:30 p.m. Such service is necessary in order to meet the construction schedules of the workers erecting the completed building. Also, because its products are utilized primarily in new construction, H. H. Robertson requires jobsite deliveries. This is particularly true with respect to traffic moving to Pennsylvania points. (Exhibit A-14, p. 2).

H. H. Robertson has utilized the services of J. F. Lomma on an interstate basis and has been well pleased with the service that the applicant has supplied to it. H. H. Robertson would very much like to have Lomma's availability to handle its Pennsylvania intrastate traffic. (Exhibit A-14, p. 2).

H. H. Robertson is basically a flatbed shipper. The flatbeds are loaded at origin by H. H. Robertson and are unloaded at destination by either the consignee or crews employed by H. H. Robertson. (T. 320). H. H. Robertson's inbound traffic also moves on flatbed equipment. (T. 321).

H. H. Robertson does not always ship on flatbed trailers. (T. 324). One of the bases for this shipper's support is the present unavailability of a choice of the type of equipment the he requires. Presently, he only has available to him a choice of flatbed equipment. This is unsatisfactory because he does not ship his products by weight, but ships by square foot and prefers to load either stretch trailers or lowboy trailers when they are available. He utilizes this type of equipment in interstate commerce and wishes to utilize special equipment in intrastate commerce as well. (T. 326-327). Mr. Ackerman indicated that he is very limited in the amount of square footage that he can place on a 40 foot trailer and because of the loading methods and the type of material that he has and the length of the materials that he ships he could increase his shipping volume if he could utilize a lowboy trailer. (T. 328). In previous years, Mr. Ackerman has used lowboy trailers when available to points in Pennsylvania. (T. 330).

Accessories that move with main loads are generally transported on the same trailer with the main load, if room permits. (T. 331). Mr. Ackerman would prefer to have the same carrier transport both the main shipment and the accessories. (T. 333-334). A 48 foot non-stretch trailer would be sufficient to satisfy this shipper's needs. (T. 334). It is not a rare occasion when H. H. Robertson requires the use of a 48 foot trailer. (T. 335).

15. Paul F. McCann, Traffic Manager
Pittsburgh-Des Moines Corporation

Pittsburgh-Des Moines is a steel fabricator and erector. As pertinent to this application, it maintains a manufacturing facility in Warren, Pennsylvania and a "tool house" situated in Neville Island, Pennsylvania. It also has tentative plans to reopen a manufacturing facility in Neville Island.

Pittsburgh-Des Moines ships iron and steel items used on flat bottom cone roof tanks, flat bottom dome roof tanks, bridges, liquid and natural gas tanks, spheres, elevated water storage tanks and construction equipment, as well as shipping entire tanks when their size permits their over-the-road transportation. Inbound shipments consist of steel plates, beams and angles, as well as girders used in building bridges. Pittsburgh-Des Moines has 10 outbound shipments per month, with 4 of these moving to points in Pennsylvania. The average weight of an outbound heavy hauling shipment is 40,000 pounds. This traffic all originates at Neville Island. (Exhibit A-15, p. 2; T. 342).

Inbound shipments occur approximately 15 times per month. Of these, 5 originate at Pennsylvania points. Total inbound tonnage from Pennsylvania points averages 45 tons per month and moves inbound to the manufacturing facility in Warren. (Exhibit A-15, p. 2; T. 344).

Representative points within Pennsylvania to which Pittsburgh-Des Moines has shipped products requiring heavy hauling include Shippingport, Neville Island, Warren, New Sewickley, Bradford, Elrama and Ardara. Pittsburgh-Des Moines also has shipments moving between jobsites located in Pennsylvania without having the products move back to either Warren or Neville Island. Most of these shipments involve the movements of cranes. Inbound origins include Homestead, Bethlehem, Washington, Johnstown and Conshohocken. (Exhibit A-15; T. 342).

Pittsburgh-Des Moines requires drop-deck trailers and double-drop trailers. Also, because it requires deliveries to jobsites, Pittsburgh-Des Moines requires equipment that is powerful enough to make deliveries of its heavy equipment at unpaved locations. In addition to jobsite deliveries, PDM requires timed, scheduled deliveries. Since PDM not only manufactures the commodities in question but also erects them at destination, it is very important that deliveries arrive on time in order to keep the erection crews on schedule and in full operation. Late deliveries do not only cause construction delays but also result in additional expenses for Pittsburgh-Des Moines by causing this shipper to pay its workers while they remain idle awaiting the arrival of an indispensable shipment. (Exhibit A-15, p. 2).

Pittsburgh-Des Moines is supporting the application of J. F. Lomma in part because of an anticipated increase in the amount of traffic it will have moving between points in the application territory. This is particularly true if the Neville Island manufacturing facility opens as anticipated. The authorization of Lomma in Pennsylvania will afford Pittsburgh-Des Moines greater access to heavy hauling service by making available to it additional equipment. This will, in turn, insure the dependable service which PDM requires. (Exhibit A-15, pp. 2-3).

When Pittsburgh-Des Moines tools up a job, it usually requires 5 loads of equipment. One of those loads would be a shipment requiring heavy hauling

services. Outbound shipments of materials for a particular job, and not necessarily the tools utilized in erecting those materials, may also involve the use of specialized trailer equipment. (T. 344-346).

Most of the steel moving inbound to Warren moves on regular flatbed trailers. (T. 347).

Pittsburgh-Des Moines has utilized the services of Moore-Flesher, Daily Express and Frank Hake. It is Mr. McCann's position that the carriers presently available to him do not have sufficient amounts of special equipment to handle all of his traffic. This is particularly true in view of his expected expanded operations. (T. 348-349).

If the bridge business expands as expected, Pittsburgh-Des Moines will require specialized trailers for inbound shipments moving to Warren. (T. 349).

An additional basis for Mr. McCann's support is that as a result of his business increasing, he will require larger quantities of large pole trailers, drop-deck trailers and double-deck trailers. (T. 351).

Protestant Witnesses:

1. Frank W. Hake, II, Vice President
Frank W. Hake, Incorporated

Frank W. Hake, Incorporated ("Hake") is a motor carrier concentrating in heavy specialized transportation, primarily those shipments over 50 tons in weight. It holds authority from the Pennsylvania Public Utility Commission to provide heavy hauling service between points in the city and county of Philadelphia and within an airline distance of 150 statute miles of City Hall in Philadelphia. It also holds heavy hauling authority to provide service from railhead to railhead, or from railheads to points of installation, between points in Pennsylvania. (T. 358; Hake Exhibit 1).

Hake operates 7 specialized heavy hauling tractors, 2 of which are capable of pulling loads up to 500 tons. Hake also operates 8 tandem stretch trailers, 9 lowbed trailers, 6 various types of special trailers, 5 cranes and 2 crawler transporters. (T. 359-361; Hake Exhibit 2).

Hake maintains a terminal in Eddystone, Pennsylvania which has rail service into and out of the facility, with inside overhead cranes, outside overhead cranes, approximately 40,000 square feet of inside storage which is serviced by overhead cranes, a 5,000 square foot service shop and approximately 10,000 square feet of office space. The terminal facility has a telecopy machine, as well as a telex machine which are capable of obtaining permits from the Department of Highways. (T. 364).

Hake provides rigging as well as transportation services. It also provides escorts as required for superheavy loads. (T. 364-365).

Hake has solicited both rigging and hauling work from Westinghouse Electric Corporation in East Pittsburgh and has provided service for that shipper. Mr. Hake was not aware of any complaints from Westinghouse regarding the services which he has provided for them. Hake has also solicited Schramm, Inc.

but has not been given the opportunity to perform any services for that company. (T. 365-366).

Hake has solicited and performed work for Pittsburgh-Des Moines when that shipper's Neville Island facility was open. It is Mr. Hake's impression that the Neville Island facility was still closed at the time of his testimony. (T. 367-368). Hake has also solicited and performed work for the Fuller Corporation. Such work has been provided for in excess of 20 years, and Mr. Hake did not have knowledge of any complaints received from that shipper. (T. 369).

Service provided by Hake for Metropolitan Edison has included rigging as well as transportation. Again, no complaints were received regarding Hake's services. (T. 369). Hake has solicited work from Ecolaire Heat Transfer Company but has not received any request for transportation services from them, although Hake has been in Ecolaire's facility at the request of that shipper's customers. (T. 370).

Hake's heavy hauling equipment - that being 50 tons and over in capacity - is utilized approximately 30% to 35% of the time. It was Mr. Hake's opinion that there is no need for another heavy hauler in Pennsylvania due to the economic climate as well as the high dollar investment that heavy haulers have made in their equipment and the under-utilization of that equipment that they are presently experiencing. (T. 370-371). Mr. Hake estimated that his company has invested in excess of \$2.5 million on specialized equipment. (T. 372).

In 1983, Hake had gross operating revenues of approximately \$216,000.00. Of this, approximately \$188,000.00 was derived from service provided in Pennsylvania intrastate commerce. In addition to providing heavy hauling service, Hake also acts as a rigger and a millwright. In 1983, Hake employed approximately 16 people in the motor carrier business while employing an additional 1,100 people in the rigging, millwrighting and warehousing aspect of its operation. In 1983, Hake earned a profit from its motor carrier operations, but reported a loss from non-carrier operations of approximately \$345,000.00. (T. 373-376).

Hake had overall revenues of between \$10 million and \$11 million in 1983, with \$188,000.00 being derived from service rendered in Pennsylvania intrastate commerce. In that same year, the cost of conducting Hake's non-carrier operations amounted to approximately \$9,800,000.00. The equipment reflected on Hake's equipment list is utilized in operations other than PUC activities. (T. 376-377).

Mr. Hake was under the impression that David Graham, another protestant in this proceeding, does not possess the equipment necessary to handle a 400 ton load. (T. 380). Similarly, Mr. Hake does not see Daily Express as a competitor for shipments in the 200 ton to 400 ton range. (T. 381).

Mr. Hake could not identify the last time that his company provided service for Fuller within Pennsylvania. Hake has not provided service for Metropolitan Edison within Pennsylvania within the last year. In fact, the witness could not indicate the last time he provided Pennsylvania intrastate service for that shipper. The solicitation of Schramm occurred within the last 2 years, while the solicitation of Ecolaire occurred within the last 2 to 3 years. (T. 382-384).

Hake served Westinghouse approximately a month before this witness' testimony in this proceeding. The transportation services rendered took place between Chester, Pennsylvania and Philadelphia. Mr. Hake admitted that his company could not serve Westinghouse's East Pittsburgh facility unless the shipment either originated at or terminated at a railhead. (T. 384-385).

2. George Krom, Vice President of Sales
David Graham Company

David Graham specializes in service provided on flatbed and specialized equipment capable of handling shipments up to 70 tons. It holds authority from the Pennsylvania Public Utility Commission which authorizes the provision of heavy hauling services between points in the city and county of Philadelphia and points within 170 miles of said city. It also holds authority to provide service from this territory to the remainder of Pennsylvania. This latter authority is subject to several shipper and territorial restrictions. (T. 387; Graham Exhibit 1).

Graham maintains its main terminal in Tullytown, Pennsylvania, with an additional company-owned terminal in Harrisburg and agency terminals in Allentown, Smithton and Coraopolis. Graham operates 28 company-owned tractors and utilizes 200 trailers, of which 61 qualify as "specialized" according to the definition utilized by the Pennsylvania Public Utility Commission. (T. 388-389). Graham has a transceiver which is utilized in obtaining permits, and provides escorts on loads that require permits. (T. 391).

In addition to 20 owned tractors, Graham also leases 185 additional tractors. (T. 402). Of the owned tractors, only one is suitable for handling a load in excess of 50 tons. (T. 404). Of the tractors owned by Graham, only one is registered in Pennsylvania. Although the owned trailers are domiciled in Pennsylvania, they are not utilized for handling intrastate traffic. Similarly, only 11 of the leased tractors are registered in Pennsylvania, and none of those are capable of handling a 50 ton load. (T. 404-406). The leased trailers that are registered in Pennsylvania are not utilized exclusively for intrastate service, but are also utilized for providing service in interstate commerce. (T. 406).

Graham has provided heavy hauling service for Westinghouse Electric Company on shipments moving in Pennsylvania intrastate commerce. Graham has also provided heavy hauling service for the Fuller Company, but has never been offered any heavy hauling shipments moving between Pennsylvania points. (T. 392-393).

Graham has solicited, but not received any Pennsylvania intrastate heavy hauling traffic from H. H. Robertson Company, Pittsburgh-DesMoines Company and the Schramm Company. This protestant has also solicited the Seco/Warwick Company and has been offered Pennsylvania intrastate work by that shipper. (T. 394-395).

Graham has invested approximately \$1.5 million in specialized trailer equipment, while its investment in tractors accounted for another \$3.5 million. (T. 397). Graham's heavy hauling facilities and equipment are presently being utilized approximately 80% of the time. (T. 395-396).

The tractors in which Graham has its \$3.5 million investment are not

utilized in Pennsylvania intrastate heavy hauling service. (T. 409).

Graham has not provided any heavy hauling services for supporting shippers other than Westinghouse in intrastate commerce. (T. 399, 411-412).

In 1983, Graham had total intrastate revenues of approximately \$622,000. A large portion of Graham's non-heavy hauling intrastate service is related to the transportation of iron and steel. Mr. Krom could not estimate what percentage of his intrastate revenue was derived from heavy hauling service. (T. 399-400).

Graham had total operating revenues of approximately \$11.5 million in 1983, and Mr. Krom estimate that total revenue for 1984 would approximate \$17 million. (T. 413-414).

Mr. Krom indicated that he has handled over-dimensional loads for Fuller Company on an interstate basis, and stated that he has no information regarding his company's refusal to handle an intrastate over-dimensional load for that shipper. (T. 414-415).

3. E. S. Moore, Jr.
Corporate Director of Traffic and Special Projects
Daily Express, Inc.

Daily Express holds authority from the Pennsylvania Public Utility Commission which authorizes the transportation of property (excluding commodities in bulk and household goods in use) between points in Pennsylvania, subject to 9 specific restrictions. (Daily Exhibit 1, Appendix A). The statewide authority presently held by Daily was obtained in January or February of 1984. (T. 441).

Daily maintains its main office in Carlisle, Pennsylvania, with additional Pennsylvania terminals located at Allentown, Harrisburg, Johnstown, New Kensington, Towanda and Williamsport. Terminals located at Hamburg, New York, Elkton, Maryland and Wheeling, West Virginia are also utilized to supply equipment and service to customers located in Pennsylvania. (Daily Exhibit 1, pp. 2, 4). Daily's terminals are connected by a system-wide computer housed at the main terminal in Carlisle.

System-wide, Daily Express maintains approximately 35 terminals, with the majority of those being located in northeastern United States. Daily stations equipment at each of these terminals. The number of pieces situated at a particular terminal varies depending upon the needs of shippers in that particular area. (T. 442-443).

Daily's fleet of highly-specialized trailer equipment is controlled by a special team located at Carlisle. Individual regional terminals have day-to-day access to the specialized equipment, but overall supervision of Daily's fleet of 75 to 100 units is maintained by the special team in Carlisle. (Daily Exhibit 1, p. 3).

It was Mr. Moore's contention that due to the various locations of Daily's terminals, Daily was reasonably certain that any Pennsylvania customer would have an appropriate tractor/trailer unit at its door within an hour or two of requesting service. (Daily Exhibit 1, p. 4-5).

Daily currently operates approximately 129 tractors and more than 950 trailers of various design. Trailers include 399 flats, 129 stretch-flats, 2 steerable dollies, 27 single-drops, 246 level-decks, 79 lowboy fixed necks, 48 lowboy detachable goosenecks, 8 stretch detachable goosenecks, 7 vans and 7 glass hauler trailers. (Daily Exhibit 1, p. 5, Appendix B).

Daily has an active safety and maintenance program. (Daily Exhibit 3).

Daily provides service in interstate commerce pursuant to nationwide non-radial general commodity authority. Daily attempts to complement or supplement its interstate operations from and to Pennsylvania points with its intrastate operation. Intrastate operations in 1982 grossed approximately \$1.8 million. In 1983, Daily's intrastate revenue was \$1.5 million while its system-wide revenue was between \$40 and 42 million. Consequently, Daily's intrastate revenue amounted to approximately 3 or 3 1/2% of its system-wide revenue. Mr. Moore anticipated that intrastate revenues in 1984 would approximately \$2 million. This would result in a growth of approximately 25% over the previous year.

During the first 8 1/2 months of 1983 Daily handled 3,175 loads in Pennsylvania while for the first 10 months of 1984 it handled 5,135 such shipments. (T. 446-448). These 1984 shipments generated gross revenues of excess of \$1.7 million. (Daily Exhibit 1, p. 6).

Mr. Moore could not identify the number of heavy hauling shipments Daily Express handled between Pennsylvania points during the first 10 months of 1984. Mr. Moore similarly could not indicate the amount of revenues derived from Pennsylvania intrastate heavy hauling service during the stated period. (T. 450-453).

Daily offers a call-and-demand type service with the following special features: statewide authorization, trailer spotting, prompt pick-up and delivery (specialized equipment to be provided within 24 to 36 hours from the time of request), provision of multiple trailers, widespread terminal locations, operational flexibility, continuous equipment acquisition, modification and maintenance, and superior operational safety and claims experience record. (Daily Exhibit 1, pp. 7-10).

Daily normally keeps its stretch equipment and lowboys at only one place in western Pennsylvania, one in central Pennsylvania and one in eastern Pennsylvania. (T. 420). Daily does not have any specific equipment with 100 ton capacity, but does possess equipment capable of handling shipments of 80 to 90 tons. (T. 423).

In addition to its present complement of equipment, Daily Express has 16 additional pieces ordered for 1985. The ordered equipment is very special in nature. In addition, within the past two weeks, Daily Express accepted delivery on a lowboy trailer which has rails and is capable of transporting a railroad car. (T. 424-425).

In its office in Carlisle, Daily has a transceiver and telex equipment capable of receiving permits. (T. 425).

During the first 10 months of 1984, Daily provided service in intrastate

commerce for approximately 161 shippers.

Daily is opposing the instant application because it has built its business in intrastate commerce to the point where it can provide service within an hour or two of receiving the service request and that if it lost any of its traffic it would lose the ability to keep moving its equipment in an efficient fashion. (T. 430-431).

For 1984, Daily handled 5 shipments for McGraw Edison, 1 shipment for Westinghouse Electric, 1 shipment for Keeler/Door-Oliver, 6 shipments for the Fuller Company and 1 shipment for Metropolitan Edison. (T. 436-438). In reviewing the underlying documents for service rendered for McGraw Edison, Mr. Moore indicated that none of the 8 shipments required the use of a lowboy or special equipment. Similarly, on the shipment handled for Westinghouse, Mr. Moore could not tell from the shipping documents whether or not that shipment was a heavy hauler type shipment. (T. 461-462). Of the traffic handled for the Fuller Company, possibly one was a heavy hauling shipment; however, Mr. Moore could not tell for certain from the Bill of Lading. (T. 462). Mr. Moore could not identify how many of the 161 Pennsylvania shippers that he has serviced required heavy hauling service. (T. 463).

The shipments handled for Metropolitan Edison and Keeler/Dorr-Oliver were heavy hauler shipments. (T. 463-464).

Daily Express is concerned that it will lose freight to Lomma because Lomma may come in with bids lower than those of Daily. (T. 440). Mr. Moore acknowledged that Daily Express may have submitted lower bids than Lomma on certain traffic moving in interstate commerce. (T. 458).

All of Daily's over-the-road equipment, with the exception of 18 pieces, is owned and operated by independent contractors. All of the 18 tractors owned by Daily are based in Harrisburg. Daily also owns 31 tractors that are used at the terminals. Except for these 49 pieces, the remaining tractors (of the 829 total tractors) are leased from owner-operators. (T. 455-457).

4. W. Dennis Kerr, President
Moore-Flesher Hauling Corporation

Moore-Flesher maintains its business office in Zelienople, which is in Butler County approximately 30 miles north of Pittsburgh. Moore-Flesher is a specialized heavy hauler and transporter of size and weight type shipments. Moore-Flesher is presently in the process of transferring a portion of its rights to Moore-Flesher Trucking Corporation, with the remainder of the rights being transferred to a company called W. D. Kerr & Sons. (T. 465-468). If the transfer applications are approved, Moore-Flesher Trucking Company would be authorized to provide service in the area west of and including the Counties of McKean, Cameron, Clearfield, Cambria and Bedford while W. D. Kerr & Sons would have authority to provide service from points west of those counties to points east of those counties. (T. 474).

This protestant's Zelienople facility consists of 8 1/2 acres of ground with an 8,000 square foot building that houses its shops and a small warehouse. There is also an office building with approximately 9 offices. In addition, there is a maintenance facility situated at this location. (T. 476). Moore-Flesher utilizes

the services of 4 company drivers and approximately 30 owner-operators. The owner-operators lease primarily tractors and semi-trailers to Moore-Flesher. (T. 477-478). W. D. Kerr & Sons also operates out of the Zelienople facility and, although it does not own any motor vehicle equipment, it leases approximately 20 tractors and semi-trailers. W. D. Kerr & Sons does engage in heavy hauling service with equipment that it leases from Moore-Flesher Hauling Company. (T. 478-479). Moore-Flesher has the capacity to handle shipments up to approximately 200 tons. (T. 479).

The power equipment owned by Moore-Flesher has been fully depreciated so that its book value is now zero. (T. 538-539). The present depreciated value of the trailer equipment owned by Moore-Flesher is approximately \$21,000. (T. 539).

The 4 drivers presently employed by Moore-Flesher are engaged in both heavy hauling transportation and rigging work. At one time, Moore-Flesher utilized approximately 36 company drivers but reduced its work force because of economic conditions. (T. 482-483).

It was Mr. Kerr's opinion that Moore-Flesher presently provides all of the services proposed by J. F. Lomma, Inc. (T. 494).

The following is a listing of heavy haulers that advertise their services in the area serviced by Moore-Flesher: DeBolt, Dietz, Eaborn, Fayette Trucking, George Transfer, Chadderton, Daily Express, Ballistreri and Ace Doran. (T. 496).

In November of 1983, Moore-Flesher handled 21 size and weight shipments between points in Pennsylvania. However, 5 of these shipments may fall within the restrictive amendment which has been agreed to by the Applicant. (Moore-Flesher Exhibit 13; T. 500-501). Mr. Kerr also offered into evidence an exhibit which reflects 25 Pennsylvania intrastate heavy-hauling shipments handled during the period February to May, 1984. These shipments accounted for approximately 25% of Moore-Flesher's intrastate size and weight shipments during that period. (Moore-Flesher Exhibit 13; T. 502). The revenue derived from the heavy-hauling service provided in November of 1983 totalled \$17,690.25, while the representative sample for the months of February to May, 1984 generated revenue for Moore-Flesher of \$11,019.15. (T. 503).

There are many occasions when Moore-Flesher handles non-size and weight shipments in conjunction with size and weight shipments. (T. 504-505).

Moore-Flesher has discovered that many of its customers have gone out of business and that the opportunities to haul size and weight shipments are slowly but surely dwindling because of those closings. Mr. Kerr offered into evidence an exhibit which reflected 22 major plant closings in western Pennsylvania. (Moore-Flesher Exhibit 15). The plant closings have resulted in Moore-Flesher operating only approximately 25% of its total equipment. Mr. Kerr testified that he does not believe that there have been many major plant openings in western Pennsylvania. (T. 538). Also, Moore-Flesher is competing with 26 other companies for size and weight traffic in western Pennsylvania. (Moore-Flesher Exhibit 14; T. 509-510).

A preponderance of Moore-Flesher's heavy hauling traffic is handled between points in western Pennsylvania. However, it does hold itself out to

provide service to eastern Pennsylvania, and has never refused to handle a shipment moving to eastern Pennsylvania. (T. 510-511).

Moore-Flesher has not provided any service for Iver J. Lee Company or for Zurn Industries. Mr. Kerr was under the impression that the Fuller Company was out of business, although Moore-Flesher had provided service for that shipper in the past. Moore-Flesher is presently providing service for Pennsylvania Electric Coil and has done so for approximately 25-30 years. In addition to those set forth in Mr. Kerr's traffic study, Moore-Flesher handled one other heavy-hauling shipment in 1984 for Pennsylvania Electric Coil. (T. 512-516). In 1983, Moore-Flesher handled 5 other shipments for Pennsylvania Electric Coil, with some being size and weight shipments and other not amounting to a shipment that required special equipment or special handling. (T. 516).

Mr. Kerr later amended his testimony that the Fuller Company was out of business. Mr. Kerr meant to say that they had just closed the one particular facility. (T. 547).

Moore-Flesher has not serviced Ionics in the past 3 to 4 years. As for Duquesne Electric, Moore-Flesher was tendered a shipment in October, 1983. However, that was not a size or weight shipment. (T. 517-518). This was the only shipment that has been tendered to Moore-Flesher by Duquesne Electric. (T. 518).

In 1984, Moore-Flesher handled either 7 or 9 heavy-hauling shipments for Tippans Machine Company. (T. 519-521). Moore-Flesher has provided service for Erie Strayer Company, but the last shipment handled for that shipper was approximately 10 years ago. (T. 522-523).

In 1984, Moore-Flesher handled 4 shipments for Westinghouse Electric Company. (T. 551-552). Mr. Kerr testified that he has never heard of the Warwick Company which is situated in Meadville. (T. 527).

Moore-Flesher has provided extensive service for H. H. Robertson Company but has never handled a size or weight shipment for that shipper. (T. 527-528). Moore-Flesher had provided service for Pittsburgh-Des Moines Steel Company out of its Neville Island facility until that facility closed. Shipments originating at Pittsburgh-Des Moines' Warren facility are 99% non-size and weight shipments. (T. 528-529).

Moore-Flesher is opposing the instant application because it has a great deal of money tied up in its equipment and is only utilizing approximately 25% of that equipment at present. Approval of this application would adversely affect Moore-Flesher because it would authorize an additional size and weight carrier who would be competing for the same traffic handled by Moore-Flesher. If Moore-Flesher loses additional size and weight traffic, it would either have to get out of the heavy-hauling business or at least sell some of its equipment. (T. 529-530). Approximately 30% of Moore-Flesher's \$1,300,000 gross operating revenue for 1983 was derived from heavy-hauling service. In 1983, Moore-Flesher operated at a loss with an operating ratio of 102. (T. 531-532). The remaining 70% of Moore-Flesher's revenues are derived from the transportation of iron and steel. Mr. Kerr felt that many customers utilize Moore-Flesher's service because it can offer both size and weight service and conventional flatbed service. (T. 532).

In 1983, Moore-Flesher lost \$22,904. This is approximately equal to its depreciation expense for that same year so that without depreciation, Moore-Flesher operated with an operating ratio of approximately 100. On an overall basis, Moore-Flesher generated a profit of \$104,000 company wide. (T. 541, 548).

Annualizing the heavy-hauling revenue testified to by Mr. Kerr would result in Moore-Flesher deriving \$132,228 in 1984 from heavy-hauling service. This would actually amount to approximately 10% of Moore-Flesher's gross Pennsylvania intrastate revenue. Mr. Kerr's estimate that heavy-hauling accounted for 33% of his intrastate revenue included shipments that, although not size and weight shipments themselves, moved in conjunction with size and weight shipments. (T. 534-536).

One of the photographs entered into evidence by Moore-Flesher reflects service being provided on a trailer owned by John Benkart. (T. 543).

Mr. Kerr testified that when he has a size and weight shipment moving from western Pennsylvania to eastern Pennsylvania that he will trip-lease equipment and drivers to W. D. Kerr. To some extent, both W. D. Kerr and Moore-Flesher Trucking Company will be servicing the same customers. (T. 544-545). If there are multiple stop shipments, with some shipments to be delivered in the western part of the state with the remaining to be delivered in the eastern part of the state, the shipment would have to be handled separately by W. D. Kerr and Moore-Flesher Trucking. (T. 545).

Mr. Kerr's is the only one who does solicitation work for his company, and he does not do a great deal of soliciting. (T. 547).

J.F. LOMMA, INC.

SPECIFIC ORIGINS IDENTIFIED BY SUPPORTING SHIPPERS

Allenport	Easton	Neville Island
Allentown	East Pittsburgh	Philadelphia
Ambridge	Erie	Pittsburgh
Bethlehem	Etna	Reading
Brackenridge	Fairless Hills	Sharon
Braddock	Homestead	Washington
Bridgeville	Irwin	West Chester
Cannonsburg	Johnstown	West Easton
Catasauqua	Lebanon	West Leechburg
Coatesville	Leechburg	West Mifflin
Conshohocken	Lester	Williamsport
Dravosburg	Meadville	York
Dusquesne	Monessen	

J.F. LOMMA, INC.

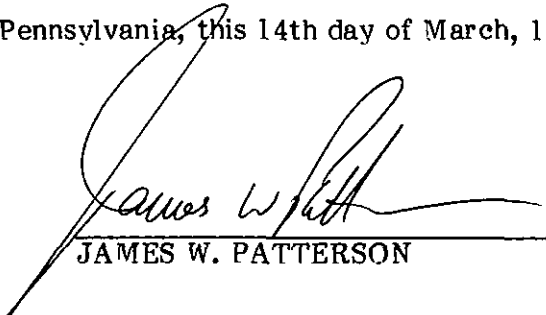
SPECIFIC DESTINATIONS IDENTIFIED BY SUPPORTING SHIPPERS

Allenport	Fairless Hills	Reading
Allentown	Hanover	Sayre
Altoona	Harrisburg	Scranton
Ardara	Horsham	Sharon
Berwick	Johnstown	Shelocta
Bloomsburg	Leechburg	Shippingport
Brackenridge	Lester	Swarthmore
Bradford	Lock Haven	Three Mile Island
Cannonsburg	Marcus Hook	Uniontown
Carnegie	Mechanicsburg	University Park
Clearfield	Midland	Upper Merion
Coatesville	Milton	Wampum
Copely	Monessen	Warren
Downingtown	Nazareth	Washington
Dravosburg	Neville Island	West Chester
Ebbensburg	New Sewickley	West Leechburg
Elrama	Oil City	Whitehall
Enon	Philadelphia	Wilkes-Barre
Erie	Pittsburgh	York
Evansville		

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing document upon all parties of record in this proceeding by postage prepaid, properly addressed, first-class mail.

Dated at Philadelphia, Pennsylvania, this 14th day of March, 1985.



JAMES W. PATTERSON

Of Counsel:

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ORIGINAL

LAW OFFICES

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LAND TITLE BUILDING

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March 15, 1985

PHILIP STERLING, 1910-1972
SIDNEY LOEWENSTEIN, 1910-1976

CABLE ADDRESS
"CONSHAITI"

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ROBERT D. ABRAHAMS	ALAN KAHN
JEROME KAPLAN	MEYER A. BUSHMAN
BERTHOLD W. LEVY	ALLEN I. ROSENBERG
LEONARD B. ROSENTHAL	WARREN J. KAUFFMAN
DON WEISBERG	MASON AVRIGIAN
SAUL D. LEVIT	ALLEN S. KELLERMAN
MORTON J. SIMON, JP.	H. RONALD KLASKO
GARY M. EDELSON	JOHN B. HERRON
MARY CUSHING DOHERTY	MICHELE SOUTHWORTH
MARK R. ASHTON	HARRY M. BYRNE, JR.
IRA W. BUSHMAN	ROBERT D. FEDER
MIRIAM B. BRENAMAN	ARTHUR KORTH
A. TAYLOR WILLIAMS	RACHEL R. MUNAFO
GARY R. KOZIK	

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MAR 18 1985

SECRETARY'S OFFICE
Public Utility Commission

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

Re: Application of J.F. Lomma, Inc.; Docket No. A105101

Dear Mr. Rich:

Enclosed please find original and nine (9) copies of the Brief on behalf of Protestants Frank W. Hake, Inc. and David Graham Company.

Copies of the enclosed have been served upon Administrative Law Judge Joseph J. Klovekorn and upon all parties of record.

Very truly yours,

Alan Kahn
Alan Kahn

AK:lad

Enclosure

cc: Honorable Joseph J. Klovekorn
James W. Patterson, Esquire
William A. Chesnutt, Esquire
John A. Pillar, Esquire

DOCUMENT
FOLDER

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MAR 18 1985

SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF : DOCKET NO.
J.F. LOMMA, INC. : A.00105101

BRIEF ON BEHALF OF PROTESTANTS
FRANK W. HAKE, INC. AND DAVID GRAHAM COMPANY

I. STATEMENT OF THE CASE

Applicant J.F. Lomma, Inc. by its application as amended seeks motor common carrier authority as described as follows.

"Property, which because of size or weight, requires the use of rigging, special handling, or special equipment, between points in Pennsylvania.

Provided that, no right, power or privilege is granted:

1. To provide service in connection with any shipment weighing less than thirty-five (35) tons to or from the Monroe County facilities of:
 - a. Pocono Fabricators, Division of Patterson-Kelly Company, Inc.
 - b. Patterson-Kelly Company, Inc. Division of Harsco Corp.
 - c. International Boiler Works
2. To transport bulldozers, graders, draglines and other earth moving and coal moving equipment between points in and west of the counties of Potter, Clinton, Centre, Blair and Bedford.

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The application is protested by six carriers, Frank W. Hake, Inc., David Graham Company, Daily Express, Inc., Moore-Flesher Hauling Company, Moore-Flesher Trucking, Inc. and W.D. Kerr & Sons, Inc.

Hearings were held in Philadelphia on March 8, June 26 and 27, October 9 and December 6, 1984 and at Pittsburgh on August 20, 1984. Applicant presented evidence by its sole operating witness and fifteen shipper witnesses. The protestants were represented by four witnesses.

II. SUMMARY OF PERTINENT EVIDENCE.

Applicant is a New Jersey corporation, based at Kearny, New Jersey. It presently holds no authority from this Commission. It does operate to and from Pennsylvania in interstate commerce under authority granted by the Interstate Commerce Commission. As a carrier it is better known for its services involving the transportation of super heavy loads, those in the 40 to 400 ton range. It would like to participate in both types of heavy hauling, the super heavy and the more conventional heavy hauling. (Applicant Exhibit A-1, p. 1, 4).

At present, applicant holds no facilities in Pennsylvania but has found two available terminal facilities in Pittsburgh and "will likely sign a lease on one of them by early July." There is nothing in the record to indicate whether such a lease was ever signed. (Applicant Exhibit A-1, p. 4, 5).

If the application is granted, applicant intends to concentrate initially on the movement of super heavy loads. However, it also expects to become more gradually involved in more conventional heavy hauling service. (Applicant's Exhibit A-1, p. 8).

Applicant operates 38 power units and a variety of trailer equipment of a specialized nature. Applicant's Exhibit 1, Appendix 3.

Metropolitan Edison Co., a supporting shipper, requires a movement of transformers of a variety of sizes within its service area and occasionally to and from points outside of its service area. Its service area is defined by a line drawn beginning 20 miles west of Gettysburg and proceeding on a 45 degree angle to Stroudsburg with the exception of a small corridor in the Allentown area. (Tr. 42.)

Movements of the large transformer units can involve 2 to 7 loads per year. (Tr. 52). The witness from Met. Ed. has found the services of Daily Express to be generally satisfactory but expressed the need for back up service. (Tr. 48, 53).

Keeler Dorr-Oliver ships from a facility in Williamsport. (Tr. 66, 67). Movements of intrastate shipments consist of one unit every 2 or 3 months of the type of commodity Keeler ships, boilers and stokers. Its witness said "there have been so few built so far that I haven't had to use that many carriers." (Tr. 76). The witness was supporting Lomma to have available "for my needs more than one carrier or even two carriers that I can depend upon." (Tr. 78).

Zurn Industries Energy Division ships from Erie and its commodities are boilers. (Tr. 89, 90). This company is supporting the applicant because "I am always looking for more competition pricewise and equipment wise." (Tr. 99).

Fuller Company/GATX Company ships from its manufacturing locations in Allentown and Catasauqua, Lehigh County. (Tr. 113, 116). It ships as a heavy hauling item, industrial processing equipment, shells moving as many as 25 to 50 of these items per year to Pennsylvania points. (Tr. 115, 116). At present, it uses as its primary carriers Daily, Bob Young and David Graham.

Ecolaire Heat Transfer Company located in West Easton, Northampton County, is a fabricator of steam condensers, heat exchangers and related items. (Tr. 138). This company has not made a heavy hauling shipment to points in Pennsylvania since the witness became traffic manager at the beginning of 1983. (Tr. 157).

Pennsylvania Electric Coil Inc. manufactures and ships from two facilities in Pittsburgh. (Tr. 171). At the time of the witness's testimony in August the last heavy hauling shipment made by the company occurred in January, 1984 and prior to that time there were two others, one in May and one in June of 1983. (Tr. 175, 176).

Ionics, Inc. ships outbound from Bridgeville, Allegheny County. It manufactures steel weldments used by the nuclear power industry.

(Applicant's Exhibit 7 pages 1 and 2). It ships about 1 heavy hauling shipment per month (Tr. 187), and for this is used the services of protestant David Graham. (Tr. 188).

Duquesne Electric and Manufacturing Co. is located in Pittsburgh and is a dealer of used electrical equipment. It estimates it has three heavy hauling shipments a month of which two are inbound. (Applicant's Exhibit 8 pages 1 and 2.)

Tippens Machinery Co. is a manufacturer of equipment used by metal processors shipping from two locations in Allegheny County, the City of Pittsburgh and Etna. (Tr. 207, 208).

Erie Strayer Co. ships from a facility in the City of Erie and is a fabricator of heavy construction equipment. (Applicant's Exhibit 10 page 1). Its witness stated "there have been so few shipments in the last twelve or eighteen months that we have used our own tractors and trailers...as well as Hardinger Transfer which is located in Erie." (Tr. 220).

Westinghouse Electric Corporation supported the application for its shipments from its large rotating apparatus plant in East Pittsburgh. (Tr. 230). One of the reasons Westinghouse is supporting the application is that it called David Graham to transfer a generator to Philadelphia and it took that company a week to furnish a tractor since the only tractor capable of handling the load was in Texas at the time. This caused some "slight aggravation". (Tr. 232, 233).

Schramm Inc. and an affiliated company support the application for traffic from West Chester, Pa. Schramm manufactures heavy drilling equipment and compressors. (Applicant's Exhibit 12). This shipper's support was based on need for a second carrier that is a good carrier. (Tr. 274). Although Schramm had supported Robbins Motor Transportation, he was not aware that Robbins had obtained its authority and had offered no traffic to Robbins. (Tr. 277). Robbins actually received a grant of authority enabling it to serve Schramm at docket No. A93552, F.1, Am.A.

Seco/Warwick Corporation manufactures industrial furnaces and originates traffic at Meadville, Crawford County. (Applicant's Exhibit 13). (Tr. 292). This shipper wants a carrier able to handle its total traffic consisting of both heavy hauler and non-heavy hauler loads. (Tr. 304).

H.H. Robertson Co. ships metal building products from its facility in Ambridge, Beaver County. (Applicant's Exhibit 14, p. 1). Up to the time of the witness's testimony, however, the applicant's traffic had moved entirely on regular flatbed trailers. (Tr. 320, 321).

Pittsburgh DesMoines Corporation is a steel fabricator and erector shipping both inbound and outbound from Neville Island, Allegheny County. (Applicant's Exhibit 15, p. 1). This company has had no problems with the heavy hauler service supplied by Moore Flesher, Daily or Frank Hake. However, its witness thinks "there may be a bigger demand in the future for special trailers." (Tr. 348).

The protestant, Frank W. Hake, Inc. has been in business since 1919, specializing in heavy and specialized transportation. (Tr. 358). Its operating authority, described generally, authorizes transportation of heavy hauling commodities between points in a non-radial area defined as an airline distance of 150 miles from City Hall in Philadelphia. It is authorized also to transport similar commodities "from rail head to rail head or from rail head to points of installation between points in Pennsylvania." (Hake Exhibit 1). This carrier specializes in extra heavy, heavy hauling, involving loads over 50 tons in weight. It operates approximately 16 specialized heavy hauling tractors and a corresponding number of specialized heavy hauling trailers including one which has a value of approximately half a million dollars. (Tr. 358-361). He has had loads as heavy as 859 tons, which was a nuclear reactor. (Tr. 362). Hake has a terminal facility consisting of 7-3/4 acres, train facilities, a service shop and office space. (Tr. 364). This protestant is equipped to do the rigging work as well as the transportation on the highway. (Tr. 364). Among the supporting shippers Hake has provided service for without complaint, are Westinghouse Electric Corporation, Pittsburgh DesMoines Co., Fuller Corporation, Metropolitan Edison Co., and Ecolaire. This carrier has solicited a number of the other supporting shippers but received no work from them. (Tr. 365, 370).

At the present time, this carrier's heavy hauling equipment is being utilized to the extent of only 30-35%.

The protestant David Graham Company is another carrier certificated by this Commission specializing in flatbed and specialized equipment transportation of loads up to 70 tons in weight. (Tr. 387, 388). It holds operating authority from this Commission as well as from the Interstate Commerce Commission. Its P.U.C. authority authorizes, described generally, the transportation of heavy hauling commodities within a non-radial territory defined by a radius of 170 miles of the City of Philadelphia and from that territory to points in Pennsylvania and vice versa. (Graham Exhibit 1). This carrier has its terminal in Tullytown where it occupies a 7-1/2 acre tract containing office and maintenance facilities. It also has a company terminal in Harrisburg and 3 agent terminals elsewhere in Pennsylvania, namely, Allentown, Smithton and Coraopolis. (Tr. 388, 398).

Graham operates 28 company-owned tractors and some 200 trailers. Among the 200 trailers are 61 specialized trailers designed for size and weight transportation. The company operates five terminals in states other than Pennsylvania. (Tr. 389-391).

The supporting shippers this carrier has performed transportation for include: Westinghouse Corporation, Fuller Co., (but not in Pennsylvania), and Seco/Warwick Corporation. The carrier has

solicited a number of the other shippers but has not been favored with any traffic by them. (Tr. 392-395).

David Graham's vehicle equipment represents an investment of approximately \$5,000,000.00. (Tr. 397).

III. ARGUMENT

The present application seeks statewide non-radial heavy hauling authority. While the Commission has traditionally granted broader territorial authority to heavy haulers than general freight carriers on a similar showing of need, the support for this application is sparse and fragmentary at best. Several of the shippers actually presented no evidence of need for heavy hauler authority. Several conceded they were supporting the applicant solely because they had been asked to do so by applicant's salesman. Some offered vague general reasons for their support, such as need for more special equipment and the possibility that their traffic would increase. Some simply wanted another authorized carrier or a back-up carrier without any showing whatsoever that existing carriers were not handling the traffic.

Geographically, the evidence of need was also very fragmentary for a statewide non-radial application. All the shippers shipped to and from their places of business with the exception of Metropolitan Edison which shipped throughout its service area, a rather ill-defined territory


in East Central Pennsylvania. Of the remaining shippers, six were based in Allegheny County, two in Erie County, one in Chester County, one in Crawford County, one in Lehigh County, one in Beaver County, one in Lycoming County and one in Northampton County. None testified to a sufficiently large number of origin points or destination points necessary to justify the largest grant the Commission can give a heavy hauler.

Under all of the circumstances, the application should either be denied or strictly limited to either authority for the named shippers who made out a case for public need or to the geographic limitations of the evidence of real traffic.

Respectfully submitted,

FRANK W. HAKE, INC.
DAVID GRAHAM COMPANY

BY:


ALAN KAHN

OF COUNSEL:

ABRAHAMS & LOEWENSTEIN
1430 Land Title Building
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(215) 561-1030

CERTIFICATE OF SERVICE

I hereby certify I have served a copy of the foregoing Brief on the Honorable Joseph J. Klovekorn, Administrative Law Judge and James W. Patterson, Esquire, attorney for Applicant by special messenger. The remaining parties of record were served by first class mail postage pre-paid.

Dated at Philadelphia, PA, this 15th day of March, 1985.

A handwritten signature in cursive script, appearing to read "Alan Kahn", written in black ink.

Alan Kahn, Esquire

RUBIN, QUINN & MOSS

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March 28, 1985

* ALSO ADMITTED TO D. C. BAR
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The Honorable Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Re: Docket No. A. 105101
Application of J. F. Lomma, Inc.

RECEIVED

MAR 29 1985

SECRETARY'S OFFICE
Public Utility Commission

Dear Secretary Rich:

Enclosed please find the original and nine (9) copies of the Reply Brief of Applicant, J. F. Lomma, Inc., which is being filed in connection with the above-captioned proceeding.

Copies of the enclosed have been served upon Administrative Law Judge Joseph J. Klovekorn and upon all parties of record.

Very truly yours,

James W. Patterson
JAMES W. PATTERSON

JWP/tal
Enclosures

cc: The Honorable Joseph J. Klovekorn, ALJ
Alan Kahn, Esquire
William A. Chesnutt, Esquire
John A. Pillar, Esquire
Angelo M. Monaco

ORIGINAL

Before The

PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF
J. F. LOMMA, INC.

:
:

DOCKET NO.
A. 105101

**REPLY BRIEF OF APPLICANT
J. F. LOMMA, INC.**

RECEIVED

MAR 29 1985

SECRETARY'S OFFICE
Public Utility Commission

J. F. LOMMA, INC.

By: James W. Patterson, Esquire
Edward L. Ciemniecki, Esquire

Of Counsel:

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MAR 29 1985

I. STATEMENT OF THE CASE

Applicant, J. F. Lomma, Inc. ("Lomma") adopts the Statement of the Case set forth in its Main Brief, with the following addition:

Briefs were filed in this proceeding by Applicant and by Protestants Daily Express, Inc. ("Daily Express") and Moore-Flesher Hauling Company, Inc. ("Moore-Flesher"). A Joint-Brief was filed on behalf of Protestant Frank W. Hake, Incorporated ("Hake") and David Graham Company ("David Graham").

This Reply Brief is filed in response to Protestant's Briefs.

II. ARGUMENT IN REPLY

A. Consideration Of The Evidence Of Record Must Result In A Finding That Lomma Possesses The Technical And Financial Ability To Provide The Proposed Service And Has Established Its Willingness To Operate Safely And Legally

Lomma submits that a proper reading of the testimony in this proceeding must result in a finding that it is fit to receive the requested authority.

Initially, it must be noted that Moore-Flesher is the only Protestant to question Lomma's technical ability to provide the proposed service, while Lomma's financial fitness and its willingness to operate safely and legally was unchallenged by any of the Protestants. Consequently, this Argument will be limited to the questions of Lomma's operational fitness which were raised by Moore-Flesher.

Moore-Flesher claims that Lomma has failed to present evidence regarding the manner in which it intends to provide service to western Pennsylvania shippers. This assertion is counter to the evidence of record.

Lomma presented evidence regarding the amounts and types of specialized equipment that it owns and that it will make available to Pennsylvania shippers of size and weight commodities. (Exhibit A-1, p. 5, Appendix 3). Evidence was also offered regarding the experienced personnel which Lomma will

utilize for Pennsylvania intrastate service, and Lomma's emphasis on utilizing company-employed drivers and helpers rather than owner-operators in order to maximize its ability to exercise maximum control over its operations. (Exhibit A-1, p. 5).

Lomma's operating witness also set forth the type of accessorial services which the Applicant will supply in conjunction with the transportation which it will provide. These services include the planning of each movement, which would involve determining the route of movement, the location of bridges along the route, the proper loading and unloading of the shipment, and an evaluation of the site where the shipment is to be delivered. Lomma's preparation for transporting each heavy hauling shipment will include bridge reinforcement, and contact and coordination with electric, gas, telephone and water utilities as well as with state permitting agencies, engineers and police as well as local authorities. Finally, Lomma indicated its intention to utilize professional, experienced riggers. (Exhibit A-1, p. 8).

Lomma has been providing heavy hauling service in interstate commerce for over 10 years. In fact, all of its interstate service has involved the transportation of size and weight commodities. (Exhibit A-1, p. 2; T. 32-33). Applicant's witness identified nine (9) western Pennsylvania destinations which Lomma served in interstate commerce during the first 5 1/2 months of 1984. (Exhibit A-1, p. 3). Lomma has established its experience in providing the type of service proposed herein and, significantly, has shown that it has provided service within western Pennsylvania and is familiar with the territory encompassed within the western section of Moore-Flesher's operating authority.

Lomma, moreover, has done more than to offer a promise of service for western Pennsylvania-based shippers. It has established a terminal, near Pittsburgh, in Bridgeville, Pennsylvania and has hired a terminal manager for that

facility. At the time that Lomma's operating witness testified in this proceeding (June 26, 1984), Lomma was interviewing applicants for operations and dispatch positions and expected to begin driver interviews within 30 days. (Exhibit A-1, p. 5). Clearly, Applicant is making a diligent effort towards establishing a presence in western Pennsylvania so as to make its service readily available to size and weight shippers situated in that territory.

Lomma has gone as far as any applicant can go in establishing its ability to provide the proposed service. It has shown 1. its experience in providing services of the nature proposed herein; 2. the type of equipment which it will make available if this application is approved; 3. the type of accessorial services it will supply to shippers utilizing its transportation services; 4. its familiarity with the territory to be serviced — a familiarity gained through serving this territory in interstate commerce; and 5. its commitment to providing a responsive service to western Pennsylvania shippers — a commitment best exemplified by the establishment of a terminal in Bridgeville, Pennsylvania. An applicant, without engaging in service before it holds appropriate authority, could hardly go further in establishing its operational fitness. Neither Pennsylvania law nor Commission policy requires more.

Lomma has established its operational fitness as well as its financial fitness and its willingness to operate safely and legally.

B. The Evidence Of Record Establishes A Need For Lomma's Service Throughout Pennsylvania

Protestants' most strenuous arguments center on the evidence of need presented in this proceeding. Each Protestant asserts that the evidence offered by the supporting shippers fails to support a grant of statewide authority to Lomma. A close examination of Protestants' arguments reveals that they quote certain testimony out of context and misinterpret certain other evidence of

record in an attempt to support their positions.

Initially, it must be noted that it is impossible to fully respond to the assertions set forth in the Joint-Brief of Hake and Graham. Although claiming that "(s)everal of the shippers actually presented no evidence of need for heavy hauler authority" and that "(s)everal conceded they were supporting the applicant solely because they had been asked to do so by applicant's salesman," the Joint-Brief offered no transcript references or other support for its contentions. (Joint-Brief, p. 9). Other assertions made in the Joint-Brief similarly lacked references to the record. The lack of any record references makes it difficult to fully respond to the contentions of Hake and Graham. However, since the general propositions propounded by Hake and Graham were voiced in the Briefs of Daily and Moore-Flesher, this response to the arguments of Daily and Moore-Flesher responds as well to the Hake and Graham contentions.

Moore-Flesher contends that there "are 22 counties in western Pennsylvania in MFH's service area from which there is no shipper support whatsoever." (Moore-Flesher Brief, p. 9). This contention boldly ignores the realities of the transportation service needed by the supporting shippers as set forth in the record. While Moore-Flesher would have the Commission equate shipper facilities with traffic origins, a number of the supporting shippers indicated that they have origins of traffic spread throughout Pennsylvania. For example, Pennsylvania Electric Coil receives motors and transformers requiring repairs from the same facilities to which it ships new or repaired products. The witness for this shipper identified Sharon (Mercer County), Monessen (Westmoreland County), Allenport (Washington County) and Leechburg (Armstrong County) as destinations (and consequently, inbound origins) of his traffic. (Exhibit A-5, pp. 1-2). Similarly, the outbound heavy hauling shipments of Tippins Machinery and Westinghouse Electric often return to Tippins and Westinghouse for

repairs. (Exhibit A-9, p. 2; Exhibit A-11, p. 2). The witness from Pittsburgh-Des Moines identified Johnstown (Cambria County) as an inbound origin of his traffic, testified that he has had heavy hauling shipments to Shippingport (Beaver County), Warren (Warren County) and Bradford (McKean County), and noted that he has shipments moving directly between jobsites, ie., without coming through his facility. (Exhibit A-15; T. 342). Clearly, there are numerous points in western Pennsylvania, other than the ten shipper facilities discussed in the Moore-Flesher Brief, from which heavy hauling shipments originate and with respect to which a need for Lomma's service has been voiced. The Moore-Flesher Brief is, in this regard, provably inaccurate.

The Briefs of Moore-Flesher and Daily mischaracterize the testimony of the supporting shippers in an attempt to minimize their support for this application. For example, Daily attempts to characterize the support of Pennsylvania Electric Coil as merely reflecting a desire for "another local outfit." (Daily Brief, p. 17) (emphasis in original). However, the testimony quoted by Daily actually refers to Lomma's opening of a terminal in Bridgeville, Pennsylvania. Pennsylvania Electric Coil's witness testified that the opening of that terminal, which is in close proximity to his shipping facility, would make available to him a local carrier that can meet his emergency service needs. (T. 167-168). Clearly, this shipper considers Lomma's terminal location an important benefit to him, and such benefit cannot be minimized by the mischaracterization of the testimony undertaken by Daily.

Moore-Flesher notes that Ionics averages one shipment per month to York and Mechanicsburg and states that no other destinations were mentioned. (Moore-Flesher Brief, p. 9). However, Moore-Flesher conveniently fails to note this shipper's testimony that he has made shipments to other Pennsylvania points besides the two mentioned. (T. 189).

Similarly, Moore-Flesher claimed that the witness from Duquesne Electric "was vague about actual size and weight shipments, and offered no probative evidence of need for any heavy hauling service by Lomma." (Moore-Flesher Brief, p. 10). This is, again, simply inaccurate. The witness from Duquesne Electric testified that he has approximately 3 outbound and 2 inbound heavy hauling shipments per month. (Exhibit A-8, p. 2) Also, although Moore-Flesher asserts that the witness testified that he would not divert traffic from his existing carrier, the following exchange suggests otherwise:

Q. Is it your intention to take the freight away from Haser and give it to Lomma?

A. Not necessarily. We have a problem of obtaining equipment. And we are interested, just as any other company is, we are interested in shipping our equipment, when it is ready to go. We have to get it out. Now, we are like all other companies. We have cash flow problems. The sooner that we can ship an invoice, the sooner that we can receive monies. (T. 200).

Taken in context, it becomes clear that this shipper has experienced difficulty in obtaining equipment from its present carrier and will look to Lomma to supply more expeditious service than is presently available.

Moore-Flesher's characterization of the testimony of the witness from Westinghouse is similarly inaccurate. Moore-Flesher claims that "[w]hile professing that MFH was 'out of business,' he later admitted that MFH provided heavy hauling service without complaint." (Moore-Flesher Brief, p. 10). A careful review of the transcripts fails to uncover any instance where Westinghouse's witness asserted that Moore-Flesher was "out of business." Also, this witness testified that equipment availability was a problem with Moore-Flesher and that Moore-Flesher's service went "downhill" after it sold its interstate authority. (T.

263-264). This directly contradicts the assertions of Moore-Flesher. ^{1/}

Lomma resents Moore-Flesher's accusation that Westinghouse's witness "was either confused or deliberately misleading" and that his testimony regarding a "need for service 'on a moment's notice' was a bootstrap effort to justify his support for Lomma." (Moore-Flesher Brief, p. 10). The witness testified that he ships to electric utilities and that, because of the nature of the electric utility industry, the great majority of his shipments move on a moment's notice. (T. 262, 266, 269). Nothing in the record contradicts this testimony, and Moore-Flesher should not be permitted to unjustifiably question the veracity of this witness in its Brief. Indeed, if one were to identify a misleading factor in this case, the inaccuracies and plain distortions of the record contained in the Moore-Flesher Brief would make it the prime candidate.

The remaining witness summaries of Moore-Flesher and Daily contain similar inaccuracies and mischaracterizations of the supporting shipper testimony. Lomma requests that the Administrative Law Judge review the Digest of Testimony attached as Appendix 1 to Lomma's Main Brief for a complete and accurate summary of the testimony presented in this matter.

Daily and Moore-Flesher attempt to downplay the support of certain shippers, attempting to argue that the only reason they were supporting the application was because they were "friends" of Lomma's Pittsburgh-based salesman. (Moore-Flesher Brief, p. 15; Daily Brief, p. 18). This is not the testimony presented in this record. Each of the witnesses cited by Protestants in support of this proposition merely testified that they learned of the instant

^{1/} Later in its Brief, Moore-Flesher claims that its service for Westinghouse has been "exemplary." Although Moore-Flesher has been into Westinghouse's facility on shipments arranged by other shippers, Westinghouse has not requested service from Moore-Flesher for 10 years. (T. 232, 243-244).

application through Jim Ranker, one of Lomma's salesmen. This is hardly an unusual circumstance. Lomma submits that virtually any shipper who appears and testifies in a PUC application proceeding does so as a result of solicitation by the applicant's sales staff. Protestants attempt to read into these shippers' testimony something that is simply not there. Suffice it to say that none of the shippers cited by Protestants indicated that they supported the instant application because of Mr. Ranker. Rather, they supported the application: for expeditious service (Exhibit A-5, p. 2); to obtain an additional carrier to alleviate problems with equipment availability (Exhibit A-8, p. 2; Exhibit A-10, p. 2); and to handle expected increases in traffic volumes. (Exhibit A-9, p. 2).

Daily also questions the testimony of Schramm, Inc. and Zurn Industries, stating that these shippers reflect a "the-more-the-merrier" philosophy. In support of this position, Daily notes that Schramm supported the application of Robbins Motor Transportation but is not aware whether or not Robbins received the requested authority and has not tendered any traffic to Robbins. (Daily Brief, p. 19). Initially, it must be noted that this record merely reflects that Robbins had a size and weight application published in the Pennsylvania Bulletin on June 16, 1984 — four months prior to the testimony of Schramm in this proceeding. No evidence was presented that Robbins received any authority as a result of that proceeding. More importantly, Daily conveniently fails to mention that Robbins has not contacted Schramm since this shipper supported its application. (T. 282). Even if Robbins has received the authority it requested, it is clear that it is not sufficiently interested in Schramm's traffic to solicit this shipper's business.

Daily reaches even further in trying to discredit the testimony of the witness from Zurn Industries. Daily questions Zurn's testimony that it may have used Hardinger Transportation, relying upon the fact that Hardinger filed an

application seeking specific authority to serve Zurn. (Daily Brief, p. 19). There is, obviously, nothing inconsistent with a shipper making limited use (or even no use) of a carrier and deciding to support an application of that carrier for authority to cover a broader territory or to handle a broader range of commodities. It is interesting to note that, matching the considerable gyrations in its Brief in connection with this rather minor point, Daily chose to include only the cover page of the Commission's Order in the Hardinger application proceeding, leaving the matter open to speculation.

Moore-Flesher argues that certain of the supporting shippers have not attempted to utilize other regulated carriers because their traffic volumes have been reduced due to poor business conditions. (Moore-Flesher Brief, p. 15). Moore-Flesher fails again to deal with the record in this case. Two of the shippers identified by Moore-Flesher as having decreasing volumes — Erie Strayer and Pittsburgh-Des Moines — indicated that they expect their traffic volumes to increase in the near future. (T. 223-224; Exhibit A-15, pp. 2-3; T. 349, 351). The other two shippers identified by Moore-Flesher in this connection — Duquesne Electric and Westinghouse — testified that they have attempted to utilize existing carriers and have experienced problems with equipment availability. They expect Lomma's availability to help alleviate these problems. (Exhibit A-8, p. 2; T. 197; Exhibit A-11, pp. 2-3). It is apparent that Moore-Flesher's arguments will not withstand close scrutiny.

Moore-Flesher also contends that "[i]t is well settled that a shipper has a duty to seek out existing service, and has no right to simply await to be solicited, before it can effectively support a new carrier for an entirely new service." (Moore-Flesher Brief, p. 15). It is interesting to note that Moore-Flesher cites an Interstate Commerce Commission case for this "well settled" principle. Perhaps of the greatest significance is the antediluvian marketing and

service attitude displayed by this argument. Although claiming that its equipment is vastly underutilized, Moore-Flesher has not solicited eight of the supporting shippers, while Moore-Flesher's solicitation efforts involving Zurn, Duquesne Electric and Schramm were weak at best. (T. 48-49, 74, 129-130, 148-149, 189-191, 221-222, 231-233, 302, 203-204, 284). No reasonable argument can be made that these shippers must affirmatively seek out Moore-Flesher and request that it provide service when that Protestant has not made any effort to alert these shippers of the availability of its service. The Moore-Flesher position in regard to solicitation harkens back to another era. It bespeaks an attitude which leaves little doubt as to why its business fortunes are less than hoped for.

It is apparent that Protestants have totally ignored the specialized nature of heavy hauling service in evaluating the evidence of need present in this record. As pointed out in Lomma's Main Brief, the Commission's policy in connection with heavy-hauling applications is to grant heavy-hauling rights through a wide territory, between unspecified points of origin and unspecified points of destination. This policy derived through the Commission's recognition that heavy hauling shipments do not move with regularity or frequency, or between definite points. Rule Against W. J. Dillner Transfer Company, 30 Pa. P.U.C. 362 (1952). Viewing the evidence presented in this proceeding against this background, it is apparent that Lomma has established the existence of a public need for its proposed service throughout the Commonwealth of Pennsylvania.

C. Existing Service Has Been Unable To Meet The Transportation Needs Of The Supporting Shippers; Approval Of This Application Will Serve A Useful Public Purpose And Result In A Public Benefit

Although an applicant for a Certificate of Public Convenience is no longer required to establish the inadequacy of existing service in order to satisfy its burden of proof, the Commission can consider the level of service available to

the shipping public in order to determine whether approval of an application will be responsive to a public need and result in some public benefit. Application of Richard L. Kinard, Docket No. A. 00095829, F. 1, Am-D (Order entered October 22, 1984).

The evidence of service deficiencies present in this record were set forth in detail on page 10 of Lomma's Main Brief, and will not be repeated at length herein. It is sufficient to note that those deficiencies — ranging from the unavailability of appropriate equipment and the inability of carriers to handle certain types of shipments, to delayed deliveries and damaged shipments — are substantial and that the supporting shippers are looking to Lomma to alleviate the service inadequacies.

Even if existing service is not found to be inadequate, Lomma has presented substantial evidence in connection with the "alternatives to inadequacy" discussed in the Commission's Kinard decision to justify a finding that approval of this application will serve a useful public purpose and result in a public benefit.

Moore-Flesher asserts that no probative evidence was presented that Lomma would offer a different service than that available from existing carriers. (Moore-Flesher Brief, p. 17). Even a cursory review of the record contradicts this assertion. For example, Zurn Industries and Fuller Company indicated their need for exotic, super heavy-hauling service not normally provided by regular heavy haulers. (T. 96-97, 100, 122, 128-129). In addition, Zurn and Metropolitan Edison require both transportation and rigging — a service combination not available from such carriers as Daily Express and David Graham. These services, plus Lomma's ability to provide the type of prompt, responsive service not generally available from other size and weight carriers, qualifies the instant proposal as a "different service" as that term is defined in the Kinard decision.

Although disputed by Moore-Flesher, approval of this application will increase the efficiency of Lomma's operation. Evidence was presented that Lomma is presently providing extensive interstate service which either originates or terminates at Pennsylvania points. Approval of this application will clearly increase the amount of Pennsylvania-related traffic handled by Lomma. Consequently, if Lomma receives the authority sought herein it will be able to return equipment terminating in western Pennsylvania following service in interstate commerce to its Bridgeville terminal in anticipation of utilizing that equipment to handle a Pennsylvania intrastate shipment. In the past, such equipment would have to deadhead back to South Kearny, New Jersey or some other distant point. In this manner, approval of the application will improve the efficiency of Lomma's overall operation and therefore satisfy the "efficiency" and "benefit to applicant" Kinard alternatives to inadequacy.

A grant of the requested authority will allow Lomma to serve its existing interstate customers on an intrastate basis, and will fully align Lomma's intrastate authority with the authority it presently holds from the Interstate Commerce Commission, thereby satisfying the "shipper competition" and "I.C.C. authority" Kinard alternatives.

Lomma has similarly satisfied the "backup service" alternative to inadequacy. One witness indicated that he considers Daily Express as his primary carrier and is supporting Lomma as a backup carrier, although there would be instances when he would request service from Lomma before he contacts Daily. (T. 283-284). Also, many shippers supported the application because they felt that there exists a shortage of specialized equipment and desire Lomma's availability in order to insure the supply of equipment when it is needed. (T. 47-50, 11, 1212-122, 198, 261-262, 348-349; Exhibit A-5, p. 2; Exhibit A-10, p. 2; Exhibit A-13, p. 13).

The final alternative to inadequacy challenged by Moore-Flesher relates to future needs. As noted in Lomma's Main Brief, Keeler/Dorr-Oliver, Erie Strayer, Tippins Machinery, Zurn Industries and Pittsburgh-Des Moines all indicated that they expect their traffic volumes to increase. (Lomma Brief, pp. 13-14). Moore-Flesher attempts to counter this testimony by arguing that there is no evidence that existing service would be unable to satisfy these increased demands for service. Again, Moore-Flesher's imagination has been allowed to stray from the record. Two of these shippers presented testimony that present carriers were unable to satisfactorily handle even their presently limited traffic volumes, while a third, Pittsburgh-Des Moines, stated simply that he does not believe that his present carriers have sufficient specialized equipment to handle all of his expected transportation needs. (T. 78-80, 83, 94, 348). Lomma has satisfied the future need alternative.

It is clear that Lomma has established that approval of its application will serve a "useful public purpose" and result in "public benefit" in accordance with the Commission's Kinard decision.

D. Protestants Have Not Established That Approval Of This Application Will Endanger Or Impair Their Operations Contrary To The Public Interest

In their Briefs, neither Hake, Graham nor Daily argued that approval of this application would have an adverse impact upon their operations. Consequently, Lomma will merely adopt the argument set forth at pages 18-20 of its Main Brief relative to its position that a grant of the requested authority will leave the operations of these three Protestants unaffected.

As for Protestant Moore-Flesher, Lomma respectfully requests that the Commission refuse to consider evidence which is not part of the record. Moore-Flesher attached to its Brief as Appendix C a document which is described

as an excerpt from the January 15, 1985 Pittsburgh Gazette, and asks that the Commission take official notice of the article. If this were not part of the overall, misleading pattern of the Moore-Flesher opposition in this case, the introduction of a newspaper article as evidence after the close of the record would be a cause for mirth. Counsel knows better.

There is no manner in which Lomma can, at this point in time, check the accuracy of the information contained in Appendix C to Moore-Flesher's Brief. No information is supplied relative to the period of time covered by the article, whether any of the facilities listed were reopened at different locations or whether there were any plant openings which offset the plant closings reflected in Appendix C. In any event, Moore-Flesher should not be permitted at this late date to introduce evidence which cannot be properly examined by Lomma, and Lomma therefore requests that the Commission not consider Appendix C in making its determination in the instant matter.

Moore-Flesher would have the Commission believe that it has suffered a severe decline in its heavy hauling business and that, as a result, it is operating at only 25 percent capacity with only 4 full-time drivers. However, most of these consequences flow from Moore-Flesher's own actions. Moore-Flesher sold its interstate operating authority, but apparently sold no equipment. No evidence was submitted that Moore-Flesher sold any of its equipment prior to or following the sale of its I.C.C. authority. It can similarly be inferred that at least a portion of the work force reduction was attributable to the cessation of interstate operations by Moore-Flesher. It is also interesting to note that although Moore-Flesher only utilizes 4 full-time drivers and an additional 8 part-time drivers, it employs the services of 30 owner-operators. (T. 477-478). The reasons for the reduction in the unionized work staff of Moore-Flesher may very well extend beyond the so-called economic decline in western Pennsylvania referred to by

Moore-Flesher's witness.

Moore-Flesher asserts that it cannot withstand additional revenue losses and that western Pennsylvania shippers would suffer from the loss of Mr. Kerr's expertise. It must be reiterated that, on a company-wide basis, Moore-Flesher generated a profit of approximately \$104,000 in 1983. (T. 541). This Protestant is clearly not in the dire situation it would lead the Commission to believe. Also, if the expertise of Mr. Kerr is so important to western Pennsylvania heavy hauling shippers, they will continue to turn to Mr. Kerr for their heavy hauling transportation needs. All Lomma is asking through this application is an opportunity to give those shippers a choice of the carrier they desire to utilize.

If it was not sufficiently clear at the final day of hearing in this matter, it is now crystal clear that Moore-Flesher is and has been contending with deep-seated internal problems having little or nothing to do with competition or the economy. It has sold its I.C.C. authority. It is splitting its P.U.C. authority in to two parts. Its work force has shifted from employees to independent contractors. It did not reduce its equipment capacities to match shrinkage caused by its withdrawal from I.C.C. service. Its tractor equipment is aged — old enough to be depreciated to zero. Its sales and solicitation efforts appear to be almost nil.

Moore-Flesher is, in a word, a dinosaur. It takes the position that customers should come to it; that it is "entitled" to a protected service territory and that western Pennsylvania is "its" bailiwick.

Neither law, policy nor reason supports Moore-Flesher's position.

It must be borne in mind that Moore-Flesher holds no authority to provide service between points in eastern Pennsylvania. A grant of heavy hauling authority to Lomma which would allow the Applicant to provide service between

points in and east of the counties of Potter, Clinton, Centre, Blair, Huntingdon and Fulton would leave Moore-Flesher totally unaffected. Moreover, even if Lomma were granted all of the authority requested herein, it would only potentially impact upon 10 percent of Moore-Flesher's overall operation. Moore-Flesher would not face increased competition from Lomma for the transportation of general freight shipments, or for the transportation of general freight shipments which move in conjunction with intrastate size and weight shipments. Even Moore-Flesher's Brief, with remarkable candor, admits that the service which it provides for at least one of the supporting shippers involves no heavy hauling at all — "MFH has handled about 1,000 shipments for H. H. Robertson and has never been requested to provide special equipment (527-528)." (Moore-Flesher Brief, p. 13). Obviously, Moore-Flesher has nothing to fear so far as this traffic is concerned.

There is simply no evidence in this record to support Moore-Flesher's contention that approval of this application will lead to its ultimate demise. Indeed, Moore-Flesher's demise is occurring voluntarily. It will cease to exist regardless of the outcome of this proceeding — its intrastate authority will be transferred to Moore-Flesher Trucking Corporation and W. D. Kerr & Sons. Utilizing two companies to provide a service previously supplied by a single entity may very well result in shippers looking elsewhere for a complete service whether or not Lomma's service is available to them. In any event, it is impossible to determine the effect, if any, that Lomma's proposed service will have upon the purchasers of Moore-Flesher's authority. Contrary to the position adopted by this Protestant, one cannot simply infer, from the evidence presented in this record, that the injection of Lomma's service will negatively impact upon the successors of Moore-Flesher.


Finally, as noted in Lomma's Main Brief, in considering the potential

adverse effect that approval of this application would have upon any of the Protestants, the Commission must consider first and foremost the public interest. It is clear that making available to the shipping public Lomma's expertise, specialized equipment and responsive service, will benefit Pennsylvania shippers of size and weight commodities. No factual basis has been developed in this record upon which to conclude that Lomma's entry into the market will do material harm to the Protestant's interest. There is everything to be gained and little to be risked as a result of allowing Lomma entry into the Pennsylvania intrastate heavy hauling market.

Lomma respectfully requests that its application be granted in its entirety. ^{2/}

Respectfully submitted,

RUBIN, QUINN & MOSS

By: 
JAMES W. PATTERSON
EDWARD L. CIEMNIECKI

Attorneys for Applicant,
J. F. Lomma, Inc.

^{2/} The Daily Brief, at pages 21-22, suggests the use of the word "and" instead of "or" in the phrasing of the commodity description contained in any grant of authority to Lomma. The distinction suggested by Daily is unavailing of any real difference in the service authorized. Using either "and" or "or" will permit Lomma to handle heavy and bulky articles on specialized trailer equipment or on non-specialized trailer equipment such as ordinary flatbeds, when, in the latter case, Lomma provides or arranges for the provision of specialized devices for loading or unloading.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing document upon all parties of record in this proceeding by postage prepaid, properly addressed, first-class mail.

Dated at Philadelphia, Pennsylvania, this 28th day of March, 1985.


JAMES W. PATTERSON

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March 29, 1985

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MAR 29 1985

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-18
Harrisburg, PA 17108

Re: APPLICATION OF J. F. LOMMA, INC.
A.00105101
Protest of Daily Express, Inc.

Dear Sir:

Enclosed for filing please find an original and nine copies of the Reply Brief of Protestant Daily Express, Inc. Copies of the foregoing brief have been served on all parties of record.

Please acknowledge receipt hereof by date-stamping the enclosed copy of this letter of transmittal.

Respectfully submitted,

McNEES, WALLACE & NURICK

By: *William A. Chesnutt nas*
William A. Chesnutt

WAC/nas

Enclosures

cc: All Parties of Record
Mr. E. S. Moore, Jr.
Daily Express, Inc.

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MAR 29 1985

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S OFFICE
Public Utility Commission

APPLICATION OF
J. F. LOMMA, INC.

:
: DOCKET NO. A.00105101

REPLY BRIEF OF PROTESTANT
DAILY EXPRESS, INC.

Protestant Daily Express, Inc., by its counsel McNeese, Wallace & Nurick, respectfully submits this Reply Brief to presiding Administrative Law Judge Joseph J. Klovekorn.

SCOPE OF THIS PLEADING

Main Briefs have been filed on behalf of applicant J. F. Lomma, Inc., protestant Daily Express, Inc., jointly on behalf of protestants Moore-Flesher Hauling Company, Moore-Flesher Trucking, Inc. and W. D. Kerr & Sons, Inc., and jointly on behalf of protestants Frank W. Hake, Inc. and David Graham Company.

In its Main Brief, Daily argued in the alternative for (a) total denial of the application, (b) a grant of authority limited to service for three named shippers, or (c) a grant with a precisely framed commodity description limiting service to so-called "heavy-hauling" or "size and weight" transportation (see Applicant's MB*, p. 4). The common thread for the alternative arguments that any grant of authority herein should

*MB is used herein as an abbreviation for Main Brief.

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be appropriately limited is the standard of 52 Pa. Code §41.14(c), which expressly contemplates that grants of motor carrier authority will be "commensurate with the demonstrated public need...." (emphasis added). There is, and can be, no dispute that disposition of this application is governed by 52 Pa. Code §41.14 (see Applicant's MB, p. 2; Daily's MB, pp. 16-17).

ARGUMENT

Daily stands by the arguments previously made for total denial of this application (Daily MB, pp. 17-20), or alternatively for a grant of authority limited to service for three named shippers (Daily MB, pp. 20-21). No useful purpose would be served in repeating those arguments here. The arguments advanced by applicant in favor of a total grant of the application present the Judge with two diametrically opposite views of what the evidence in this record supports (see Applicant's MB, pp. 5-23).

Applicant and Daily do not disagree, however, that at most this record supports a grant of authority limited to "'heavy-hauling' or 'size and weight' transportation" (Applicant's MB, p. 4). The disagreement between applicant and Daily in this regard is confined to the question of what commodity-description phrasing will simultaneously insure applicant's ability to meet the demonstrated transportation requirements of shippers supporting this application, without authorizing applicant to compete for traffic of these and other shippers, concerning which no need for applicant's services has been shown.

More specifically, the issue in dispute is whether a phrasing should be employed that would conceivably authorize applicant to perform transportation on flatbed trailers, so long as "the carrier or an agency brought to bear by the carrier (other than the shipper or consignee)" supplies and utilizes specialized equipment to accomplish loading or unloading (Applicant's MB, p. 4). This analysis is the basis for applicant's continued insistence that the appropriate commodity description is:

property, which because of size or weight requires the use of rigging, special handling or special equipment (Applicant's MB, p. 3).

rather than

property, which because of size or weight requires the use of rigging, special handling and special equipment (Daily's MB, p. 21).

Applicant's position on an appropriate commodity description is wrong for at least three reasons: (1) there is no evidence that any of the shippers supporting this application ever require the type of flatbed trailer service adverted to by applicant on brief; (2) there is no support in precedential case law for the disjunctive phrasing of the "heavy-hauling" commodity description; and (3) the use of flatbed trailers under any circumstances does not come within the purview of "heavy-hauling" service.

A review of applicant's own digest of testimony presented by the supporting shippers (Applicant's MB, Appendix II) disclose no reference to any shipper who alleges a need for transportation services to be performed on flatbed trailers in connection with loading or unloading furnished by "the carrier or an agency brought to bear by the carrier...." (Applicant's MB, p. 4).

Applicant is flatly in error in its claim that its preferred disjunctive phrasing of the "heavy-hauling" commodity description "is the traditional operating authority phrasing used by the Pennsylvania Public Utility Commission (Applicant's MB, p. 3). None of the four decisions relied upon by applicant supports applicant's categorical assertion concerning "traditional operating authority phrasing". Indeed, only one of the four -- Application of Jacoby Transportation System, 44 Pa. PUC 809 (1970) -- even involves issuance of an operating authority. The other three were complaint proceedings involving a variety of commodity descriptions other than any so-called "traditional" heavy-hauling phrasing. The Jacoby decision also involved a consolidated complaint proceeding. We will briefly review the decisions in the order they were cited by applicant (see Applicant's MB, p. 4).

The Jacoby decision involved interpretation of a 1934 certificate authorizing transportation of

safes, pianos, heavy machinery, and materials
requiring rigging, skidding, or special
handling

44 Pa. PUC at 812.

There is no discussion in the Jacoby decision supporting an inference that carriers holding heavy-hauling certificates may utilize flatbed trailers so long as they or someone acting for them (other than the shipper or consignee) has furnished and utilized special equipment to load or unload those trailers. In fact the principal thrust of the Jacoby decision was a finding that "D. Jacoby never had any of the specialized equipment used in conjunction with heavy hauling and never

performed the type of service now known as heavy hauling" 44 Pa. PUC at 821.

The second decision relied upon by applicant is Pa. PUC v. Sorice, 48 Pa. PUC 268 (1974). The authorities at issue in that complaint proceeding read, in pertinent part, as follows:

heavy or bulky property requiring special equipment, such as the use of winches, jacks or other machinery....

48 Pa. PUC at 269.

The Commission, relying on an earlier Sorice decision at 42 Pa. PUC 110 (1965) sustained a staff complaint against the carrier for transporting steel slabs on "heavy duty flat-trailers" 48 Pa. PUC at 270, 274. In the earlier Sorice decision, also cited by applicant, the Commission had held "we do not find it necessary to decide what trailers are heavy duty flat-bed trailers and what trailers are ordinary flat-bed trailers, since both are proscribed from the definition of 'special equipment'" 42 Pa. PUC at 117. Rather than supporting the assertion advanced by applicant, the Sorice decisions contradict applicant's attempt to expand the "traditional" concept of heavy-hauling.

The fourth and final decision relied on by applicant also fails to furnish any support for applicant's supposed "traditional" formulation of the heavy-hauling commodity description. In the Sanguigni complaint proceeding, 25 Pa. PUC 535 (1946), the certificate in issue read:

contractors' and road builders' equipment, materials, machinery and supplies and other commodities requiring special equipment for handling

25 Pa. PUC at 538.

As pertinent here, the Commission held:

In the field of heavy hauling, special equipment means trucks or trailers of special design such as winch trucks, reach or pole trailers, and low-bed, drop-frame carryalls.

* * *

The respondent takes the position that if the property is loaded or unloaded on a truck by means of a crane, such loading or unloading constitutes the use of special equipment in handling. The Commission cannot agree with this position.

25 Pa. PUC at 539.

In marked contrast to applicant's unsupported assertion that its preferred disjunctive phrasing is "traditional" with this Commission, we respectfully call the Judge's attention again (see Daily MB, pp. 21-22) to the decision in Rule Against W. J. Dillner Transfer Company, 30 Pa. PUC 362 (1952), where the Commission stated:

We and our predecessors, the Public Service Commission, have always used the phrase to transport property, which because of its size or weight requires special handling and the use of special equipment....

30 Pa. PUC at 365 (emphasis added).

Finally, there simply is no case law precedent cited by applicant or known to counsel for Daily that will support applicant's strained interpretation that flatbed trailers may be used in heavy hauling service so long as loading or unloading of the trailers is accomplished with specialized devices supplied and used by "the carrier or an agency brought to bear by the carrier (other than the shipper or consignee)" (see Applicant's MB, p. 4). Instead, the precedential decisions are to the contrary. Heavy hauling "is a specialized transportation service which requires for its efficient conduct inherently special vehicular equipment" Dillner, supra, 30 Pa. PUC at 367. Following the

Dillner decision, the Commission again reviewed transportation under a heavy-hauling certificate conducted with flatbed trailers with floors of "wood with cross bars of steel" to which "no winches are attached" Salvatora v. Mac-Rod Transport, 35 Pa. PUC 131, 137 (1957). The result:

We conclude and find that the type of flat-bed equipment used by the respondent for the transportation of steel bars, which were secured to such equipment with chains and binders, is not inherently special vehicular equipment which is necessarily used in the field of heavy hauling.

35 Pa. PUC at 138.

In an exhaustive examination of the heavy-hauling concept in the first Sorice decision, supra, 42 Pa. PUC 110 (1965), the Commission cited the Mac-Rod decision for the proposition that "there can be little question that ordinary flat-bed equipment is not 'special equipment'" 42 Pa. PUC at 117.

CONCLUSION

WHEREFORE, protestant Daily prays that any authority awarded in this proceeding be framed in terms of "property, which because of size or weight, requires the use of rigging, special handling and special equipment".

Respectfully submitted,

McNEES, WALLACE & NURICK

By: 
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Attorneys for Daily Express, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Main Brief of Protestant Daily Express, Inc. was served by first class mail, postage prepaid, to the following parties of record, on this 29th day of March, 1985:

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James W. Patterson, Esquire
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The Honorable Joseph J. Klovekorn
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WILLIAM A. CHESNUTT

Dated: March 29, 1985

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March 29, 1985

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APR 1 1985

Re: Application of J. F. Lomma, Inc.
Docket No. A-105101
File No. 723

SECRETARY'S OFFICE
Public Utility Commission

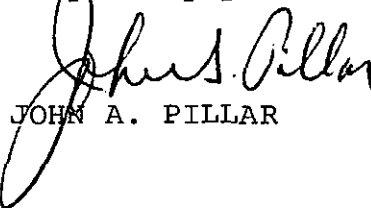
Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
P. O. Box 3265
Harrisburg, PA 17120

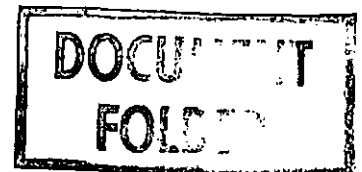
Dear Sir:

Enclosed for filing are the original and nine copies of the Reply Brief on behalf of Moore-Flesher Hauling Company, et al. in connection with the above docketed proceeding. Please acknowledge receipt of the enclosures.

A copy of this Reply Brief has been mailed to the Administrative Law Judge and all parties of record.

Very truly yours,


JOHN A. PILLAR



SW

Enclosures

cc: James W. Patterson, Esq.
William A. Chesnutt, Esq.
Alan Kahn, Esq.
Hon. Joseph J. Klovekorn, Administrative
Law Judge
Moore-Flesher Hauling Company

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of
J. F. LOMMA, INC.

Docket No. A-105101

REPLY BRIEF FOR
MOORE-FLESHER HAULING COMPANY,
MOORE-FLESHER TRUCKING, INC. AND
W. D. KERR & SONS, INC.

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Due Date: April 1, 1985

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of
J. F. LOMMA, INC.

Docket No. A-105101

I. INTRODUCTORY STATEMENT

This Reply Brief is being filed on behalf of Moore-Flesher Hauling Company (MFH), Moore-Flesher Trucking, Inc. (MFT) and W. D. Kerr & Sons, Inc. (Kerr) to the main brief filed on behalf of J. F. Lomma, Inc. (Lomma or applicant), the applicant in the above docketed proceeding.

Main briefs have been filed by Lomma, MFH, MFT and Kerr, Daily Express, Inc. and Frank W. Hake, Inc. and David Graham Company. Although MFH, MFT and Kerr have presented all of their principal arguments in opposition to the application in their main brief, as well as abstracts of the evidence presented by the applicant, the supporting shippers and the protestants, certain matters have been raised in the applicant's main brief to which MFH, MFT and Kerr wish to reply.

Since we understand that the Administrative Law Judge does not desire to read repetitive arguments and analyses of the evidence, this Reply Brief will be strictly limited to points which have been raised in the applicant's brief and which protestants believe require rebuttal. We understand that the

Administrative Law Judge has, or will have, read all of the main briefs first, so that this reply will be more meaningful, since it is not the intention of the protestants herein to repeat their principal legal arguments.

II. REBUTTAL ARGUMENT

1. THE RECORD DOES NOT SUPPORT APPLICANT'S CONTENTION THAT IT ESTABLISHED A NEED FOR STATEWIDE SERVICE BY LOMMA.
(Applicant's Brief, Pages 7-9)

On pages 7 to 9 of its brief, applicant contends that the supporting shippers collectively presented proof of need for Lomma's service throughout Pennsylvania. The record does not support this conclusion. Moreover, the record references cited by applicant do not reflect accurately the state of the record.

First, Lomma lists origins and destinations "specifically identified by the supporting shippers," in Appendix 2 of its brief. No record references as to where these points were found in the transcript or exhibits were provided, however. The applicant's list of points is misleading and not reflective of a need for Lomma's proposed service for several reasons.

First, many of the so-called origin points in the aforementioned Appendix 2, that are mentioned in the record, are origins of inbound shipments of iron and steel and other inbound materials that are not relevant to any need for size or weight service. For example, origins such as Braddock, Brackenridge, Bethlehem, Irwin, Homestead, Duquesne, Johnstown, West Mifflin and Fairless Hills are locations of steel mills (some of which

are now closed) referred to by witness Casey, and there is no evidence that such inbound shipments require a size or weight service (Exh. A-8; 195). Other examples of inbound "origin points" of non-size or weight shipments are Coatesville (Westinghouse, 242); Allenport (H. H. Robertson, Exh. A-14); and Washington and Conshohocken (P-DM, Exh. A-15).

Secondly, the origin of Ambridge (H. H. Robertson's plant) is not relevant since H. H. Robertson never uses the services of a size or weight carrier, and has no such need (320-321). Mr. Ackerman's testimony that he has a need for a heavy hauler from Ambridge and that no such service is available is clearly false (330).

Third, the mere fact that a supporting shipper appears and states he ships from one point to another is not conclusive. Those points identified in the aforementioned Appendix 2 which are truly the origins of size or weight shipments are not origins where a need for an additional heavy hauler has been established. This application, in fact any application before this Commission, is not simply a question of numbers of origins and destinations. The Administrative Law Judge has to consider the credibility of the testifier and the extent, if any, of his alleged need for service.

Applicant argues, in its brief, that some shippers, namely Fuller, Erie Strayer, Met Ed, and Schramm/PEECO, may ship to "any point" in Pennsylvania. On the other hand, Erie Strayer hasn't used a common carrier for 12 to 18 months because it has had "so few shipments" (220-221). Applicant states,

on page 7 of its brief, that Erie Strayer's needs are "unpredictable." The truth is that this shipper's needs are virtually non-existent and it has the services of Daily and Gottry, not to mention MFH, which it has not tried (222).

Finally, applicant concedes that the traffic cited by the shippers might not seem significant when considered in terms of a general property application. Lomma contends, however, that its evidence is "substantial" in light of the specialized service proposed, citing Rule Against W. J. Dillner Transfer Company, 30 Pa. P.U.C. 362 (1952). In Dillner, the Commission stated that its policy has been to grant broad heavy hauling rights because of the investment in specialized equipment that is necessary. However, the Commission did not state that such authority would or could be granted without proof of actual need. Moreover, Lomma has already made its investment in equipment to provide 48 state interstate service, and service locally within New Jersey, its home state. This Commission has no duty to protect Lomma's investment. Instead, its duty should be to protect and preserve the investment made by certificated carriers in Pennsylvania who are facing a serious decline in business and who are not able to find work for the equipment they have.

2. THE ALLEGED "SERVICE PROBLEMS" HAVE EITHER BEEN REFUTED OR WERE NOT REAL PROBLEMS (Applicant's Brief, Pages 9-11)

Applicant contends that evidence of inadequacy was presented and that Lomma's service is needed to "cure the service deficiencies." (See pages 10-11 of Applicant's Brief.) Applicant has not fairly presented the shipper's evidence.

Applicant cites Zurn's witness' testimony (T. 94) about shipments over 21 feet that Daily had problems with. The fact is that the witness testified specifically that Daily is a "very reputable company, very dependable," and that it has never had a problem with Daily on oversized or overweight shipments. Moreover, it uses Gottry most frequently since it has a terminal in Erie and it uses Preston and Hardinger, also based in Erie (102-107).

Applicant cites testimony by the witnesses for Pennsylvania Coil, DEMCO, P-DM and Westinghouse about lack of service generally, or as to difficulty in obtaining equipment. The record does not support these alleged inadequacies.

Pennsylvania Coil's witness stated that his company has never had any need for service not met satisfactorily by MFH (179). While it is true that Benkart, a heavy hauler used by Pennsylvania Coil, went out of business, its authority was acquired by Reinsfelder, and this carrier provides heavy hauling service (178).

DEMCO's witness stated that virtually all of his company's heavy hauling needs are handled satisfactorily by Haser, a

local carrier, and that Haser will continue to be used (199-200). DEMCO has never even tried MFH even though the witness recognized MFH as a capable heavy hauler (204).

P-DM's witness' testimony that existing carriers have insufficient equipment to handle its traffic is incredible! This company's Pittsburgh (Neville Island) plant has been closed for three years (350). For the limited needs it has from its tool house near Pittsburgh, P-DM uses MFH, whose service was characterized as satisfactory (348), and Daily and Hake, without complaint.

The alleged problems referred to by the Westinghouse witness must be considered in light of the inconsistencies in the witness' testimony, and his lack of candor. The complaint that Westinghouse experiences difficulty in obtaining the type of equipment needed is vastly misleading. Actually, the witness was referring to carriers with alleged "incomplete authority," which MFH refuted completely. Then, the witness stated, incredibly, that MFH had not been used for 10 years (243). MFH's evidence also clearly refuted this misleading testimony (see MFH Main Brief, Appendix B, p. 7). The witness' testimony that Westinghouse hasn't been able to secure equipment "on a moment's notice" is a vast overstatement of this shipper's actual transportation requirement and, we submit, is patently false. If, as the witness testified, David Graham, on one occasion, took one week to provide a tractor to handle one shipment, why didn't Westinghouse call MFH, Daily, Haser,

Reinsfelder, or use its own vehicle used to handle size or weight shipments?

Finally, the complaint by Seco/Warwick that it must break down shipments in order to have them transported by truck (via Daniels) is also misleading. This shipper has made absolutely no effort to obtain service from MFH or Reinsfelder (302). We submit that this shipper uses Daniels because this carrier is local and provides good service.

In conclusion, applicant contends that these shippers intend to turn to Lomma to "cure" their service deficiencies. They do not need Lomma to cure anything. They can "turn to" existing carriers such as MFH and others, which have largely not even been tried.

3. A NEED FOR STATEWIDE SERVICE CANNOT BE "INFERRED" FROM EVIDENCE BY SUPPORTING SHIPPERS WHO HAVE NO REAL NEED FOR ADDITIONAL SERVICE (Applicant's Brief, pages 11-12)

Applicant's Main Brief argues that it may be inferred that other shippers have a need for Lomma's service who are situated similarly to the supporting shippers. No such inference is warranted here.

On the whole, the supporting shippers in this case support this application so that Lomma can bid on their traffic which may result in reducing their costs. While this may be a logical goal, it is not a sufficient basis for granting broad statewide authority to Lomma. The shippers have not availed themselves of existing carriers. If they would, the shippers can now obtain bids from two or more heavy haulers from each of their respective origins.

In Allegheny County, the shippers can use MFH, Reinsfelder, Haser, Daily and David Graham, among others. From Erie County, the shippers can use Gottry, Hardinger, MFH and Daily, if not others. From Meadville, Seco/Warwick can try Daily, MFH and Reinsfelder.

While the applicant seeks an inference that other shippers may have a need for service, the Commission can equally infer that non-protesting carriers such as Reinsfelder, Gottry, Haser, Hardinger and others mentioned by the supporting shippers, can provide additional service to that offered by MFH, Daily, Hake and David Graham. One inference is just as valid as another. In this case, the inference that non-protesting carriers can also meet the shippers' needs is based on evidence of record since the supporting shippers are using such carriers presently and without complaint.

4. LOMMA'S "DIFFERENT SERVICE" AND "PUBLIC INTEREST" THEORIES ARE WITHOUT SUBSTANCE (Applicant's Brief, Pages 12-13)

There is no evidence of record to support Lomma's theory that it offers a "more prompt service" or an ability to handle heavier loads than existing carriers.

As to Lomma's ability to provide service faster than MFH, Daily or others, the argument is purely self-serving. MFH has been serving western Pennsylvania for 80 years and uses only 25% of its heavy hauling equipment. Lomma only recently established a leased office in Bridgeville, and there is no evidence that its service would be superior to others in terms of time.

MFH presented evidence of its ability to handle "super heavy" loads, including evidence that it now provides such service for the supporting shippers. It has handled 35 to 40 ton mining locomotives, for example (490-492). It has a tractor and trailer that can transport 125 tons (481-482). MFH transported a shipment weighing 252,700 pounds (126 tons) for Tippins in April, 1984, but has not been requested to use its super heavy equipment since that time (522). There is no need.

It may be argued by any new carrier that its service would be a "useful public purpose" or be in the public interest. That is simply not sufficient, standing alone, to warrant a grant of authority. The existing carriers offer a service now that is useful to the public but which is not being used even near to capacity. The Commission has a duty to foster and promote a sound transportation system and it cannot do this by flooding the market place with carriers where there is clearly no need. That is not in the public interest of anyone except the carrier trying to get a certificate.

III. CONCLUSION

On the basis of the Main Brief of MFH, MFT and Kerr, and this Reply Brief, the protestants herein request the Administrative Law Judge to make the findings and conclusions set forth in their Main Brief, and any additional findings or conclusions warranted by this Reply Brief, and the application either be (1) denied in its entirety, or (2) denied to the extent of the interests of MFH, MFT and Kerr.

Respectfully submitted,

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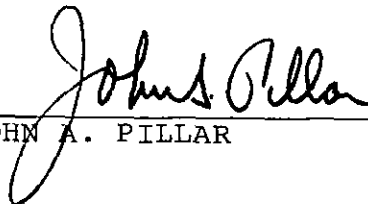
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Reply Brief on all parties of record in this proceeding, in accordance with the Rules of Practice.

Dated at Pittsburgh, PA, this 29th day of March, 1985.



JOHN A. PILLAR