

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 10, 1992

Commissioners Present:

Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner

Application of REM Trucking, Inc.,
t/d/b/a REM Hauling, Inc., a
corporation of the Commonwealth of
Pennsylvania, for the transfer of all
of the operating rights of W. James
Bowman under the certificate issued
at A-00093972 subject to the same
limitations and conditions.

A-00105933
F. 2

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DOCUMENT
FOLDER

L. Christian Dediana for the applicant.

DOCKETED

JAN 12 1993

ORDER

BY THE COMMISSION:

This matter comes before the Commission on an application filed September 8, 1992. Public notice of the application was given in the Pennsylvania Bulletin of October 17, 1992. The unopposed application is certified to the Commission for its decision without oral hearing.

Robert Molnar, t/d/b/a Robert Molnar Hauling has formed the applicant corporation to operate the contract carrier rights he now holds at A-00105933, F. 1. REM Trucking, Inc., will trade as REM Hauling, Inc. which is a fictitious name registered with the Commonwealth. Robert E. Molnar is the sole director and is president of the corporation while his wife Wilma Molnar is secretary/treasurer. Robert E. Molnar, Jr., his son, is vice president. The corporate applicant will continue to operate its business at Sutersville, Westmoreland County. The corporation will use a fleet of equipment suitable to provide transportation including five tractors and five trailers.

The applicant corporation reports assets of \$165,994 with liabilities of \$165,621 as of December 31, 1991.

The applicant under the permit issued to Robert Molnar, t/d/b/a Robert Molnar Hauling holds authority to transport coal for Mikel Coal Company

from its facilities in the borough of Smethton, Westmoreland County, to Bentley Coal Company in the townships of Burrell and West Wheatfield, Indiana County, and the Gallitin Fuel Company in the township of Fallowfield, Washington County. It also holds authority to transport coal for Amerikohl Mining, Inc., between points in Westmoreland County and from points in that county to points within an airline distance of seventy-five (75) statute miles of the limits of the said county and vice versa; and to transport coal for Tanoma Coal Sales Co., between points in that part of Pennsylvania on and west of U.S. Highway Route 15.

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The request to convert this contract carrier authority to common carrier authority is made so that the applicant will be in compliance with the provision of the Public Utility Code, specifically 66 Pa. C.S. §2504, which provides that no person or corporation shall hold both a certificate of public convenience and a permit unless for good cause shown the Commission shall find that the certificate and permit may be held consistently with the public interest. The petition indicates that the applicant's intention is to operate pursuant to the common carrier rights of the transferor in this proceeding. Submitted with the petition for conversion is a statement from each of the now authorized contract shippers which indicate they have no objection to being served by the corporate applicant as a common carrier.

Relative to the transfer proceeding, the applicant seeks to acquire all of the common carrier rights of W. James Bowman. The several paragraphs of authority permit the transportation of coal, building materials, sand, gravel, reddog and amesite in southwestern Pennsylvania.

It is our determination that it is in the public interest to convert the contract carrier authority to common carrier authority and it is consistent with the provisions of the Public Utility Code and the rules and regulations of the Commission. This order will make that conversion from contract carrier to common carrier, will have the certificate issued to stand in the name of the corporate applicant and will be contingent upon compliance with the provisions of this order which transfers the common carrier authority.

The total consideration for the rights is \$3,000. No tangible assets are involved. The sales agreement requires the consideration to be paid as follows: the total purchase amount will be paid in cash at closing.

A review of the record before us indicates that the applicant possesses the requisite experience, equipment and financial capacity to provide the proposed service.

The authority to be transferred has been operated by the transferor, therefore, it is presumed that there is a continuing public need, which may be overcome only by evidence to the contrary. In re: Bverly, 440 Pa. 521 (1970); Hostetter v. Pa. P.U.C., 160 Superior Ct. 94 (1947). Since the record is void of any such evidence, this presumption of continuing public need applies in this transfer proceeding.

We find:

1. The applicant is fit, willing and able to provide the service proposed.

2. Transfer of the authority is in the public interest and is necessary for the continued accommodation and convenience of the public; THEREFORE,

IT IS ORDERED: That the transfer application be and is hereby approved and that a certificate be issued granting the following rights

1. To transport, as a Class D carrier, coal for domestic consumption between points in the city of New Kensington, Westmoreland County, and within an airline distance of fifteen (15) statute miles of the limits of said city, no haul to exceed a distance of fifteen (15) miles from point of origin to point of destination.
2. To transport, as a Class D carrier, building materials, including brick, between points in the city of New Kensington, Westmoreland County, and within an airline distance of twenty-five (25) statute miles of the limits of said city, no haul to exceed a distance of twenty-five (25) miles from point of origin to point of destination.
3. To transport, as a Class D carrier, building materials for McFetridge Brothers Coal Company between points in the city of New Kensington, Westmoreland County and within an airline distance of thirty-five (35) statute miles of the limits of said city, provided no haul shall exceed a distance of thirty-five (35) miles from point of origin to point of destination.
4. To transport, as a Class D carrier, sand, gravel, reddog and amesite, in bulk in dump vehicles between points in the counties of Armstrong and Butler, provided no haul shall exceed a distance of thirty-five (35) miles from point of origin to point of destination.
5. To transport, as a Class D carrier, coal, in bulk in dump vehicles, between points in the counties of Armstrong, Allegheny and Westmoreland, provided no haul shall exceed a distance of thirty-five (35) statute miles from point of origin to point of destination; excluding the transportation of coal from points in the county of Allegheny except as presently authorized.

IT IS FURTHER ORDERED: That the contract carrier authority held by Robert Molnar, t/d/b/a Robert Molnar Hauling, at A-00105933, shall now stand as common carrier authority in the name REM Trucking, Inc., t/d/b/a REM Hauling, Inc., at A-00105933, F. 2, and read as follows:

6. To transport, as a Class D carrier, coal for Mikel Coal Company from its facilities in the borough of Smethton, Westmoreland County, to Bentley Coal Company in the townships of Burrell and West Wheatfield, Indiana County, and the Gallatin Fuel Company in the township of Fallowfield, Washington County.
7. To transport, as a Class D carrier, coal for Amerikohl Mining, Inc., between points in the county of Westmoreland, and from points in said county to points within an airline distance of seventy-five (75) statute miles of the limits of said county, and vice versa.
8. To transport, as a Class D carrier, coal for Tanoma Coal Sales Co., between points in that part of Pennsylvania on and west of U.S. Highway Route 15.

subject to the following general conditions:

1. That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on the property and/or rights to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by applicant, or to approve or prescribe rates sufficient to yield a return thereon.
2. That the applicant record in its Utility Account 1321 - Franchises, the actual cost of such rights recorded by the original holder thereof.
3. That the applicant charge to Account 1341 - Other Intangible Property, any amount of the consideration paid for the rights and going concern value attributable thereto in excess of the amounts recorded under condition(s) 2 above.
4. That the operating authority granted herein, or now held, or subsequently granted to the applicant to the extent that it is duplicative, shall not be construed as conferring more than one operating right.

5. That the certificate holder shall not transfer, sell or in any way convey any of its outstanding capital stock to any individual, partnership, corporation or any other entity, without the prior filing of an application and approval thereof by the Commission under Section 1102(a)(3) of Title 66, PA C.S.A.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein 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 evidence of insurance and a tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That upon compliance with the requirements above set forth, a certificate issue evidencing the Commission's approval of the right to operate as above-determined.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with this order, the rights granted the transferor, W. James Bowman, at A-00093972 be cancelled and the record be marked closed.

IT IS FURTHER ORDERED: That the contract carrier permit issued to Robert Molnar, t/d/b/a Robert Molnar Hauling, at A-00105933, F. 1, be and is hereby cancelled upon compliance with the provisions set forth in this order and all rights, powers and privileges granted thereby shall forthwith cease and terminate.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: December 10, 1992

ORDER ENTERED: DEC 14 1992