

**ORIGINAL**

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**RECEIVED**

JAN 2 1987

TELEPHONE (202) 483-8633

December 29, 1986 · SECRETARYS OFFICE  
Public Utility Commission

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

Re: Independent Freightway, Inc., Transferee,  
and Noerr Motor Freight, Inc., Transferor,  
Application Docket No. A-107087, F.1

Dear Mr. Rich:

The above-referenced application was filed August 13, 1986 and docketed September 3, 1986, according to our information. At the same time there was filed a request for temporary authority.

I understand the temporary authority application has been published in the Pennsylvania Bulletin and, thereafter, was granted. I very much should appreciate were you to send to us a copy of the order of the Commission on the temporary authority.

In addition, I should appreciate were you to add our name to the service list so that we may receive a copy of the Commission's decision on the permanent authority transfer as well.

Upon receipt of your statement of the costs for this service, we shall forward our check promptly.

Very truly yours,

*Maxwell A. Howell*  
Maxwell A. Howell

MAH:mkh

**DOCUMENT  
FOLDER**

**DOCKETED**  
JAN 5 - 1987

LAW OFFICES OF  
GRAF, KNUPP & ANDREWS, P. C.

ROBERT EWING KNUPP (1932-1976)  
CHRISTIAN V. GRAF  
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OF COUNSEL  
JOHN E. FULLERTON

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December 29, 1986

WEST HANOVER TOWNSHIP OFFICE  
4814 JONESTOWN ROAD  
HARRISBURG, PA 17109  
717/657-2858

The Secretary  
PaPUC  
Harrisburg, PA 17120

RE: A. 107087  
INDEPENDENT FREIGHTWAY INC.

**RECEIVED**  
**DEC 31 1986**  
**SECRETARY'S OFFICE**  
**Public Utility Commission**

Dear Sir:

The undersigned represents Transferee, Independent Freightway Inc (Inway), in the above proceeding and files these exceptions to the Commission's Tentative Decision therein entered Dec 9'86 which denied the application as it presently stands.

By this application Inway seeks approval to acquire all the Class D part of the operating rights of Noerr Motor Freight Inc (Noerr). Transferor, Noerr, would retain all its Class A authority which the Commission found would result in a fractionalization problem. However, the Commission found said problem could be overcome by Noerr filing an application to discontinue its Class A authority.

Noerr has so filed on December 23'86, copy attached, which should now cure the Commission's objection.

In view thereof, Inway prays that the Commission reconsider and approve its application.

A copy of these exceptions has been served upon all parties of record.

Respectfully submitted,  
INDEPENDENT FREIGHTWAY INC.

By: *John Fullerton*  
JOHN FULLERTON  
Its Attorney

cc: Noerr Motor

NOTE: A copy of these exceptions has been hand delivered to the Law Bureau.

**DOCKETED**  
JAN 2 - 1987

**DOCUMENT**  
**FOLDER**

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

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John E. Fullerton for the applicant.

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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

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Application of Noerr :  
Motor Freight, Inc., Debtor- :  
in-Possession, for approval :  
of the abandonment or dis- : Application Docket No.  
continuance of its Class A : A.75088  
operating authority. :

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DEC 28 1985

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

SECRETARY'S OFFICE  
Public Utility Commission

1. The name and address of Applicant are:

Noerr Motor Freight, Inc., Debtor-in-  
Possession  
205 Washington Avenue Extended  
Lewistown, PA 17044

2. The name, address and telephone number of  
Applicant's attorneys are:

Lloyd R. Persun, Esquire  
Shearer, Mette, Evans & Woodside  
P.O. Box 729  
Harrisburg, PA 17108-0729

3. Applicant is a motor carrier of property, having  
provided common carrier service between points in Pennsylvania  
under and subject to its Class D operating authority at various

times relevant hereto. Applicant filed its Petition for Relief under Chapter 11 of Title 11 of the United States Bankruptcy Code on July 3, 1986 in the United States Bankruptcy Court for the Middle District of Pennsylvania. Relief was ordered. Applicant is operating its business as Debtor-in-Possession under bankruptcy law. Applicant has not rendered any service under its Class A authority at least since 1983 and there is no demand for service thereunder.

4. On July 15, 1986, Applicant as seller and Independent Freightway, Inc. (Inway), a Delaware corporation, as buyer entered into an agreement providing among other things that Applicant sell and Inway purchase Applicant's Class D operating authority. By its Order entered August 20, 1986, the Bankruptcy Court approved the said sale and purchase. By Application filed August 13, 1986, Inway sought your Commission's approval of the sale and purchase. By Tentative Decision adopted December 4, 1986 and entered December 9, 1986, your Commission dismissed the said Application unless Applicant either discontinues its Class A operating authority or, in the alternative, transfers its Class A operating authority to Inway. Inway does not desire to purchase or acquire Applicant's Class A operating authority.

5. The Debtor is not able to conduct its motor carrier operations profitably. The Debtor incurred net operating losses in the amount of (\$431,545.00) and (\$1,179,060.00) for the years ended December 31, 1984 and 1985 respectively. Its operating losses continued to increase during the six months ended June 30, 1986. Applicant despite several efforts is unable to sell its Class A operating authority. Exhibit "A" attached hereto and made a part hereof contains a true and exact description of the said Class A operating authority.

6. Simultaneously herewith, Applicant is filing an Application with the United States Bankruptcy Court for the Middle District of Pennsylvania seeking its approval of Applicant's abandonment of its Class A operating authority as herein proposed.

7. Approval of the Application is necessary or proper because Applicant's Class A operating authority is without value, there is no demand for service under its Class A authority and Applicant must consummate its sale of its Class D operating authority to Inway at the earliest possible date.

WHEREFORE, Applicant prays that your Honorable Commission issue its Certificate of Public Convenience



evidencing approval of Applicant's abandonment and discontinu-  
ance of its Class A operating authority as more particularly  
described on Exhibit "A" attached hereto and made a part hereof.

NOERR MOTOR FREIGHT, INC.,  
Debtor-in-possession

By: *Richard K. Jones Jr.*  
President

EXHIBIT "A"

FOLDER 2

No. 8 To transport, as a Class A carrier, property on a route beginning in the Borough of Lewistown, Mifflin County, and points within ten (10) miles by the usually travelled highways of the limits of the said borough via U.S. Highways Route 22, including points within two (2) miles of the said highways, the City of Harrisburg, Dauphin County, Highway Route 230, the City of Lancaster, Lancaster County, and U.S. Highway Route 30 to the City and County of Philadelphia and points in Pennsylvania within an airline distance of thirty-five (35) miles of the city hall in said city;

And that the rights in paragraph (8) above be subject to the following conditions:

- (A) That no right, power or privilege is granted to render local service between Lewistown and Harrisburg and/or between Harrisburg and Philadelphia;
- (B) That no right, power or privilege is granted to pick up or deliver in the City of Harrisburg, or the City of Lancaster or points on the highway between said cities;
- (C) That no right, power or privilege is granted to render competitive service between Lancaster and Lewistown, inclusive, and/or intermediate points served by Motor Freight Express, provided, however, that the certificate holder may pick up between Lewistown, and points within ten (10) miles by the usually travelled highways of the limits of the said borough of Harrisburg, and deliver to any points on the route east of Lancaster, and in Philadelphia and within an airline distance of thirty-five (35) miles of the Philadelphia City Hall and vice versa;

No. 9 To transport, as a Class A carrier, property over the following extension of the above described Class A route between Lewistown and Philadelphia:

Beginning in the Borough of Lewistown, Mifflin County, thence via Highway Route 22 to the Borough of Huntingdon, Huntingdon County, with the right to serve off-route points within two (2) miles of the Highway Route 22 between Lewistown and Huntingdon, led highways, of the limits of the Borough of Lewistown, and points within five (5) miles by the usually travelled highways of the limits of the Borough of Huntingdon;

No. 10 To transport, as a Class A carrier, property over the following extension of the above-described Class A route between Lewistown and Philadelphia:

Beginning in the Borough of Lewistown, Mifflin County, thence via Highway Route 322 to the Borough of State College, Centre County, with the right to serve off-route points within a distance of two (2) miles of Highway Route 322, between Lewistown and State College and points within ten (10) miles of The Borough of State College.

FOLDER NO. 2 Am-B

To transport, as a Class A carrier, property over a connecting route beginning at the Village of Reedsville, Mifflin County, thence via Highway Route 76 to the Borough of Mill Creek, Huntingdon County.

FOLDER NO. 2 Am-D

To transport, as a Class A carrier, property, excluding household goods in use and commodities in bulk in tank vehicles over the following extension of the applicant's Class A routes as authorized at A.75088, Folder 2:

Beginning in the Borough of State College, Centre County, thence via Highway Route 545 to Bellefonte, thence via

Highway Route 53 to Milesburg, thence via Highway Route 220 to Wingate, thence via Highway Route 52 to its junction with Highway Route 879, thence via Highway Route 879 to the Village of Karthaus, Clearfield County, with the right to serve points within two (2) miles of said highways and including the right to render service to and from the research site of the Curtiss-Wright Corporation known as Quehenna;

Subject to the following conditions:

That no right, power or privilege is granted to transport property between points certificated to Breman's Express Company as of October 18, 1954.

FOLDER NO. 2 Am-E

To transport, as a Class A Carrier, property excluding household goods in use and commodities in bulk in tank vehicles or in hopper-type vehicles, over the following extension to applicant's Class A route authorized at A.75088, Folder 2:

Beginning in the Borough of Huntingdon, Huntingdon County, thence via Highway Route 22, to its junction with Highway Route 305, thence via Highway Route 305 to the Borough of Petersburg, Huntingdon County.

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February 2, 1987

WEST HANOVER TOWNSHIP OFFICE  
4814 JONESTOWN ROAD  
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The Secretary  
PaPUC  
Harrisburg, PA 17120

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FEB 2 1987

RE: A. 107087  
INDEPENDENT FREIGHTWAY INC.

SECRETARYS OFFICE  
Public Utility Commission

Dear Sir:

Exceptions were filed by the undersigned to the tentative decision in the above matter which was received from the Commission December 10, 1986

Said exceptions were due December 30. Although they were prepared and mailed on December 29, the Commission records indicate they were not stamped in at the Commission until December 31, one day beyond the due date.

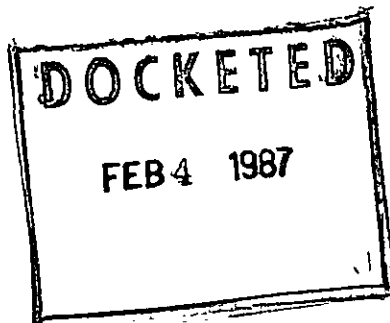
In view of the foregoing, I withdraw said exceptions and ask the Commission to treat my December 29 pleading as a petition for reconsideration.

Respectfully yours,

*John Fullerton*  
JOHN FULLERTON

F/r

cc: Noerr Motor



007

Re: PAPUC

Docket No. A. 107087

Independent Freightway Inc.

**COPY**

BEFORE THE  
UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

In re:  
NOERR MOTOR FREIGHT, INC., :  
S. L. WRIGHT, INC., :  
CHAL, INC., :  
METAL TRANSPORT, INC. :  
Debtors :

Case No. 1-87-1131  
Chapter 11

**FILED**

Harrisburg, Pa.

FEB 02 1987

Margaret A. Smith  
Clerk of the Bankruptcy Court  
Per [Signature]  
Deputy Clerk

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FEB 5 - 1987  
SECRETARY'S OFFICE  
Public Utility Commission

ORDER

AND NOW, this 2nd day of February, 1987.

upon consideration of the Motion by Noerr Motor Freight, Inc., Debtor, for authority to abandon its Pennsylvania Class A operating authority and after notice and an opportunity to be heard, no timely objection having been filed, IT IS HEREBY ADJUDGED, ORDERED AND DECREED:

1. That the said Motion be and it is hereby granted:  
and

2. That the Debtor's Pennsylvania Class A operating authority as heretofore certificated to the Debtor by the Pennsylvania Public Utility Commission be and it is hereby abandoned.

**DOCKETED**  
FEB 06 1987

**DOCUMENT FOLDER**

Robert J. Woodside  
Bankruptcy Judge