

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> February 10, 1987	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u> Law	:	FEB-87-L-122*
4. <u>SECTION(S):</u> Motor Carrier	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: Delaney 7-5000 Supervisor: Schnierle 3-3713	:	February 19, 1987
7. <u>MONITOR:</u>	:	
8. <u>PERSON IN CHARGE:</u> House 3-3713	:	
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., a Delaware Corporation; Petition for Reconsideration of a Tentative Decision.

(b) On August 13, 1986, Independent Freightway, Inc. (IFI) filed an application for approval of a transfer of part of the rights held by Noerr Motor Freight, Inc. (Noerr). Applications for emergency temporary authority and temporary authority were also filed. The emergency temporary authority was granted by order adopted September 18, 1986 at A-00107087, F.600. No protests were filed. By Tentative Decision adopted December 4, 1986 and entered December 9, 1986 at A-00107087, the Commission denied IFI's application. The Tentative Decision found that while IFI was fit to render the proposed service, a transfer of part of Noerr's authority would subject the retained rights to multiple restrictions in order to cure duplicating and conflicting rights. This was found to be against the public interest.

On December 23, 1986, Noerr filed an application at A-00075088 to abandon the rights not included in IFI's proposed transfer. IFI filed Exceptions to the Tentative Decision on December 31, 1986, one day after the exception period expired. On February 2, 1987, IFI filed a letter/petition which withdrew its exceptions because of the untimely filing and requested that the pleading be treated as a Petition for Reconsideration.

(Continued)

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

CONTENT OF MOTION: Staff recommendation adopted.

**DOCUMENT
FOLDER**

DOCKETED
MAR 5 1987

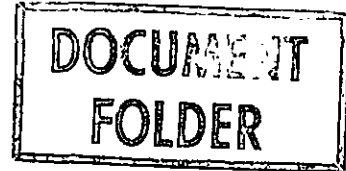
10. (Continued)

(c) For the reasons discussed infra, the Law Bureau recommends that IFI's Petition for Reconsideration be granted and the matter be referred to the Bureau of Transportation for preparation of proposed orders on IFI's and Noerr's Applications.

February 25, 1987

A-00107087

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



Application of Independent Freightway, Inc.; Petition for
Reconsideration.

To Whom It May Concern:

This is to advise you that an Order has been adopted
by the Commission in public meeting held February 19, 1987
in the above entitled proceeding.

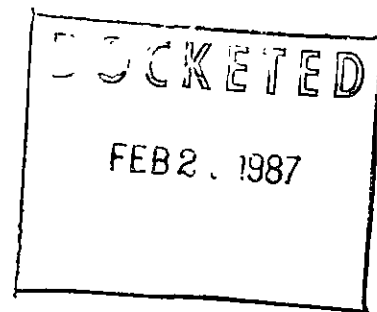
A copy of this Order has been enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

fao
Encls.
Cert. Mail

Refer to Computer list attached.



PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held February 19, 1987

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane

Application of Independent Freightway, Inc.; Petition for Reconsideration. FEB 22 1987 A-00107087

ORDER

DOCUMENT
FOLDER

BY THE COMMISSION:

On August 13, 1986, Independent Freightway, Inc. (IFI) filed an application for approval of a transfer of part of the rights held by Noerr Motor Freight, Inc. (Noerr). Applications for emergency temporary authority and temporary authority were also filed. No protests were filed to the applications. By order adopted September 18, 1986 at A-00107087 F.600, IFI's emergency temporary authority was granted.

In the application for approval of the transfer of a part of Noerr's rights to IFI, the parties indicated that Noerr had filed for protection under the reorganization provisions of Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Chapter 11. Noerr secured the approval of the Bankruptcy Court for the sale of its authorities to IFI.

On December 9, 1986, the Commission entered a Tentative Decision (adopted December 4, 1986) at A-00107087 which denied IFI's application. The Commission found that IFI was fit. It also found that no protests had been filed. However, the Commission ruled that as Noerr was to retain six (6) Class A rights while transferring forty-four paragraphs of Class D rights, numerous conflicts and duplications of authority would occur. At least thirty (30) of the Class D rights would impinge on the retained Class A rights and require thirty (30) restrictive paragraphs to be lodged on the six (6) rights retained by Noerr. This result was deemed to be against the public interest and the application was denied. However, the Tentative Decision advised that should Noerr desire to transfer all of its rights to IFI or file an application for discontinuance of its Class A authority, the Commission's objection to the transfer could be overcome.

On December 23, 1986, Noerr filed its application at A-00075088 to discontinue its Class A authority. Simultaneously, Noerr filed an application with the Bankruptcy Court for approval of the abandonment. In its application before this Commission, Noerr indicates that it has not rendered any service under its Class A authority at least since 1983 and there is no present demand for service thereunder. IFI has no desire to purchase the Class A authority and Noerr has not been able to

sell the authority to any other entity. On February 2, 1987, the United States Bankruptcy Court for the Middle District approved Noerr's action to discontinue the Class A authority.

IFI attempted to file exceptions to the Commission's Tentative Decision denying the proposed transfer by letter filed December 31, 1986. Unfortunately, they were filed one day after the time period had run. By letter filed February 2, 1987, IFI withdrew its exceptions and requested that the letter filed December 31, 1986, be treated as a petition for reconsideration. In view of the circumstances in this matter, IFI's request is reasonable.

IFI points out by its Petition that the Commission's Tentative Decision of December 9, 1986 clearly stated that discontinuance of Noerr's Class A authority would overcome the objections to a transfer of the Class D authority. As Noerr has sought approval for the discontinuance, IFI requests reconsideration of the December 9, 1986 Tentative Decision and asks that the transfer of Noerr's Class D authority to IFI be approved.

A Petition for Reconsideration is properly before the Commission if it pleads newly discovered evidence or a change in circumstances. Pennsylvania Public Utility Commission v. Philadelphia Electric Co., 58 Pa. P.U.C. 407 (1984); Cannuni v. Duquesne Light Co., 57 Pa. P.U.C. 92 (1983). Additionally, a Petition for Reconsideration properly raises any matters designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or in part. Pennsylvania Public Utility Commission v. General Telephone Company of Pennsylvania, 57 Pa. P.U.C. 765 (1983); Duick v. Pennsylvania Gas & Water Co., 56 Pa. P.U.C. 553 (1982). In Duick, the Commission explained that in a Petition for Reconsideration, it expects: ". . . to see new and novel arguments raised which were not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." 56 Pa. P.U.C. at 559.

IFI's Petition should be granted, at least in part. Noerr has promptly taken the action suggested by the Commission's Tentative Decision. IFI acted to bring the matter up for reconsideration and already has been found fit to receive a certificate of public convenience. The parties have done all that was required of them by the Tentative Decision. Accordingly, IFI has properly requested reconsideration and, under the circumstances, reconsideration should be granted.

Noerr's application at A-0075088 to discontinue its Class A authority has not been resolved. Therefore, the Tentative Decision entered December 9, 1986 at A-00107087 shall be rescinded and the underlying application for transfer shall be remanded to the Bureau of Transportation for a recommendation consistent with the action to be recommended on Noerr's application for discontinuance at A-00075088. This rescission also is, in effect, a reinstatement of IFI's emergency temporary authority granted September 18, 1986 at A-00107087 F.600, provided appropriate evidence of insurance is on file and a current tariff has been accepted.

For the foregoing reasons, it appears that IFI's Petition for Reconsideration should be granted; THEREFORE,

IT IS ORDERED: That the Tentative Decision adopted December 4, 1986 and entered December 9, 1986 at A-00107087 be and hereby is rescinded;

IT IS FURTHER ORDERED: That the Emergency Temporary Authority granted to IFI by order adopted September 18, 1986 at A-00107087 is reinstated and IFI is to ensure compliance with all aspects of that September 18, 1986 order including those parts requiring appropriate evidence of insurance and the filing of tariffs;

IT IS FURTHER ORDERED: That the application filed at A-00107087 for the approval of the transfer of Noerr's Class D authority be and hereby is referred to the Bureau of Transportation for processing in a manner consistent with the action to be taken on Noerr's application for discontinuance at A-00075088.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich", written over a large, stylized, looped flourish.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: February 19, 1987

ORDER ENTERED: FEB 25 1987

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 this 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: <i>John E. Tallerton</i>	4. Article Number 44328
	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail
Always obtain signature of addressee or agent and DATE DELIVERED.	
5. Signature - Addressee X	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent X <i>J. Reid</i>	
7. Date of Delivery <i>2-26-87</i>	

A107087

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 this 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: <i>Hoer Motor Freight Inc.</i>	4. Article Number 44329
	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail
Always obtain signature of addressee or agent and DATE DELIVERED.	
5. Signature - Addressee X	8. Addressee's Address (ONLY if requested and fee paid) FEB 26 1987 PA.
6. Signature - Agent X <i>[Signature]</i>	
7. Date of Delivery <i>FEB 26 1987</i>	

A107087

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 this 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: <i>Mywell O Howell</i>	4. Article Number 44330
	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail
Always obtain signature of addressee or agent and DATE DELIVERED.	
5. Signature - Addressee X <i>M. O. Howell</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent X	
7. Date of Delivery <i>3-3-87</i>	

A107087



PS Form 3811, Feb. 1986

DOMESTIC RETURN RECEIPT

0001
INDEPENDENT FREIGHTWAY INC.
2330 23RD AVE.
ROCKFORD IL 61108
SELF

0002
JOHN FULLERTON ESQ ✓
407 NORTH FRONT STREET
HARRISBURG PA 17101
APPLICANT

0003
MCERR MOTOR FREIGHT INC ✓
P O BOX 786
LEWISTOWN PA 17044
TRANSFEROR

0004
MAXWELL A HOWELL ESQ ✓
2554 MASSACHUSETTS AVE NW
WASHINGTON DC 20008
PARTY IN INTEREST



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION
P. O. BOX 3265, HARRISBURG, PA. 17120

April 16, 1987

A-00107087

INWAY
P.O. Box 7013
Rockford, Ill 61125-7013
Attn: Michael Stopka, Director of Traffic

IN REPLY PLEASE REFER TO OUR FILE R-16
DC
APR 29 1987

Re: ETA, Supplement No. 1, Freight - PA PUC No. 1

TARIFF OR SUPPLEMENT RETURNED FOR THE FOLLOWING REASONS:

- Tariff is less than four pages and cannot be supplemented.
- Effective supplement(s) pages exceed 50% of original tariff pages.
- Omitted or not proper Certificate No. A- _____
 Permit No. A- _____ Folder No. (s) _____
- Designated improperly: should be (See NOTE) Pa. P.U.C. No. _____
- cancels (See NOTE) Pa. P.U.C. No. _____

DOCUMENT
FOLDER

N	<input type="checkbox"/> Aero	<input type="checkbox"/> Experimental	<input type="checkbox"/> Limousine
O	<input type="checkbox"/> Airport Transfer	<input type="checkbox"/> Express	<input type="checkbox"/> Paratransit
T	<input type="checkbox"/> Call or Demand	<input type="checkbox"/> Freight	<input type="checkbox"/> Scheduled Route
E	<input type="checkbox"/> Contract	<input type="checkbox"/> Group and Party	<input type="checkbox"/> _____

- Designated improperly; should be Supplement No. _____
to (See NOTE) Pa. P.U.C. No. _____
 cancels Supplement No. (s) _____
- Designate; Supplement No. (s) _____ contain all changes.
- Carrier name not properly designated or proper.
- Operating authority omitted not complete or proper.
- Restriction(s) to operating authority omitted not complete or proper.
- New authority may be filed on one day's notice. Specify; issued under authority of Pa. Code, Title 52, Section 23.42; under effective date.
- Temporary Authority, designate; (Temporary Issue) directly under the Pa. P.U.C. No. _____

- Issued on _____ day's notice under authority of Special Permission No. _____.
Specify; under effective date.
- Filing requires 30-day statutory notice.
- List of changes required not proper (Applies only for Passenger Tariffs).
- Symbols required for (A) increase (C) change or addition (R) reduction.
- Explanation of abbreviations, reference marks and symbols not provided.
- Refers to Agency Publication(s). Power of attorney(s) required.
- Rule to determine mileage must be stated.
- Rule for advance reservations must be stated.
- Rates not provided for all commodities points, contained in operating authority.
- Page numbers not designated.
- Financial justification for proposed increases required by Pa. Code, Title 52, Section 23.67 not provided. (Freight Tariffs) Title 52, Section 23.63 and 23.64 not provided. (Passenger Tariffs)
- Tariff submitted is not acceptable. Adoption supplements must be provided, refer to instructions in our letter dated _____.
- Contract carrier requires separate tariff for each shipper.
- Contract(s) must accompany tariff(s). reductions require 60 days' statutory notice.
- When filing is resubmitted, change issued and effective dates. Use current dates, do not backdate. Show issued date two (2) days after mailing.
- Rates are provided for commodities points, not contained in operating authority.
- Other reasons:

Very truly yours,

Douglas A. Pike, Sr.
Tariff Section