

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

-----X
Tri-County Transportation, Inc., :
t/d/b/a Happy Times Charter, :
Inc., A corporation of the :
Commonwealth of Pennsylvania. :
For the removal of the following :
conditions from its operating :
authority at A-00107235, Folder :
1, Am. B. The conditions read :
as follows: (1) That the :
service herein authorized is :
limited to transportation in :
vehicles having a seating :
capacity not to exceed :
fifteen (15) persons, including :
the driver; and (3) That no :
right, power or privilege is :
granted to provide :
transportation in school buses. :
Further telephone hearing. :
-----X

Docket Number:
A-00107235
F0001 Am. C

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J. M.

Pages 124 through 142

Hearing Room,
300 Liberty Avenue
State Office Building,
Pittsburgh, Pennsylvania

Wednesday, September 13,
1995

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

MICHAEL A. NEMEC, Administrative Law Judge

APPEARANCES:

LAWRENCE L. DAVIS, ESQ.
Davis & Davis
103 South Center Street
Ebensburg, Pa. 15931-0064
(For the Applicant)

JAMES D. CAMPBELL, ESQ.
Caldwell & Kearns
2631 North Front Street
Harrisburg, Pa. 17110
(For Fullington Auto Bus Company, Inc.)

DOCKETED
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ORIGINAL

APPEARANCES (continued)

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REX W. McQUAIDE, ESQ.
 1409 Eisenhower Boulevard
 Richland Square One
 Suite 200
 Johnstown, Pennsylvania 15904
 (For McIlwain Charters, Inc.)

FORM 1

C O N T E N T S

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WITNESSES

DIRECT CROSS REDIRECT RECROSS

Douglas R. McIlwain 130 138 --- ---

E X H I B I T S

NUMBER

FOR IDENTIFICATION IN EVIDENCE

Protestant's

J (Transportation authority) 131 138

K (Equipment list) 135 138

L (Financial statement) 137 138

FORM 1

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE MICHAEL A. NEMEC: This
3 morning we have a further hearing in the Case captioned
4 Application of Tri-County Transportation Incorporated, t/d/b/a
5 Happy Times Charter Incorporated. The matter is docketed at A-
6 00107235, Folder 1, Amendment C.

7 Present this morning, by way of telephone, is attorney
8 Lawrence L. Davis, representing the Applicant, Tri-County
9 Transportation Incorporated. Also present by telephone are
10 attorneys James D. Campbell and Rex W. McQuaide, representing
11 the Protestants in this matter. Attorney William Gray has
12 previously withdrawn from participation in this Case.

13 Mister Davis, you have a preliminary matter you wish
14 to bring up?

15 MISTER DAVIS: Well, the Prehearing Order in this
16 matter, which is dated June 7, 1995, provided for the Applicant
17 to provide copies of all his exhibits, no later than July 11,
18 which was done and also, that the Protestants provide copies of
19 exhibits, prior to the hearing, on July 18, 1995. As of this
20 date, I still haven't seen any exhibits, on behalf of McIlwain.

21 MISTER McQUAIDE: If I may respond, Rex McQuaide
22 speaking, Larry, I had forwarded to your office several months
23 ago, under a cover letter, indicating that we would be
24 presenting several exhibits. One was the operating authority.
25 There's an equipment list and financial statements. So, it

1 should be of no surprise to you that those, in fact are being
2 presented in this Case.

3 MISTER DAVIS: That was on June 9. I have that
4 letter.

5 MISTER McQUAIDE: And in addition to that, you and I
6 had a conversation yesterday, wherein I indicated to you that I
7 would be faxing you, prior to the hearing, copies of the
8 exhibits.

9 Your Honor, I know that telephonic hearings are
10 somewhat cumbersome, but I would request that I be permitted to
11 introduce exhibits, as if we were all in the same room together,
12 which is to have the exhibits authenticated by my Protestant
13 witness, then introduce them. I'm prepared here this morning,
14 to fax to everybody and anybody who wants copies in advance,
15 copies of my exhibits. Essentially, they are rather
16 straightforward. They are our operating authority, which has
17 already been attached to our protest; an equipment list and a
18 financial statement.

19 JUDGE NEMEC: Okay. Has the financial statement been
20 provided to Mister Davis, prior to this morning?

21 MISTER McQUAIDE: It ws faxed to his office about 10
22 minutes ago.

23 MISTER DAVIS: We still didn't get it. I don't know
24 what's wrong with the phone lines.

25 MISTER McQUAIDE: Well, we have an acknowledgement

1 copy here, at our end, that it was received. I could fax it
2 through again, if you like?

3 MISTER DAVIS: Well---

4 JUDGE NEMEC: Mister McQuaide, Mister Davis is
5 correct, in terms of his interpretation of what I intended in
6 the Interim Order. But I also agree with you, that---regarding
7 operating authority and equipment lists, that typically there's
8 not much dispute over those items and I see no problem with
9 those. I guess there may be some potential need for cross-
10 examination on the financial statement. I have no idea. And
11 what I would like to do is give Mister Davis an opportunity to
12 review those, for an adequate period of time, for him to decide
13 what questions he might have.

14 The other problem has to do with providing two copies
15 for the court reporter of your exhibits. Are you prepared to
16 fax---well, you---have you faxed copies of these exhibits to me?

17 MISTER McQUAIDE: No, but I am prepared to do that, as
18 soon as I know your fax number, Judge.

19 JUDGE NEMEC: I'll have to go get that for you.

20 Let's take a break right now, while I go get the
21 number and perhaps you can attempt to get that financial
22 statement through to Mister Davis again.

23 MISTER CAMPBELL: Your Honor?

24 JUDGE NEMEC: Yes.

25 MISTER CAMPBELL: This is Jim Campbell. Before we go

1 off the record, I would like to just not clutter the record, but
2 I had made a request on the record, which, you know, for all
3 appearances would remain open, at this time, to be provided with
4 certain copies of operating authority, from Mister Davis. And
5 I would just like to state for the record, that he did provide
6 me with what I had requested on the record, at the previous
7 hearing, by his letter of July 19. So that that is not an open
8 item.

9 JUDGE NEMEC: Fine. Thank you for that. And I will
10 also acknowledge on the record, that I received my copies of
11 them.

12 With those notes, let's take about five minutes and
13 I'll get the fax number for you and you can check on faxing the
14 material to Mister Davis, Mister McQuaide.

15 (Off the record.)

16 JUDGE NEMEC: Back on the record.

17 Mister McQuaide, you may proceed.

18 MISTER McQUAIDE: Mister McIlwain, you were not
19 previously sworn in, at the prior hearing in this matter?

20 MISTER McILWAIN: No, I wasn't.

21 JUDGE NEMEC: I will do that now.

22 Mister McIlwain, can you hear me?

23 MISTER McILWAIN: Yes, I can.

24 JUDGE NEMEC: Okay.

25 (Witness sworn.)

JUDGE NEMEC: You may proceed, Mister McQuaide.

Whereupon,

DOUGLAS R. McILWAIN

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MISTER McQUAIDE:

Q Mister McIlwain, will you state your full name for the record, please?

A Douglas R. McIlwain.

Q And Mister McIlwain, by whom are you employed?

A McIlwain Charters.

Q And is the correct name McIlwain Charters, Inc.?

A Yes, it is.

Q Mister McIlwain, in what capacity are you employed at McIlwain Charters, Inc.?

A I am the President.

Q And are you authorized to testify on behalf of the Protestant, in these proceedings?

A Yes, I am.

Q Are you familiar with your company's operating authority?

A Yes, I am.

Q Was that authority attached to your protest in these proceedings?

FORM 1

1 A Yes, it was.

2 Q Mister McIlwain, I'll show you what I have proposed
3 marking as McIlwain Exhibit number 1 and ask that you identify
4 this particular document.

5 JUDGE NEMEC: Okay. I'm going to interrupt you. We
6 are going to mark it as Protestant's Exhibit J.

7 (Whereupon, the document was marked as Protestant's Exhibit J
8 for identification.)

9 BY MISTER McILWAIN:

10 Q Mister McIlwain, I show you then Protestant's Exhibit
11 J and ask you to identify that particular document, please.
12 What is that document, Mister McIlwain?

13 A This is the document of my authorities.

14 Q Okay. And Mister McIlwain, could you basically
15 summarize where your present operating authority permits you to
16 go?

17 A Basically, my present operating authority permits me
18 to haul in the counties of Somerset, Cambria, Indiana and parts
19 of Westmoreland.

20 Q And does that permit you then to operate out of those
21 counties, to points in Pennsylvania and return?

22 A Yes.

23 Q Mister McIlwain, does your company also possess I.C.C.
24 authority?

25 A Yes, we do.

1 Q And where is that authority docketed to?

2 A The number is MC-174052.

3 Q And could you basically describe what that authority
4 permits your company to do?

5 A We have the right for charter and special operations
6 between points in the United States.

7 Q Mister McIlwain, could you briefly describe the type
8 of services offered by McIlwain Charters, Inc., that may be
9 pertinent to these proceedings?

10 A Well, we do group and party charter work in all the
11 counties we have authorities for. We also do person sales for
12 various sporting events and cultural events throughout the
13 state.

14 Q In addition then to doing intrastate work, do you also
15 offer interstate work?

16 A Yes, we do.

17 Q So, for example, you would be willing to pick up
18 somebody in various points in Cambria County and take them to
19 various places in the state of Pennsylvania or outside the state
20 of Pennsylvania?

21 A We---we do and we would be willing to do so.

22 Q Mister McIlwain, what are your hours of operation at
23 McIlwain Charters?

24 A Our offices are open from 8:30 to 4:30 and our garage
25 is open 24 hours.

1 Q Can you give us a brief description of your plant
2 facilities?

3 A We have a facility of 21,000 square feet, which
4 consists of offices, garages, wash bays, parking areas, parking
5 areas for customers, anything and everything involved with
6 transportation.

7 Q Mister McIlwain, where are your plant facilities
8 located?

9 A In Upper Yoder Township, of Cambria County.

10 Q Is that basically in Johnstown?

11 A It is in the Greater Johnstown area, correct.

12 Q Do you offer a full service maintenance facility at
13 this plant location?

14 A Yes, we do.

15 Q Does your company also operate a safety program and if
16 so, could you describe that, please?

17 A Yes. We have a safety program. We have safety
18 meetings about half a dozen times a year. We have a room that
19 is dedicated strictly for training of drivers and for safety
20 meetings, in which we have a tv with a vcr, which we show video
21 films, provided to us by the insurance company and various
22 consultants that we have gotten material from over the years.
23 We have our own in-house people. We're a third-party tester.
24 We basically can do almost anything that the law requires.

25 Q In connection with being a third-party tester, are you

1 referring to commercial drivers' licensing?

2 A Yes, I am.

3 Q Do your drivers of your bus equipment maintain
4 drivers' daily logs?

5 A Yes, they do.

6 Q Do your drivers inspect the buses on a daily basis,
7 before commencing a trip?

8 A Yes, they do. We have a requirement that drivers come
9 out---first of all, we require a driver to be at the point of
10 pick up, a half hour before the group wants us there and we want
11 our drivers, before they leave the garage, to report 45 minutes
12 ahead of time, to do a complete pretrip inspection.

13 Q Does your company maintain insurance, as required by
14 the PUC and I.C.C.?

15 A Yes, we do.

16 Q Mister McIlwain, I now show you what I would propose
17 to have marked as Protestant's Exhibit K and ask that you
18 identify this particular exhibit. It is a two-paged exhibit.

19 A Okay.

20 Q Could you identify the document for the record,
21 please?

22 A Yes. These are equipment lists of the various
23 equipment that we have---use in our work.

24 Q Okay.

25 JUDGE NEMEC: The document will be marked as

1 maintaining your equipment, et cetera?

2 A Well, if you look at our equipment list, you can
3 readily see that we try to keep as new of equipment as we
4 possibly can on the road and in order to do that, you have to
5 make a profit.

6 Q Mister McIlwain, can your company, under its current
7 authority pick up and return passengers from the various
8 locations identified by the Applicant in his---at the initial
9 hearing?

10 A Yes.

11 Q Okay. For example, are you willing and do you
12 currently pick up and return people to the city of Portage,
13 Ebensburg and Summerhill?

14 A Yes, we do.

15 Q Could you specify other representative points of
16 origin and return, within Cambria County, as it may be pertinent
17 in these proceedings?

18 A Well, the Ebensburg area, Loretto, Nanty Glo,
19 Summerhill, the whole Johnstown area, Richland, north in the
20 county to Carrolltown, Patton area; just anywhere in the county
21 we offer.

22 Q Mister McIlwain, I now show you what I propose to have
23 marked as Protestant's Exhibit L and ask that you identify that,
24 please.

25 JUDGE NEMEC: The document will be identified as

1 Protestant's Exhibit L for identification.

2 (Whereupon, the document was marked as Protestant's Exhibit L
3 for identification.)

4 THE WITNESS: It's a copy of my financial statement.

5 BY MISTER McQUAIDE:

6 Q Mister McIlwain, how would you characterize the
7 profitability of your company over the past several years and at
8 the current point in time?

9 A It's been a real struggle over the last several years.
10 At the current point in time, we have reached a point of
11 profitability. However, we just recently, in '95, lost a
12 contract that was highly profitable, and we are projecting not
13 being profitable in '96.

14 Q Is that the reason that you are looking to increase
15 business throughout the county of Cambria?

16 A Yes, it is.

17 Q If you would then just summarize, Mister McIlwain why
18 you are protesting these proceedings?

19 A Well, in our general area, there's---the competition
20 is pretty stiff and for the market that is out there, we have,
21 besides McIlwain Charters in this area, we have Blue and White,
22 Fullington, Shrock and Lodestar. And I believe that that's more
23 than enough to cover the market area and at the present time, it
24 makes it difficult enough to make a profit.

25 MISTER McQUAIDE: I have no further questions and

1 would tender him for cross-examination and also would move for
2 the admission of all of our exhibits, Your Honor, subject to
3 cross.

4 JUDGE NEMEC: All right. In terms of your Exhibit L,
5 does it consist of two pages: one the balance sheet and one a
6 statement of income and retained earnings?

7 MISTER McQUAIDE: That's correct. I believe, for the
8 record, that each one of our exhibits consists of two pages.

9 JUDGE NEMEC: Okay. Subject to cross-examination and
10 later motion and/or objection, Protestant Exhibits J, K and L
11 are admitted into the record of these proceedings.

12 (Whereupon, the documents marked as Protestant's Exhibits J, K
13 and L for identification, were admitted into evidence.)

14 JUDGE NEMEC: Mister Davis?

15 MISTER DAVIS: Thank you, Your Honor.

16 ---

17 CROSS EXAMINATION

18 BY MISTER DAVIS:

19 Q Mister McIlwain, can you hear me?

20 A Yes, I can.

21 Q Your last exhibit, L, covered the years ending
22 December 31st, 1992 and December 31st, 1993. Do you have any
23 more recent than that?

24 A Yes, I have a '94, but I don't have it with me. My
25 accountants generally don't give that to me until about five or

1 six months after the end of the year. They have gotten it for
2 me, but I don't have that with me.

3 Q Aren't you required to file that with the PUC?

4 A Yes and it is.

5 Q It has been filed, but it's just not available for us?

6 A I do not have it, that is correct.

7 Q May we have that?

8 A I---

9 MISTER McILWAIN: We would be prepared to file that as
10 a late filed exhibit.

11 MISTER DAVIS: That's all the questions I'd have.

12 JUDGE NEMEC: Okay. I have one or two additional.

13 The---your Protestant's Exhibit L, is this part of a
14 bigger statement? I just see that there are notes. It
15 indicates under "current liabilities," for example, "Current
16 maturities of long-term debt (Note 3), Notes payable, (Note 2.)"
17 Can you tell me where this is drawn from, please?

18 THE WITNESS: These are the basic sheets, pulled from
19 the financial statement. There are other sheets on the
20 financial statement. It's prepared by my accountant. I have a
21 public c.p.a.

22 JUDGE NEMEC: Okay. And what is the---for what
23 purpose are these statements prepared?

24 THE WITNESS: They are prepared for various reasons,
25 one of them being for obtaining loans from banks to purchase new

1 equipment.

2 JUDGE NEMEC: And your annual reports have been filed
3 with the Commission?

4 THE WITNESS: Yes. That's another reason. We have to
5 file these annually with the PUC.

6 JUDGE NEMEC: Okay.

7 Mister Campbell, any questions?

8 MISTER CAMPBELL: No, Your Honor.

9 JUDGE NEMEC: All right. My understanding is that you
10 are going to provide Mister Davis with your 1994 annual report
11 to the Commission? Is that correct?

12 THE WITNESS: Yes, I will.

13 MISTER McQUAIDE: In fact, Your Honor, we will
14 circulate that as a late filed exhibit for the Court and all the
15 parties in these proceedings.

16 JUDGE NEMEC: All right. It doesn't need to be made an
17 exhibit, if it's a copy of what's been filed with the
18 Commission. That's a public document and it may be referred to.
19 For convenience, I'd appreciate copies of it. Okay?

20 MISTER McQUAIDE: Fair enough, Your Honor.

21 JUDGE NEMEC: All right. Mister Davis, do you care to
22 present any rebuttal testimony?

23 MISTER DAVIS: No, Your Honor.

24 JUDGE NEMEC: All right. Mister McIlwain, you are
25 excused.

1 (Witness excused.)

2 JUDGE NEMEC: All right. I'm going to ask you to do
3 briefs. I'll send out a briefing letter. Main brief will be
4 due on or before October 13. Reply briefs will be due October
5 27. Along with your brief, I would ask, if possible, to be
6 provided a computer disk, with the brief on the disk. And any
7 of the Word Perfect versions would be acceptable. The one that
8 I use is Word Perfect 5.1 for DOS, but virtually anything that
9 you have in terms of word processing programs, can be converted
10 here. So, it would be helpful to me to have your briefs on a
11 disk.

12 Any questions about that?

13 MISTER McQUAIDE: Rex McQuaide speaking, Judge. What
14 was the first date? Was that October 15?

15 JUDGE NEMEC: 13. October 13. I believe that that is
16 a Friday.

17 MISTER McQUAIDE: Friday the 13th.

18 JUDGE NEMEC: Right. And I'll confirm that by letter.
19 Any problems with that schedule?

20 MISTER DAVIS: No, Your Honor.

21 MISTER McQUAIDE: No, Your Honor.

22 JUDGE NEMEC: Okay. Anything else from anybody?

23 MISTER DAVIS: I don't think so. Larry Davis.

24 JUDGE NEMEC: Okay. All right. I thank you all for
25 your attendance. We will adjourn at this time.

1 MISTER McQUAIDE: Thank you.

2 JUDGE NEMEC: Bye, bye.

3 MISTER McQUAIDE: All right.

4 MISTER DAVIS: Bye.

5 MISTER CAMPBELL: Good-bye.

6 ---

7 (Whereupon, at 10:46 a.m., the hearing was adjourned.)

8 ---

9

10 C E R T I F I C A T E

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

16

17 COMMONWEALTH REPORTING COMPANY, INC.

18

19

BY: 

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James R. Obringer

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