

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

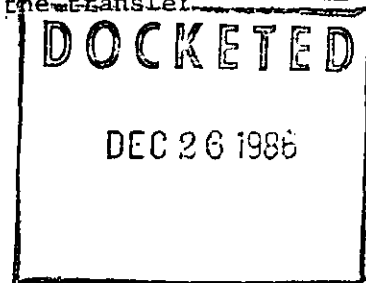
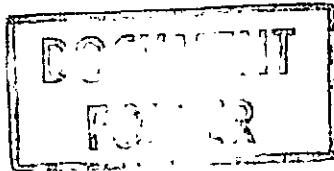
1. <u>REPORT DATE:</u> November 10, 1986	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u> Transportation	:	DEC-86-T-1239*
4. <u>SECTION(S):</u> Technical Review	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: Ernst 7-2154 Supervisor: Bigelow/Marzolf 3-5945	:	December 4, 1986
7. <u>MONITOR:</u>	:	
8. <u>PERSON IN CHARGE:</u> Keener-Farley 7-4386	:	
9. <u>DOCKET NO:</u> A-00107087	:	

10. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) Application of Independent Freightway, Inc., Rockford, Illinois, a corporation of the State of Delaware, for approval of the transfer to it of part of the rights held by Noerr Motor Freight, Inc., at A-00075088, consisting of all the transferor's Class D authority, subject to the same limitations and conditions.

(b) Applicant proposes to purchase all of the transferor's Class D authority; the transferor would retain its Class A authority. We find that the duplication and conflict of authority caused by this fractionalization of rights would result in the transferor retaining rights with numerous restrictions. The retaining of rights so restricted would not be in the public interest.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed tentative decision denying the transfer application.



11. MOTION BY: Commissioner Chm. Taliaferro Commissioner Fischl - Yes
Commissioner
SECONDED: Commissioner Shane Commissioner

CONTENT OF MOTION: Staff recommendation adopted.



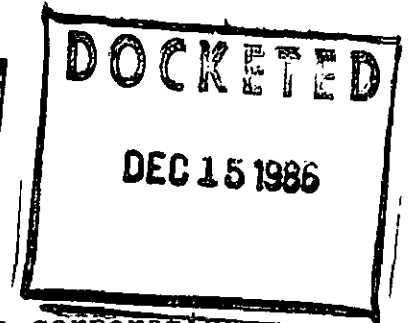
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

December 9, 1986

IN REPLY PLEASE
REFER TO OUR FILE

A-00107087

John Fullerton, Esquire
407 North Front Street
Harrisburg, PA 17101



Application of Independent Freightway, Inc., a corporation
of the State of Delaware.

To Whom It May Concern:

This is to advise you that a Tentative Decision has
been adopted by the Commission in public meeting held
December 4, 1986.

An Executed Tentative Decision has been enclosed for
your records.

Very truly yours,

Jerry Rich, Secretary

lg
Encls.
Cert. Mail
cc:applicant
Independent Freightway, Inc.
2330 23rd Avenue
Rockford, IL 61108

Bureau of Trans.
Similar letter to: Transferor:
Noerr Motor Freight, Inc.
P.O. Box 786
Lewistown, PA 17044

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held December 4, 1986

Commissioners Present:

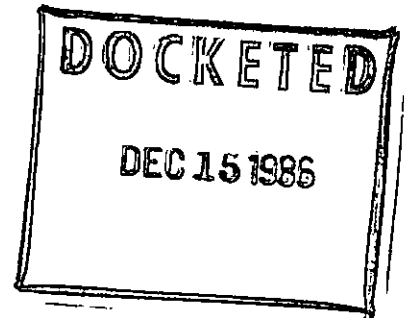
Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane

Application of Independent Freightway, Inc., a corporation of the State of Delaware, for approval of the transfer to it of part of the rights held by Noerr Motor Freight, Inc. at A-00075088, consisting of all the transferor's Class D authority, subject to the same limitations and conditions.

A-00107087

John E. Fullerton for the applicant.

TENTATIVE DECISION

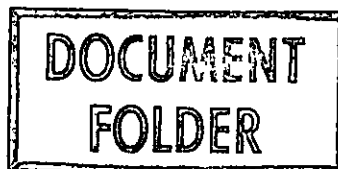


BY THE COMMISSION:

This matter comes before the Commission on an application filed August 13, 1986. Corresponding applications for emergency temporary authority and temporary authority were also filed. By order adopted September 18, 1986, we granted emergency temporary authority. Public notice of the application was given in the Pennsylvania Bulletin of September 20, 1986. No protests were filed and the record is now certified to the Commission for its decision without oral hearing.

Independent Freightway, Inc. (applicant), is a Delaware corporation, duly registered to conduct business in Pennsylvania, with its principal place of business in Rockford, Illinois. One hundred percent of the outstanding stock of the applicant is owned by Transportation System, Inc., a parent corporation. Jeffrey C. Crowe is president of the applicant and Brian Kinsey is vice president. The applicant reports assets of \$14,308, with liabilities of \$5,066, leaving a stockholders' equity of \$9,242.

Noerr Motor Freight, Inc. (transferor), has filed for bankruptcy under Chapter 11 in the United States Bankruptcy Court for the Middle District of Pennsylvania (Case No. 1-86-00731). By order, dated August 20, 1986, the court approved the sale of part of the transferor's intrastate operating authority to the applicant.



The transferor reported total intrastate revenue of \$63,521 for 1984 and \$49,079 for 1985. The record further indicates that the transferor is in good standing with the Commission, having submitted all reports, tariffs and insurance filings.

By this application, the applicant proposes to purchase all of the transferor's Class D operating authority, consisting of forty-four (44) paragraphs of rights, for a total consideration of \$17,500. No tangible property is involved in the sale. The transferor will retain all of its Class A operating authority, consisting of six (6) paragraphs of rights. The purchase price is to be paid within fifteen days of final approval of the transfer by this Commission and approval by the Interstate Commerce Commission of the transfer of interstate authority and approval by the Indiana Public Service Commission of transfer of intrastate authority.

In transferring the Class D rights to the applicant, numerous conflicts and duplications of authority will occur. The Commission's policy on fractionalization of rights is to consider each application on its own merits. Application of M. Emanuel, t/d/b/a Emanuel's Express, 47 Pa. P.U.C. 133 (1973). In reviewing the rights to be transferred and the rights to be retained, we note that at least thirty (30) of the Class D rights transferred would impinge on the Class A rights retained. Thus, it would be necessary for these thirty (30) rights to become restrictions to the six (6) Class A rights retained. We believe that the imposition of thirty (30) or more restrictions, in this case, would render the authority unclear and confusing, unduly limiting, incapable of providing complete service, and impractical or difficult to enforce. See generally Fox-Smythe Transportation Co., Extension - Oklahoma, 106 M.C.C. 1, 1967 Fed. Carr. Cas. ¶36,158.

We will deny this application as it presently stands. We believe that there are only two alternatives that will overcome our objections. The transferor may either transfer all of its operating authority to the applicant or the transferor may file an application for discontinuance of its Class A authority.

After a complete review of the record, we find that:

1. The applicant is fit to receive a certificate of public convenience.
2. The applicant seeks to obtain by transfer all of the transferor's Class D operating authority.
3. The transferor seeks to retain all of its Class A authority.
4. The transfer would create conflicting and duplicate rights.

5. The transfer would require extensive restriction of the retained rights; such restriction would render the retained rights unclear and confusing, unduly limiting, incapable of providing complete service, and impractical or difficult to enforce.

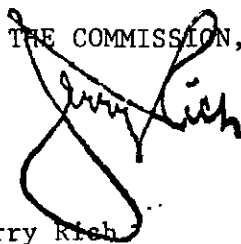
6. The rights to be retained, as so restricted, would not be in the public interest; THEREFORE,

IT IS ORDERED: That the application for the transfer of part of the rights held by Noerr Motor Freight, Inc., at A-00075088, be and is hereby denied as not in the public interest.

IT IS FURTHER ORDERED: That unless exceptions are filed within twenty (20) days from the date of service, this order shall become final.

IT IS FURTHER ORDERED: That, upon the adoption of this order, the temporary authority application is hereby dismissed.

BY THE COMMISSION,


Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: December 4, 1986

ORDER ENTERED: DEC 09 1986

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do so will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery.

3. Article Addressed to:
Roer Motor Freight, Inc.

4. Article Number **44121**

Type of Service:
 Registered Insured
 Certified COD
 Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
 X

6. Signature - Agent
 X *[Signature]*

7. Date of Delivery **DEC 11 1986**

8. Addressee's Address (ONLY if requested and fee paid)
 PA

PS Form 3811, Feb. 1986 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do so will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery.

3. Article Addressed to:
John Fullerton, Esq.

4. Article Number **44122**

Type of Service:
 Registered Insured
 Certified COD
 Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
 X

6. Signature - Agent
 X *[Signature]*

7. Date of Delivery **12-10-86**

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Feb. 1986 DOMESTIC RETURN RECEIPT