

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

-----x
Application of H. Fred Barefoot Trucking, :
Inc. Amendment so as to permit the : Docket No.
transportation of property, for Mayfair : A-00107365
Creamery, from its facilities located in : F001, Am-A
the borough and township of Somerset, :
Somerset County, to points in :
Pennsylvania, and vice versa. :

Initial Hearing

-----x
Pages 1 through 97 Hearing Room #2
First Floor
North Office Building
Commonwealth and North
Streets
Harrisburg, Pennsylvania

Friday, July 19, 1991

Met, pursuant to notice, at 11:03 a.m.

BEFORE:

HERBERT COHEN, Administrative Law Judge

APPEARANCES:

J. BRUCE WALTER, Esquire
Rhoads & Sinon
One South Market Square
P.O. Box 1146
Harrisburg, Pennsylvania 17108-1146
(For H. Fred Barefoot Trucking)

WILLIAM A. GRAY, Esquire
Vuono, LaVelle & Gray
2310 Grant Building
Pittsburgh, Pennsylvania 15219
(For Dan Fleegle Trucking)

DOCKETED
FOLDED

DOCKETED
AUG 13 1991

RECEIVED

AUG 9 1991

SECRETARY'S OFFICE
Public Utility Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Rick Barefoot	3 33	6	--	--
David Pickard	34	42	69	73
Daniel Fleegle	75	88	95	--

E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
---------------	---------------------------	--------------------

Applicant Exhibit

✓1 (Statement)	4	34
✓2 (Accountant's Statement)	6	34
✓3 (Statement)	42	74

Protestant Exhibit

✓1 (Copy of PUC-Operating Authority)	76	95
--------------------------------------	----	----

Any reproduction of this transcript is prohibited without authorization by the certifying reporter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE COHEN: On the record, this is the time set for the hearing on the application of H. Fred Barefoot Trucking, Inc. This is an amendment to the existing authority, A-00107365, F001, Am-A. The amendment would permit the transportation of property, for Mayfair Creamery, from its facilities located in the borough and township of Somerset, Somerset County, to points in Pennsylvania, and vice versa.

This hearing was originally scheduled as a previous--Friday, the 12th and was continued to today. Appearing for the applicant is J. Bruce Walter, Esquire, and appearing for the sole proprietorship is William A. Gray, Esquire, and he's representing Dan Fleegle for Dan Fleegle Trucking. Any procedural comments before we begin?

MR. WALTER: I don't believe so. Your Honor, I would call on behalf of the applicant Rick Barefoot. Whereupon,

RICK BAREFOOT

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALTER:

Q Would you state, please, for the record your name and your position with Barefoot Trucking?

1 A My name is Rick Barefoot. I am vice-president.
2 I basically handle everything.

3 Q Do you have before you approximately a five-page
4 statement?

5 A Yes.

6 MR. WALTER: Your Honor, I would like to have
7 this prepared direct and marked as Applicant's Exhibit
8 1.

9 ADMINISTRATIVE LAW JUDGE COHEN: We'll mark it as
10 A-1.

11 (Whereupon, the document was marked as
12 Applicant Exhibit No. 1 for
13 identification.)

14 BY MR. WALTER:

15 Q Mr. Barefoot, was this statement prepared by my
16 office in conjunction with you and after discussions
17 with you?

18 A Yes.

19 Q And are you prepared, subject to whatever
20 additional questions may be asked of you by myself or
21 Mr. Gray, to adopt this statement as your direct
22 testimony this morning?

23 A Yes.

24 Q Mr. Barefoot, I think you had indicated to me at
25 the bottom of page 2 that there would be one potential

1 addition to the description of equipment. Would you
2 explain that, please?

3 A We presently have a trailer, a transport trailer,
4 sitting in Wisconsin we had ordered. It's just a matter
5 of me going out and picking it up.

6 Q Is that a bulk trailer as well?

7 A A bulk trailer, yes.

8 Q About three additional questions, sir. Are you
9 aware of any complaint of the Public Utility Commission
10 that has been served upon Barefoot Trucking?

11 A None that I know of.

12 Q Are you aware of any citations that would
13 indicate a complaint is forthcoming?

14 A Not that I know of.

15 Q And are you now providing service to Mayfair
16 Creamery?

17 A Only on an interstate capacity.

18 Q Under the interstate authority of this reference
19 in your direct testimony?

20 A Yes.

21 Q Mr. Barefoot, do you have a second document
22 before you which is a statement of Seager & Seager,
23 Inc., Accountants and Auditors?

24 A Yes.

25 Q And is that the exhibit, too, referenced in the

1 prepared direct testimony on page 4?

2 A Yes.

3 MR. WALTER: Your Honor, I'd like to have the
4 accountants' statement, if I may, marked as Applicant's
5 Exhibit 2.

6 ADMINISTRATIVE LAW JUDGE COHEN: Marked as A-2.

7 (Whereupon, the document was marked as
8 Applicant Exhibit No. 2 for
9 identification.)

10 MR. WALTER: Your Honor, that's all the direct I
11 have. I would offer the two exhibits subject, of
12 course, to Mr. Gray's examination.

13 ADMINISTRATIVE LAW JUDGE COHEN: They would be
14 admitted subject to cross and objections from counsel.

15 ADMINISTRATIVE LAW JUDGE COHEN: Mr. Gray.

16 MR. GRAY: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. GRAY:

19 Q Mr. Barefoot, do you presently have any authority
20 from the Public Utility Commission?

21 A Yes.

22 Q What is your present authority?

23 A It is to move products or any food-related
24 products out of Cambria County to all points in
25 Pennsylvania to and from Galliker Dairy.

1 Q Galliker is spelled G-a-l-a-g-h-e-r.

2 A G-a-l-l-i-k-e-r.

3 Q And the Galliker Dairy authority is limited to
4 services from its facilities in the city of Johnstown?

5 A Yes.

6 Q Do you presently provide service under that
7 authority?

8 A Yes.

9 Q And by this application, you are seeking
10 additional authority for Mayfair Creamery, is that
11 correct?

12 A Yes, in Somerset County.

13 Q Have you provided any service to Mayfair Creamery
14 in the past from or to its facilities in Somerset County
15 that involved transportation within Pennsylvania?

16 A I have pulled some product prior to these
17 proceedings that were done through the broker; and yes,
18 they did come from Mayfair.

19 Q When you say done through the broker, what do you
20 mean?

21 A I wasn't technically working for Mayfair
22 Creamery. I was working for the people who were
23 purchasing the product.

24 Q Who is that?

25 A One was Kraft, I believe. It was a spur of the

1 moment thing. They needed a truck and the broker called
2 me; and yeah, we did do it.

3 Q When was that?

4 A I'm not even sure. It's been a few months ago.
5 I think it was before when we had started this process.

6 Q You think it was before you filed this
7 application?

8 A I really am not sure.

9 Q Do you know when you filed this application?

10 A It would have been done in April.

11 Q You filed in application in April. So you say
12 you think this movement for Kraft would have been before
13 April?

14 A It would have either been in April or May. I
15 know it was not in June. It was April or May, I'm sure.
16 I know it was, say, after spring because it was warm. I
17 know that much.

18 Q Now, you used the terminology "broker", and that
19 term has different connotations to different people.
20 When you say you did it for the broker, what do you mean
21 by that? I mean, who actually calls you?

22 A The broker hired me.

23 Q And who was that? Was that Kraft or was that a
24 shipment?

25 A That was the broker himself that called me.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Now, who was the broker?

A T. C. Jacoby's.

Q E. C. Jacoby, spelled J-a-c-o-b-i?

MR. WALTER: That's J-a-c-o-b-y.

MR. GRAY: J-a-c-o-b-y.

BY MR. GRAY:

Q And where is E.C. Jacoby located?

A St. Louis.

ADMINISTRATIVE LAW JUDGE COHEN: Where?

THE WITNESS: St. Louis.

BY MR. GRAY:

Q St. Louis, Missouri?

A Yes.

Q And so do I understand that E. C. Jacoby called you and said, will you handle a movement of freight from the facilities of Mayfair in Somerset County to Kraft's facilities?

A That was originally the way it was stated. At the time, I wasn't sure that it was going to Philadelphia. Kraft has many plants and they said that it was going to Kraft.

They weren't sure which plant, and they said could you handle it? I said we probably can. Well, when it come down to it, it ended up it was Philadelphia; and I had committed myself, so we did

1 honor it.

2 Q Did you tell the person from E. C. Jacoby before
3 you handled the movement that you were not permitted to
4 handle movements within Pennsylvania except from the
5 facilities of Galliker Dairy?

6 A No.

7 Q You didn't tell E. C. Jacoby that?

8 A No. Like I said, I initially felt that it was an
9 interstate--going to be an interstate haul because
10 almost always--well, in the past any time they called
11 me, we have always done interstate work for them.

12 Q How many days prior--

13 ADMINISTRATIVE LAW JUDGE COHEN: Do you mean
14 Kraft or Jacoby?

15 THE WITNESS: That meant Jacoby.

16 BY MR. GRAY:

17 Q How many days--excuse me.

18 A This was the only time that we've ever done
19 anything for--that was delivered to Kraft, and they had
20 asked me about loads before, about Kraft in New York;
21 and I just assumed that that's where it was going, and I
22 didn't really pursue it anymore. And then when it come
23 down to the hour that the product needed to be done,
24 they said no, it's Philadelphia.

25 Q How many days prior to the time that the movement

1 actually was made did you find out that the destination
2 was Philadelphia?

3 A Oh, it was hours before.

4 Q But clearly at the time that you handled the
5 movement, you did know it was improper, correct?

6 A Yes.

7 Q Did you--have you provided any other service
8 within Pennsylvania during the past two years which was
9 other than for Galliker Dairy?

10 A I have done some work out of Cambria County, yes.
11 Strictly, it was done out of Cambria County and stayed
12 within Cambria County.

13 Q And who was that for?

14 A That was for Pepsi-Cola.

15 Q And what did you transport for Pepsi-Cola?

16 A It would have been fructose. It came out of
17 Johnstown and went ten miles to the top of the hill,
18 five miles to the top of the hill, to their plant up in
19 the Industrial Park.

20 Q For how many months or years were you involved in
21 that transportation?

22 A We've only done that for--I think since last
23 fall, and it's on a very as-need basis. They have a
24 truck of their own. They called me only whenever their
25 truck is either not working--it's basically on an

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

emergency basis.

We are not a regular--it's not a regular entity that we do. I originally thought that being that it was coming out of Cambria County, that I was okay to do that?

Q Why?

A I wasn't totally clear--being that it wasn't for Galliker Dairy, I took the assumption that, yes, it was coming out of Cambria County, that I was okay; and I realized then that, no, it isn't because it wasn't going to Galliker Dairy because we had pulled product out of the same place for Galliker.

Q But you know, of course--

A But now I know that that, was wrong.

Q Well, you've known all along that your authority from the PUC is contract carrier authority for Galliker Dairy, correct?

A Correct.

Q And in fact, you have a contract with Galliker Dairy, correct?

A Yes.

Q That's on file with the PUC, correct?

A I don't have to file a contract.

Q And this movement or these movements, I should say, for Pepsi-Cola were movements that you were paid by

1 Pepsi-Cola, right?

2 A Yes.

3 Q And they began, you said, in the fall of 1990.
4 Can you be more specific? Would you think in September?

5 A Well, that would be fall, so it would be
6 September, yes.

7 Q And how long--are you still hauling for
8 Pepsi-Cola today?

9 A No. We haven't--we have hauled within the past
10 week. They had a guy that was sick, yes.

11 Q Where was that movement from or to?

12 A Same place, Johnstown.

13 Q That was a movement from Pepsi-Cola in Cambria
14 County to some other point in Cambria County?

15 A Yes.

16 Q And was that a movement of fructose?

17 A Yes.

18 ADMINISTRATIVE LAW JUDGE COHEN: Of what,
19 fructose?

20 THE WITNESS: Fructose.

21 BY MR. GRAY:

22 Q What is fructose?

23 A It's a corn-based product which is used in any
24 Pepsi or any kind of cola. It's the part that gets you
25 hooked on the soda. It's the sugar.

1 ADMINISTRATIVE LAW JUDGE COHEN: It's a liquid
2 form?

3 THE WITNESS: It's liquid, yes. This was all
4 down in bulk tanks.

5 BY MR. GRAY:

6 Q During the period from September of 1990 until
7 today, would you say that you have handled 20 movements
8 for Pepsi-Cola within Cambria County?

9 A I really don't know. They may call us and we may
10 work one day a month. Then we may not hear from them
11 for two, three months.

12 Q Well, using my number 20 as a bench mark either
13 up or down, would you agree that it's in the range of 20
14 that you've called during that period of time?

15 A I would say it's a possibility. We usually haul
16 three loads, if we do. That's what they guarantee us to
17 do.

18 Q And all of these 20 or so loads would have been
19 during the period from September of 1990 up until last
20 week, correct?

21 A Correct.

22 Q Do you have anything on the books for them now
23 that you'll be hauling for them that's presently
24 scheduled?

25 A Yes. It's usually done a lot of times the day

1 of--it's always a last minute.

2 Q Now, in addition to the movements for Pepsi-Cola
3 where you've transported fructose--strike that. The
4 movements for Pepsi-Cola where you've transported
5 fructose, did you say that is into their bottling plant?

6 A Yes.

7 Q And is there bottling plant in Johnstown, did you
8 say?

9 A It's in, say, in the Johnstown perimeter. It's
10 just down the street from Galliker's.

11 Q So it's--do you think it is or is not in the
12 borough limits of Johnstown?

13 A Their address is Johnstown.

14 Q And where does it come from?

15 A It comes from downtown Johnstown.

16 Q But do you know the name of the supplier of the
17 fructose?

18 A They buy their sugar or corn--it comes in on rail
19 cars. It's a rail siting and I'm not exactly sure what
20 they call that other than Station 47 or something like
21 that, but it's just a pump over from a rail car to
22 trucks.

23 Q The fructose, though, that you transport--it
24 doesn't come right off the rail car onto your trucks?

25 A Yes.

1 Q Do you know where the rail cars come from?

2 A I have no idea.

3 ADMINISTRATIVE LAW JUDGE COHEN: You don't know
4 if they come from upper Pennsylvania or south
5 Pennsylvania?

6 THE WITNESS: I would imagine they would come
7 from out west, I would imagine, probably Chicago; but I
8 have no way of knowing that.

9 BY MR. GRAY:

10 Q Have you ever inquired as to where they come
11 from?

12 A No.

13 Q And your trucks actually go right to the rail car
14 and this stuff, this fructose is drained right onto your
15 tank trucks?

16 A They have a pump that they pump. We use their
17 pumps and it pumps right into our trucks.

18 Q This is the supplier of Pepsi-Cola--

19 A Yes.

20 Q --has no tank facility?

21 A Correct.

22 Q In other words, they don't produce fructose at
23 that facility?

24 A It's not a refinery. It is strictly a transfer
25 station.

1 Q Do they have storage facilities there at all to
2 store the fructose?

3 A As many rail cars that they can get in there.
4 That's their storage.

5 Q So they actually would take the rail cars, and
6 they would sit there for a period of time?

7 A Yes.

8 Q Do you know how long that period of time is?

9 A I have no idea. It depends on the demand, I
10 would gather.

11 Q Do you know the shipping arrangements as to how
12 the stuff comes in?

13 A No.

14 Q You don't know anything about that?

15 A It's all done through the railroad, I guess.
16 It's on their tracks. I have no idea.

17 ADMINISTRATIVE LAW JUDGE COHEN: Do you know if
18 they're involved with Connor?

19 THE WITNESS: I guess it's Connor. I don't know.
20 I'm a trucker. I'm not a railroad engineer.

21 BY MR. GRAY:

22 Q Other than these movements that you've handled
23 for Pepsi-Cola--you're paid by Pepsi-Cola, I think you
24 said, on those movements?

25 A Yes.

1 Q Other than these movements that you've described
2 for Pepsi-Cola which are within Cambria County and the
3 movement that you described for where you were paid by
4 E. C. Jacoby--

5 A T. C.

6 Q Oh, it's T. C. I'm sorry. Have you handled
7 other movements within Pennsylvania during the past two
8 years?

9 A I would say that would probably be close to being
10 it.

11 Q Have you handled any movements whatsoever from
12 the facilities of the shipper in this case, Mayfair
13 Dairy, to points in Pennsylvania other than--I think you
14 said the one shipment for T. C. Jacoby--did you say it
15 originated at Mayfair Creamery?

16 A Yes.

17 Q Okay. Excluding that one, have you handled any
18 other shipments of any kind to anyone that have been
19 within Pennsylvania where the freight has either been
20 paid by Mayfair or someone else and that has been within
21 Pennsylvania during the past two years?

22 A I wouldn't deny. I'm sure that there probably
23 could have been. It's over a two-year period. We're
24 talking about a potential of 110 loads a month.

25 Q You mean that's how many loads you handled a

1 month?

2 A Yeah. So I'm saying that--I couldn't sit here
3 and say no, that was absolutely the bottom line. I
4 can't guarantee that. But once it was done, I forget
5 about it.

6 Q It would sort of stick out in your mind, would it
7 not, though, if you did work where you were paid on
8 movement within Pennsylvania by somebody other than
9 Galliker Dairy because you don't have authority for
10 anybody other than Galliker Dairy?

11 A Well, we work for different people. In an
12 interstate service where we do ICC work for them, if,
13 say, the billing is all done by ICC or PUC, so if there
14 was one there, it wouldn't have a flashing symbol on it.
15 I wouldn't--I couldn't say yeah, we did three loads of
16 this and two loads of that and one load.

17 Q Would it be fair to say that for your customers,
18 generally speaking, that you do not tell them that you
19 can only handle ICC shipments; that you take--let me
20 finish--that you take whatever shipments they will give
21 you.

22 A Since we have just got into this proceedings, I
23 have exempted from trying from doing--from doing
24 anything on the liquid--on the milk product side. In
25 other words, anything that has come up, I have said no.

1 I have things pending. I'm not going to do that.

2 Q But that's a change from how it was before,
3 correct?

4 A But I have done--like with the sugars, yes, we
5 have done that. It's not a common practice. It doesn't
6 happen very often, and a lot of times it never happens;
7 and usually when it does, it's done on an emergency
8 basis. It's a last-minute thing where someone else had
9 canceled, and it was basically done as a favor to
10 whoever called. It's not a general practice.

11 Q You said that you sort of changed your mode of
12 operation when you filed this application and that now
13 you more carefully screen the shipments, is that
14 correct?

15 A Well, we don't condone trying to do things
16 illegally.

17 Q I understand.

18 A There have been times when they've called and
19 said hey, it needs done now. They've called maybe an
20 hour or two before the product needed to be shipped; and
21 yes, in the past, we have done it. Since we have
22 started these proceedings, I have tried to exempt from
23 them.

24 Q But you haven't been entirely successful because
25 you did handle at least one load for T. C. Jacoby?

1 A Yes. And that, as I said, was a circumstance
2 where they didn't mislead me. I just took an assumption
3 that it was an interstate carry; and then when the
4 bottom line came from, it ended up being an intrastate
5 carry.

6 Q Now, since you filed the application, which you
7 think was in April of this year--I want to zero in on
8 that period of time because it's a relatively short
9 period of time, just from April to the middle of July.

10 Since you filed the application, can you think
11 of any other situations, be they emergency or last
12 minute or whatever, where you have provided service
13 within Pennsylvania for anyone other than Galliker Dairy
14 and have handled the shipment, be it on an emergency
15 basis or any other basis?

16 A I'll say to the best of my knowledge, there may
17 have been one to Holly, but I can't to this point
18 remember the circumstances of how that developed.

19 Q There may have been one to Holly?

20 A This would have been Carlisle out of Somerset.
21 This was a, I believe, a load on the same circumstances
22 that was changed at the last minute.

23 Q Is Holly a dairy? Is that the name of a dairy?

24 A It is a milk processing plant.

25 Q So then do you know what the correct name of the

1 company is?

2 ADMINISTRATIVE LAW JUDGE COHEN: Is that
3 W-a-l-l-y?

4 THE WITNESS: That's H-o-l-l-y, Holly Milk.

5 BY MR. GRAY:

6 Q Holly Milk. Okay. And they're located in
7 Carlisle?

8 A Technically, I think it's something Spring.

9 MR. WALTER: I think it actually might be South
10 Middleton Township.

11 BY MR. GRAY:

12 Q Is it Mount Holly Springs?

13 A Yeah. I just know that everybody calls it Holly,
14 and I call it holly.

15 Q In any event, on that occasion--when was that, by
16 the way? We've zeroed in that it was sometime between
17 April and now. Was it within the last month or before
18 that?

19 A I would say that it was two months ago, but I
20 don't really know. I know there was a load, I believe,
21 that we had done; but I don't even know what for sure we
22 even would have hauled.

23 Q But you do remember that there was a load that
24 moved from Somerset to Mount Holly Springs about two
25 months ago that you handled?

1 A Yeah. I know there was a cancellation.

2 Q You mean a cancellation--what do you mean by a
3 cancellation?

4 A Usually, in the past whenever this would happen,
5 they already had another carrier on the load; and they
6 would maybe call--like I said, it would be usually the
7 last minute--and say hey, there's a problem. Could you
8 do it? Do you have equipment to do it?

9 And usually, I'll say yes. I have the equipment
10 but if it's not convenient, I usually say no but I would
11 rather not do it; and I think on the this
12 circumstance--like I said, I'm not clear when this
13 happened. I know--all I know is it was warm because I
14 know we didn't have snow. That's all I recall?

15 ADMINISTRATIVE LAW JUDGE COHEN: Was this trip
16 arranged through a broker.

17 THE WITNESS: It would have been done through a
18 broker, I feel sure, and I know that we have not done
19 anything that Mayfair has paid us.

20 BY MR. GRAY:

21 Q Would the broker have also been T. C. Jacoby?

22 A Yes. That's the only one I do.

23 Q Have there been other movements for T. C. Jacoby
24 where they--where it was arranged through them where you
25 handled the shipment within 1991 other than the two that

1 you've testified to previously?

2 A To the best of my knowledge, no.

3 Q Would it be correct to say and fair to say, Mr.
4 Barefoot, that you really don't want to turn down any
5 shipments that T. C. Jacoby tenders to you, be they
6 within Pennsylvania or outside of Pennsylvania, because
7 of the desire to keep a good working relationship with
8 T. C. Jacoby?

9 A When we initially started, I would say that would
10 be yes. We have grown since with them a good working
11 relationship that they are familiar with what we will
12 and will not do. I don't feel that it is necessary for
13 me to say now, yes, we'll haul anything they want us to
14 haul because that isn't the case.

15 Q That used to be the case, though, correct?

16 A Not necessarily. I would try to help them anyway
17 that I could, but I would not go out of my way to help
18 them. You have a tendency to try to do the best that
19 you can, providing good service, which we have done.

20 Q During the past two years, would you agree with
21 me that you have probably handled more than ten
22 shipments within Pennsylvania where you have been--where
23 the arrangements have been made by T. C. Jacoby and
24 where the shipments were either for T. C. Jacoby or were
25 other than for Galliker Dairy during the past two years?

- 1 A I would say ten would be very high.
- 2 Q What would you place the number at?
- 3 A Well, I know of two, those two. It's kind of
- 4 like asking me how many times I've speeded and never got
- 5 caught. I don't know.
- 6 Q That's kind of like what I'm asking you.
- 7 A I've been caught speeding twice in ten years, but
- 8 I don't know--I really have no idea. I know that we
- 9 have done very little--we do very little work for them.
- 10 Q For T. C. Jacoby?
- 11 A Yes.
- 12 Q On those two shipments, by the way, were you paid
- 13 by T. C. Jacoby on those?
- 14 A No. We're always paid either by the person
- 15 you're picking it up from or the person you deliver to.
- 16 In these cases, we have never been paid by Mayfair to do
- 17 something in PUC?
- 18 Q So in the one case, the movement to Kraft in
- 19 Philadelphia, were you paid by Kraft?
- 20 A Yes.
- 21 Q And in the other case, the movement to Mount
- 22 Holly Springs, were you paid by the receiver of the
- 23 shipment there?
- 24 A Correct.
- 25 Q And those are the only two that you can think of

1 right now that you have handled within Pennsylvania,
2 where you have specific recollection of them?

3 A Those are the two in recent memory, yes.

4 Q But certainly before--at least before this
5 application was filed, your belief is that you did have
6 others that were handled within Pennsylvania?

7 A It wouldn't be a shock to me, no. Yes, we
8 probably did do some, but to say it was a general
9 practice, no.

10 Q Well, most of your movements are in interstate
11 commerce, are they not?

12 A We do a lot of work interstate.

13 Q Intrastate, within Pennsylvania?

14 A Interstate. We do work intrastate solely for
15 Galliker at present.

16 Q I believe in your statement--and I am looking for
17 it here, but I'll ask the question anyway. Did I
18 understand that in your statement you indicated that you
19 do some exempt hauling?

20 ADMINISTRATIVE LAW JUDGE COHEN: From the farm
21 to--

22 THE WITNESS: That would be exempt. We do farm
23 pick-up work, yes.

24 BY MR. GRAY:

25 Q Now, I want to explore that just a bit. When you

1 say you do farm pick-up work, you mean you pick up milk
2 from a farmer and haul it somewhere?

3 A Haul it to Galliker's or for Galliker's.

4 Q Do you do farm pick-up work where you haul it
5 other than to Galliker's facility?

6 A It is a facility owned by Galliker's. It's
7 where--Galliker controls the traffic. Wherever they
8 want it to go, we take it. If they take it to Timbukto,
9 that's where, I guess, we would take it.

10 They have a plant in Maryland Galliker owns
11 which we take a lot--we take a load of milk a day down
12 there; but Galliker's does all the traffic for that. We
13 are paid by the farm.

14 Q I'm only interested in movements within
15 Pennsylvania in connection with my questions now. Have
16 you hauled milk from farms in Pennsylvania to someone
17 else in Pennsylvania?

18 A Other than Galliker.

19 Q Yes.

20 A If they said so, yes.

21 Q If who said so?

22 A If Galliker said to. It's their milk. They're
23 trafficking the milk. They're selling the milk to
24 somewhere else. The farmer is still paying the freight.

25 Q But all of the milk that you have transported

1 would be milk that Galliker is purchasing, is that
2 correct?

3 A That would be purchased by the farmer, yes.

4 Q So stated otherwise, you're not hauling milk
5 anywhere else within Pennsylvania other than where
6 Galliker is purchasing the milk, is that correct?

7 A They're purchasing the milk and we pick it up.
8 What they do with it after that--if they want to sell
9 it, they can sell it. They may sell it and it has never
10 gotten off our truck, and then we'll take it to where
11 they sell it to.

12 Q To where Galliker sells it to?

13 A Right.

14 Q So you haul basically from farms all the milk?

15 A That's our principal business.

16 Q You haul milk from farms to customers of Galliker
17 or to Galliker's own facility in Pennsylvania?

18 A Ninety-five percent of it goes to Johnstown--goes
19 to Galliker's facility. The other five percent probably
20 goes to there--it goes to Galliker's other plant which
21 is in Maryland. I say five percent. That may be a
22 little load. We take a load a day down there.

23 Q And on these shipments, you are paid by the
24 farmer?

25 A Correct.

1 Q And in effect, you're providing service to the
2 farmer?

3 A That's who I have to get along with, yeah.

4 Q Well, your contract with Galliker does not
5 involve these movements from the farm where you're paid
6 by the farmer, correct?

7 A The money is deducted from the farmer's check,
8 yes. Galliker's name is on the check, but technically
9 the farmer is where the money is coming from. The money
10 doesn't come from Galliker Dairy's checking account per
11 se. The farmer is the guy that's saying--

12 ADMINISTRATIVE LAW JUDGE COHEN: You don't get a
13 check from Farmer Brown.

14 THE WITNESS: I don't get a check from Farmer
15 Brown and Farmer Smith. I get one check from Galliker
16 Dairy, and it is deducted off of the farmer's milk
17 receipts, this check; and it says ex-amount of dollars
18 for Holly via Barefoot.

19 BY MR. GRAY:

20 Q And all of those movements once again within
21 Pennsylvania go strictly to the facilities of Galliker
22 in Johnstown, that are within--I understand you said
23 something about hauls that go to Maryland. I don't want
24 to talk about those. The ones within Pennsylvania, do
25 they go--

1 A Sure. They may sell milk to Mayfair Creamery.

2 Q And you would haul those directly from the farmer
3 to Mayfair Creamery?

4 A They call it farm diverted milk. It would be
5 farm milk diverted via Galliker paperwork-wise to, good
6 example, Mayfair Creamery. We very seldom do that
7 because of our location of where we're based because
8 it's geographically better to send someone else to go
9 there, so we normally go to Johnstown.

10 Q How frequently in the past year have you handled
11 movements from the farmer directly to Mayfair Creamery
12 where it hasn't gone into Galliker's Johnstown facility?

13 A Maybe once a month.

14 Q Once a month. And on those occasions, you're
15 paid by Galliker, correct?

16 A Negative, no. We get paid by the farmer.

17 Q Well, I mean the check to you, though, comes from
18 Galliker; and it's deducted out of the farmer's account
19 again, correct?

20 A That's who pays us.

21 Q Have you ever had a check--

22 A I do not send Galliker Dairy a bill for me taking
23 milk to Mayfair. Regardless of where the milk is
24 delivered to, I pick it up from the farm. I take it to
25 where they say.

1 Q Where who says?

2 A Where Galliker says. But I do not have to bill
3 them for milk taken from John Smith's farm and Bill
4 Smith's farm and anybody else's farm. I do not have to
5 bill them. It is automatically deducted from the
6 farmer's check and then mailed to me.

7 Q But the check that you received in the mail is a
8 check which bears the name Galliker's as opposed to the
9 farmer?

10 A Sure, correct. I wouldn't get paid if I had to
11 ask every farmer.

12 Q I understand the economics of it, but
13 nevertheless the check is Galliker's check?

14 ADMINISTRATIVE LAW JUDGE COHEN: In effect,
15 Galliker is paying the farmer ex-dollars per gallon less
16 cost of transportation.

17 THE WITNESS: Correct.

18 BY MR. GRAY:

19 Q Now, are there also other areas in Pennsylvania,
20 other receivers of freight in Pennsylvania, that receive
21 the shipments from the farmer from the farm to their
22 facility handled by Galliker's besides Mayfair Creamery?

23 A I'm sure they can sell it all over the state, if
24 they want.

25 Q I'm talking about where you haul it. Have you

1 hauled to a number of other points besides the facility
2 in Somerset of Mayfair Creamery?

3 A Years ago.

4 Q In the past two years, have you--in other words,
5 has that milk gone from the farm where you pick it up to
6 any point other than Galliker's facility in Johnstown
7 and Mayfair's facility in Somerset where you've hauled
8 it?

9 A Within the past two years, I would say no.

10 Q Where is your facility located again, Mr.
11 Barefoot?

12 A Alum Bank, Pennsylvania.

13 Q What county is Alum Bank?

14 A Bedford.

15 Q How far is your facility from the facility of
16 Mayfair in Somerset, in Somerset County?

17 A I would say 35, 40 miles depending on the route,
18 which route you took.

19 Q Have you provided any service within Pennsylvania
20 where you have leased your equipment to another motor
21 carrier?

22 A No.

23 Q Have you provided any service within Pennsylvania
24 under any other sort of arrangements besides just you
25 arranging with the shipper and hauling it?

1 A I've never--we've never subleased or tripleased
2 or anything like that, no.

3 MR. GRAY: Thank you. That's all I have, Mr.
4 Barefoot.

5 ADMINISTRATIVE LAW JUDGE COHEN: Mr. Walter?

6 MR. WALTER: I don't believe I have any, Your
7 Honor, no.

8 BY ADMINISTRATIVE LAW JUDGE COHEN:

9 Q Let me ask you about the Pepsi-Cola moves. Did
10 they come to you and ask you to do the moving?

11 A They called me. They said we have a truck broke
12 down--initially, how it started was they had a truck
13 broke down, and they were in a situation where they
14 needed someone fast; or they were going to have to shut
15 the plant.

16 Q And how far did these Pepsi moves go from
17 Johnstown across the city line, I guess?

18 A I think it takes--it's a ten-mile round trip.

19 Q Would it be fair to say--I believe Mr. Gray asked
20 you this--most of your quote, "uncertificated moves"
21 within the state of Pennsylvania were done by you as a
22 solicitation to the broker or whoever asked you to do
23 it?

24 A It was always done on a last-minute basis. It
25 was never solicited.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q You never solicited that traffic?

A No.

ADMINISTRATIVE LAW JUDGE COHEN: That's all I have.

MR. GRAY: I have no other questions.

ADMINISTRATIVE LAW JUDGE COHEN: Thank you, Mr. Barefoot.

MR. WALTER: I believe, Your Honor, you had already ruled that the two exhibits would be admitted.

ADMINISTRATIVE LAW JUDGE COHEN: Well, if we have them--

MR. WALTER: I have no objection.

ADMINISTRATIVE LAW JUDGE COHEN: We'll admit the Applicant's statement, A-1 and Applicant's exhibit A-2.

(Whereupon, the documents marked as Applicant Exhibit Nos. 1 and 2 were received in evidence.)

MR. WALTER: Your Honor, I would call Mr. Pickard.

Whereupon,

DAVID PICKARD

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALTER:

Q Sir, for the record, could you state your name,

1 by whom you're employed, and in what capacity?

2 A My name is David Pickard, and I'm employed by
3 Mayfair Creamery as a production supervisor.

4 Q Mr. Pickard, do you have with you a statement
5 which is labeled prepared direct testimony?

6 A Yes, I do.

7 Q And was that statement prepared in conjunction
8 with my office?

9 A Yes, it was.

10 Q And have you reviewed the statement?

11 A Yes.

12 Q And are you prepared to adopt to that statement,
13 subject to whatever additional questions may be asked of
14 you, as your prepared direct testimony in this
15 proceeding?

16 A I do, but I would like to qualify that in the
17 first section under No. 2 that I am the person who
18 controls the transportation for the company. That is
19 not a sole purpose of my position, and I do not control
20 all transportation. In this particular case, I do
21 control and schedule most of the fluid milk products
22 which would involve these two gentlemen.

23 MR. WALTER: Your Honor, I would note that Mr.
24 Pickard hasn't raised it, but I believe the statement
25 spells his last name wrong. It should be P-i-c-k-a-r-d.

1 There's an "h" there.

2 ADMINISTRATIVE LAW JUDGE COHEN: Off the record.

3 (Discussion off the record.)

4 BY MR. WALTER:

5 Q Mr. Pickard, do you have other carriers available
6 to you to provide the transportation that's in issue
7 today?

8 A We have used other carriers on different--at
9 different times, but the one involved will--his rates
10 are exorbitant unless he is doing a back haul. In other
11 words, if he would bring something into our plant and
12 take another load out of the plant, then his rates come
13 into line.

14 If he does not do that and has to come into the
15 plant empty, then those rates are extremely high. The
16 other individuals that had been approached refused to
17 provide service to the plant.

18 Q And I take it your answer is in addition to the
19 services of Mr. Fleegle, those carriers that you're
20 referring to?

21 A Yes.

22 Q Are you or is it your intention--and by your, I
23 mean Mayfair Creamery--that you would stop using the
24 service of Mr. Fleegle?

25 A That is not my intention, and that has not been

1 indicated to me by the plant manager.

2 Q Could you explain for the record then why you are
3 supporting Barefoot Trucking as an additional carrier?

4 A Well, basically what we're looking for is an
5 additional carrier to handle business in a peak period
6 season. The business that we do is peaks during
7 different times of the year.

8 In other words, springtime becomes a very heavy
9 flow as well as does summertime with certain customers
10 that we provide condensed material or regulated products
11 for, whether they may be cream or condensed skim milk at
12 this point; but we felt that we needed an additional
13 carrier to help cover those peak periods.

14 Q Have you had any concerns with the service of Mr.
15 Fleegle that's currently being provided to you?

16 A Yes. There have been some. Mostly in my
17 capacity, we have been able to work out the problems
18 that have arisen. Some of the dissatisfaction that's
19 been indicated by our customers at that time--at
20 different times, they have made indications that they
21 were not happy with delivery time scheduling, etc., etc.

22 MR. GRAY: Your Honor, I move to strike the
23 answer as being hearsay testimony.

24 MR. WALTER: It explains why he's doing what he's
25 doing.

1 ADMINISTRATIVE LAW JUDGE COHEN: We'll admit it
2 that he received certain objects from his customers. He
3 doesn't know the nature. He certainly knows that he
4 received objections. He doesn't know the truthfulness
5 of the allegation.

6 BY MR. WALTER:

7 Q Mr. Pickard, in addition to the traffic that your
8 prepared statement talks to, Hershey Creamery here in
9 Harrisburg, which I take it is the focus of your current
10 sails--are there other delivery or destination locations
11 that you either now or anticipate requiring service to?

12 A Well, as I had indicated to you previous to this,
13 Mayfair is--has changed their tactics as far as doing
14 business. At one time, it's a leveling plant. In the
15 summertime, we would practically shut down our business
16 as far as condensed milk products were concerned because
17 of unavailability of raw material.

18 Now, as we proceed on and we feel that we need
19 additional units in our plant and have gone out and
20 actively solicited more raw milk--in other words, what
21 you do in our position is you pay premiums; and as you
22 go to the suppliers of milk, you pay the man a premium
23 over the A & W which is a pricing index that comes out
24 of Wisconsin.

25 Now, we would go to, say for instance, Galliker

1 Dairy and offer them a premium so that we could purchase
2 their milk. Now, in doing so, we are putting more units
3 through our plant; but we are also in turn looking for
4 new customers because we now need a place to put this
5 condensed milk product.

6 And of course, we're going to look in
7 Pennsylvania because of the fact that if you can deliver
8 into Pennsylvania, you can provide a cheaper product
9 which gives you somewhat of a leg up on the business in
10 the marketplace because of the fact that the trucking is
11 going to be cheaper.

12 Q Now, in our discussions, you had indicated we had
13 discussed this. I think you had identified some
14 specific places where those deliveries may occur.

15 A Right. We have explored doing some business in
16 the Philadelphia area. We've done some in the Carlisle
17 area. We have done some in the Du Bois area. Now, the
18 Du Bois area--some of that has been involved with
19 transportation of buttermilk products which are a
20 by-product of the manufacturer of butter and the
21 condenses from that product.

22 ADMINISTRATIVE LAW JUDGE COHEN: What type of a
23 customer buys your product?

24 THE WITNESS: Cheese plants, ice cream
25 manufacturing outfits. Sometimes, certain candy

1 corporations will purchase that product.

2 ADMINISTRATIVE LAW JUDGE COHEN: Bakeries?

3 THE WITNESS: Bakeries, yes.

4 BY MR. WALTER:

5 Q Mr. pickard, do you currently use Barefoot
6 Trucking on an interstate basis?

7 A Yes, we do.

8 Q And how has that service been?

9 A Very well, no problems.

10 Q We talked a little bit about destinations or
11 delivery points. In terms of inbound transportation,
12 can you be somewhat specific about what the origins
13 there would be?

14 A As far as my purchasing raw milk or my purchasing
15 raw cream?

16 Q We're talking about not farm milk, but milk or
17 other inbound products--

18 A Those types of inbound products could come from
19 anywhere within the state. But as I understand
20 correctly, which I am not totally well versed in all of
21 the PUC regulations, if I bring raw milk into my plant,
22 deposit it into a storage facility, and then transfer it
23 back out to another plant within Pennsylvania, then it
24 comes under the PUC regulations, I believe, but I'm not
25 a hundred percent sure of that.

1 But those type of movements would be relatively
2 common within our specter of business. Now, those would
3 originate--for instance, raw milk could originate
4 definitely from within Pennsylvania, not exclusively,
5 but would have a higher priority of coming in through
6 Pennsylvania-bound milk from Pennsylvania to our plant.
7 Now, as far as--

8 ADMINISTRATIVE LAW JUDGE COHEN: Do you have
9 any--where do they presently come in from as far as you
10 know?

11 THE WITNESS: Well, most of the milk that is
12 coming is in the diverted milk, for example, from
13 Sani-Dairy, Galliker's, these individual outfits.

14 ADMINISTRATIVE LAW JUDGE COHEN: Where are they
15 located, for the record? We have to keep account of
16 these for the record.

17 THE WITNESS: Sani-Dairy is in Johnstown.
18 Galliker's, of course, is in Johnstown. Fikes' is in
19 Uniontown, Pennsylvania. Turner's Dairy--I'm not sure
20 of the location--Pittsburgh, Pennsylvania. And Milk
21 Marketing is also Pittsburgh-based. Excuse me, Your
22 Honor, Ohio. Now, that is one of our largest suppliers
23 on milk.

24 MR. WALTER: Thank you, Mr. Pickard. That's all
25 I have. Again, Your Honor, subject to Mr. Gray's cross

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

examination, I would move for this statement, which I think is Applicant's Exhibit 3.

ADMINISTRATIVE LAW JUDGE COHEN: All right.

(Whereupon, the document was marked as Applicant Exhibit No. 3 for identification.)

ADMINISTRATIVE LAW JUDGE COHEN: Mr. Gray.

CROSS EXAMINATION

BY MR. GRAY:

Q Mr. Pickard, it's true, is it not, that just within the past several days, you told Mr. Fleegle, my client, that you had no problems with his service?

A Yes. Basically, you're correct at this point.

Q Well, I mean that's what you told him within the past several days, correct?

A Sure, absolutely.

Q And in fact, as we sit here today, you're not here to criticize Mr. Fleegle's service, correct?

A No, other than to--other than to point out that there certainly have been problems in the past which we have both mutually worked out. I'm not trying to point out that this entire business is a problem-free business because Mr. Fleegle will also tell you that that's not the case; but the problems that have arisen we have handled on an individual basis as a norm.

1 Q Well, the problem--the primary problem that
2 you're, as you recall it, problem, that you're relating
3 to involved Hershey Creamery in Harrisburg, correct?

4 A Correct.

5 Q And you're aware, are you not, that that problem
6 was actually created by the fact that Mayfair Creamery
7 was not getting the Hershey Creamery product ready on
8 time which was resulting in Mr. Fleegle not being able
9 to get it there on time. You're aware of that, are you
10 not?

11 A And in some cases, that is perfectly correct,
12 yes, sir.

13 Q And in fact, you're aware, are you not, that when
14 this problem was raised, Mr. Fleegle went to Hershey
15 Creamery with all the weigh tickets on the movements
16 which both you and he have and that Hershey Creamery,
17 after reviewing those weigh tickets agreed that this was
18 not Mr. Fleegle's fault but was Mayfair's fault?

19 A That has not been indicated to me by anyone other
20 than Mr. Fleegle.

21 Q But Mr. Fleegle did tell you that?

22 A Oh, absolutely, sir.

23 Q And did you follow up then with Hershey Creamery
24 and say to them, hey, Mr. Fleegle tells me that he went
25 over all these records with you and says that it's our

1 fault; that you called up Hershey Creamery and asked if
2 that was true?

3 A No, I did not.

4 Q And that's really the problem that you're talking
5 about. There are no other problems or concerns that
6 Mayfair has had with Mr. Fleegle other than this one
7 with Hershey Creamery, correct?

8 A Now, are you talking as collectively, in a
9 collectively sense, or are you talking in an individual
10 sense of having a problem on that particular day?

11 Q I'm talking just period. You said there was some
12 concerns raised by your customers about Mr. Fleegle, and
13 we've just discussed the primary customer, Hershey
14 Creamery?

15 A Right.

16 Q Now, I'm asking you what other specific customers
17 have raised any concerns about Mr. Fleegle's service?

18 A Well, first of all, the problems with Hershey are
19 not exclusively Mayfair Creamery's fault. In other
20 words, a certain portion of those certainly were, the
21 product not being available at a particular time; and
22 I'm not going to say exclusively that they were notified
23 each individual time. But as a general rule, they were
24 notified that these products would be late. By the same
25 token--

1 Q You mean by them, you mean Hershey Creamery?

2 A Yes. By the same token, there were a number of
3 times that those products were late or misdirected or in
4 some manner because of Mr. Fleegle's faults.

5 Q Which specifically--I would like you to
6 specifically identify any such instances where Mr.
7 Fleegle did not get the product there where it was his
8 fault and not Mayfair's fault?

9 A Okay. First of all, may I add that not all of
10 those objections to Mr. Fleegle's services are due to
11 Hershey's objections. Okay. Some of them are within
12 the plant themselves.

13 Q Within whose plant?

14 A Within Mayfair's Creamery plant, within our
15 particular facility.

16 Q But what I want to zero in on--what my question
17 relates to--first of all, what your testimony was on
18 direct, which was that there were some concerns raised
19 by Mayfair's customers about the service of Mr. Fleegle;
20 and we've just gone over Mayfair, and my next question
21 was--I'm sorry--we've just gone over Hershey Creamery.
22 And my next question was, what other customers have
23 raised any concerns? When you use the word "customer"
24 in the plural sense--when you use the words "customers"
25 in the plural sense, who were you referring to other

1 than the Hershey Creamery situation?

2 A Okay, Gold Bond Ice Cream.

3 Q And where is Gold Bond Ice Cream located?

4 A In Hagerstown, Maryland.

5 Q So those would be out-of-state shipments?

6 A Right.

7 Q And that's the only other shipper that has raised
8 any quote unquote "concern" about Mr. Fleegle's service,
9 correct?

10 A Right. And I might add, that is the majority of
11 the business that had been done by Mr. Fleegle with
12 Mayfair Creamery. There had been some other singular
13 items that may well have been done by him. But by and
14 large, the majority of that business is Hershey and Gold
15 Bond.

16 Q We're going to go over that in a minute. In
17 fact, maybe this is a good opportunity to do that. At
18 the present time, Mr. Fleegle is providing service, is
19 he not, to Mayfair in connection with movements from
20 your Somerset County facility to Hershey Creamery in
21 Harrisburg?

22 A Yes.

23 Q And does that average seven or eight loads a week
24 at the present time?

25 A I would say that would be a fair average.

1 Q And that's generally speaking a fair average, not
2 just now but a fair average, let's say, over a year?

3 A No. I would say that--see, as I pointed out
4 before, it is definitely seasonal; and this is the peak
5 period where we may go from as few as six loads up to as
6 many as ten loads in a week. I have seen it even higher
7 than that.

8 But now as November, December and January come
9 along, then we're looking at a situation where this may
10 drop back to one or two or three loads a week; so it is
11 drastically curtailed in the wintertime.

12 Q And you're talking about to Harrisburg, the
13 shipments to Harrisburg?

14 A Right.

15 Q The peak season would be the season other than
16 December, January, and February?

17 A And March I'd also include into that.

18 Q So peak season would be other than those four
19 months?

20 A Yes, basically. And you must understand that
21 they are tapering a gradual rise into that peak season.

22 Q And by that, would you mean that ranging from six
23 to ten, as you've described it, perhaps during the--

24 A It may go down to eight, six and then stay at six
25 maybe for a little while.

1 Q So during the low part of the peak season, it
2 might be six; and the high part of the peak season, it
3 might be ten?

4 A Right.

5 Q And Mr. Fleegle is handling all of that traffic,
6 correct, to Harrisburg?

7 A I believe all except for one load a week.

8 Q Who handles the other one load a week?

9 A A fellow named Nelson Rowen.

10 Q What's the name of his company? Is it Nelson,
11 Nelson Road and Trucking?

12 A Yes.

13 Q Does Mr. Rowen have PUC authority?

14 A Not that I'm aware of.

15 Q Why do you use him for one load a week?

16 A Basically because Mr. Fleegle made no objection
17 to it and because his rates were so low that Mr. Fleegle
18 did not choose to meet that rate.

19 Q So you went to Mr. Fleegle, and you said we can
20 get this lower rate from Mr. Rowan. Will you meet this
21 lower rate, and he said he would not. Is that a fair
22 statement?

23 A I can not testify exactly to that information
24 because I did not talk to Dan personally on that, but
25 that's as I understand it, yes, sir.

1 Q Just so the record's clear, when you say Dan, you
2 mean Mr. Fleegle?

3 A Mr. Fleegle. I'm sorry. Yes.

4 Q Now, what other movements does Mayfair Creamery
5 presently have that are on an ongoing basis within
6 Pennsylvania--forget about the ones outside of the
7 state--within Pennsylvania other than the
8 Somerset-to-Harrisburg movement?

9 A Okay. Now, you, I assume, are talking about
10 products leaving our plant, manufactured out of our
11 plant and leaving there and going outside of Somerset?

12 Q You're right. We're taking those one first, and
13 then we're going the inbound.

14 A None on a regular basis at this point. Oh,
15 excuse me. There is a regular run that goes to
16 Galliker's.

17 Q So that would go from Somerset to Johnstown, is
18 it?

19 A Right.

20 Q Is that one where you pay the freight on it?

21 A I don't believe so, no. I believe that that's
22 paid by Galliker's. We sell the majority of our product
23 by FOB which means freight on board. In other words, we
24 sell it at the door of our old plant so that the buyer
25 normally pays the hauling.

- 1 Q Who pays the hauling on the Harrisburg?
- 2 A Harrisburg?
- 3 Q Hershey Creamery.
- 4 A I must qualify--I'm not a hundred percent sure of
- 5 that. I believe that Harrisburg pays for that; but on
- 6 reflection, I'm not a hundred percent sure of that.
- 7 Q But you think, subject to not being a hundred
- 8 percent sure, that the freight on the
- 9 Somerset-to-Harrisburg movement is paid by Hershey
- 10 Creamery?
- 11 A Yes. But now Mr. Fleegle could answer that
- 12 question much better than me because I do not know that
- 13 particular--
- 14 Q But on the Somerset-to-Johnstown movement, you're
- 15 pretty concern that that's paid by Galliker's?
- 16 A That's paid by Galliker's.
- 17 Q And who hauls that movement?
- 18 A George Lybarger, Lybarger & Sons or Lybarger &
- 19 Son.
- 20 ADMINISTRATIVE LAW JUDGE COHEN: Could you spell
- 21 that for the court reporter, please?
- 22 THE WITNESS: L-y-b-a-r-g-e-r, I believe.
- 23 BY MR. GARY:
- 24 Q Do you know whether Lybarger & Son has PUC
- 25 authority?

1 A That I couldn't tell you. I believe they do not.

2 Q Have you ever used, to your knowledge, Mr.
3 Barefoot or his company for that movement?

4 A No.

5 Q Why don't you use Mr. Barefoot for that movement.

6 A That I really can't tell you. The biggest reason
7 is that I think Galliker's has approached Lybarger &
8 Son, and this gentleman is a man that is into our plant,
9 almost on a daily basis; and that would be the basic
10 reason.

11 Q So it's Galliker's choice rather than your
12 choice?

13 A Yes.

14 Q And the Hershey Creamery movement from Somerset
15 to Harrisburg, that would be Hershey Creamery's choice
16 rather than your choice?

17 A No. That is our choice. That's why I cannot
18 tell you for sure whether we pay that or whether Hershey
19 pays that.

20 Q The movement from Somerset to Johnstown, how
21 frequent is that during peak season?

22 A Three to four times a week.

23 Q And during non-peak season?

24 A Once, I suppose. Once a week.

25 Q What other outbound movements from Somerset are

1 there that occur more than just sporadically within
2 Pennsylvania besides the two that you've mentioned to
3 Harrisburg and Johnstown?

4 A Well, there would be the sales of certain cream
5 products. Now, as Mr. Barefoot indicated to you, the
6 vast majority of that is sold through a broker.

7 Q You have no involvement with that as far as--

8 A Other than the fact that this gentleman calls me
9 and asks me for a load of cream; and I say yes or no, I
10 have none. He does not always identify the destination.

11 Q And you don't have any involvement in the choice
12 of the carrier or anything there? He, the broker,
13 chooses the carrier there, correct?

14 A That's on a normal situation, yes.

15 Q Now--

16 ADMINISTRATIVE LAW JUDGE COHEN: Excuse me for
17 interrupting. Let's get it straight for the record. A
18 broker in this situation you're talking about--he's in
19 the business of buying and selling food products and
20 arranging for that transportation.

21 THE WITNESS: Right.

22 BY MR. GRAY:

23 Q So basically, we've dealt fairly now with the
24 outbound, correct? The outbound is to Harrisburg and to
25 Johnstown, and there are also some outbound where a

1 broker is involved?

2 A Right, and a great many of those, I might add.

3 Q And basically, that takes care of your outbound
4 transportation, correct?

5 A Correct.

6 Q Now, let's deal with your inbound transportation.
7 By the way, the outbound transportation would be what
8 commodity or commodities?

9 A It would be cream, ice cream mix, and what we
10 call wet solids which is liquid condensed or skim milk
11 condensed and buttermilk condensed.

12 Q Do you receive inbound shipments at your Somerset
13 County facility from points in Pennsylvania where you
14 choose the motor carrier and where you pay the motor
15 carrier?

16 A Yes. We do if we have control over the motor
17 carrier, yes.

18 Q In which specific instances?

19 A Well, Sanderson & Son Incorporated, Butler,
20 Pennsylvania.

21 Q That's a trucking company, correct?

22 A Right.

23 Q So where do those movements come from?

24 A They would come from Dean Foods to Somerset, and
25 I believe he has PUC authority; but to what extent, I'm

1 not a hundred percent sure of.

2 ADMINISTRATIVE LAW JUDGE COHEN: Where did that
3 come from, what county?

4 THE WITNESS: I'm not sure, Judge, what county
5 that is.

6 BY MR. GRAY:

7 Q I thought you said Butler?

8 A That is where he originates; but the Dean Foods,
9 I'm not a hundred percent sure what their address is.

10 Q So Dean Foods, though, is somewhere in western
11 Pennsylvania?

12 A Yes.

13 Q And you receive what commodity from Dean Foods?

14 A Cream.

15 Q And that's hauled by Sanderson & Sons?

16 A Yes.

17 Q Is it Sanderson & Sons?

18 A Sanderson & Son.

19 Q And would it be correct to say that Sanderson &
20 Son is going to keep continuing to haul that Dean Foods
21 shipments?

22 A That is not necessarily a fair statement at this
23 point.

24 Q Doesn't Dean Foods tell you that they want
25 Sanderson to haul that?

1 A They do up to a point, but there have been some
2 problems in that neighborhood; and we need to address
3 them and are addressing them at this point.

4 Q Who pays the freight or that, on those shipments?

5 A I think we do.

6 Q So you paid the freight; and at least at this
7 point in time, Dean Foods chooses the carrier; and they
8 have chosen Sanderson.

9 A Yes. Basically, that is correct.

10 Q What other inbound shipments do you have to our
11 Somerset facility where you pay the freight on it?

12 A Well, it depends. It would be on a spot load
13 situation. Some products we buy at a certain rate over
14 a given market, and we pay the freight and some where
15 the seller pays the freight.

16 Now, that would be basically determined at the
17 time of the particular sale. In other words, you might
18 call me and say I have a load of cream. I want
19 ex-number of dollars plus the freight.

20 Q Now, you had mentioned certain points in your
21 direct testimony. You had mentioned Sani-Dairy in
22 Johnstown as the point where the inbound shipments are
23 coming in from?

24 A Yes.

25 Q Who hauls that?

- 1 A Mr. Fleegle.
- 2 Q And who chooses Mr. Fleegle on that? Is that you
- 3 or is that Sani-Dairy?
- 4 A No, that's Sani-Dairy.
- 5 Q Who pays the freight on that?
- 6 A I believe Sani-Dairy does.
- 7 Q And the shipments in from Galliker's that you
- 8 mentioned--you've just discussed--we've just discussed
- 9 those shipments, right?
- 10 A Correct.
- 11 Q The shipments in from Fike's in Uniontown, who
- 12 handles those?
- 13 A That would be--mostly those are raw milk
- 14 products. Now, we do get some occasional shipments of
- 15 cream from them during non-peak ice cream seasons.
- 16 Q Are those handled by Mr. Fleegle?
- 17 A No, those are handled by George Spangler, but I'm
- 18 not--I can't tell you what exactly the name of that
- 19 company is; but I know that it's George Spangler.
- 20 Q I assume Fike chooses him?
- 21 A Yes.
- 22 Q And Fike pays the freight?
- 23 A Yes.
- 24 Q You mentioned Turner's in Pittsburgh. Would
- 25 those also just be sporadic shipments?

- 1 A No. That would be raw milk shipments.
- 2 Q Who handles those?
- 3 A You asked me names that I can't come up with.
- 4 Q Would that be because you don't select the
5 carrier, but rather than Turner selects--
- 6 A Right. These milk haulers come in, and I might
7 not know them all. In other words, I might recognize
8 the man's truck, but I wouldn't necessarily know the
9 individual.
- 10 Q But Turner's selects the carrier and pays the
11 freight, correct?
- 12 A Correct.
- 13 Q And on the Milk Marketing shipments coming in
14 from Ohio, those shipments are coming into Mr. Fleegle?
- 15 A Right and other haulers as well, sir.
- 16 Q He hauls a substantial amount of freight in for
17 Milk Marketing, correct?
- 18 A Correct.
- 19 Q And on those shipments again, the shipper from
20 Milk Marketing chooses the carrier and pays the freight,
21 right?
- 22 A Right.
- 23 Q In your statement on page 8, you--I'm sorry--in
24 paragraph 8, you refer to one carrier who can
25 give--quote, "one can give us a good rate as long as he

1 is in our area," end of quote. Who is that carrier?

2 You did mention the carrier's name?

3 A Yeah, Milk Transport Incorporated.

4 Q It is true, is it not, that you do utilize and
5 have available to you the services of Milk Transport?

6 A Yes, on occasion, yes.

7 Q So if you need any back-up service, for example,
8 to Mr. Fleegle, you can always call upon Milk Transport,
9 correct?

10 A Well, the only way that it would be feasible to
11 use Milk Transport is if that gentleman would be in the
12 area with a load of milk or some other product that he
13 would be delivering either to us or to a close vicinity
14 to us.

15 In other words, he might be delivering to
16 Johnstown, Sani-Dairy, or Galliker's; or he may be
17 delivering farmer's cheese up in New Wilmington and have
18 to drop down our way; and considering that, he would
19 consider that a back haul, which the rate is comparable
20 to Mr. Fleegle's. Beyond that, it almost doubles.

21 Q How many occasions have you used Milk Transport,
22 let's say, for loads within Pennsylvania in the past
23 year?

24 A I couldn't even venture to guess because it has
25 been numerous, numerous times.

1 Q Okay--go ahead.

2 A If I may, as I pointed out before, these milk
3 transport in the peak season becomes somewhat more
4 available. Now, he is not always available nor is he
5 necessarily always cooperative to take care of our
6 particular business.

7 He may have something else slated where he
8 cannot handle our products. So at that time, then we
9 would have to go elsewhere; and this is where we're
10 basing our request for Barefoot Trucking--is that if Mr.
11 Fleegle cannot handle it, then I do not have another
12 source that I can rely on. Let me put it that way.

13 Q It's true in all fairness, is it not, that there
14 has never been an occasion where you have called Mr.
15 Fleegle up for a truck; and he could not provide that
16 truck. That's never occurred, correct?

17 A That has occurred only on a very short-term
18 basis. In other words, Mr. Fleegle has always agreed
19 that he would somehow take care of it, but it may not
20 always meet the standards that we required.

21 In other words, maybe I might have called him at
22 8:00 in the morning; and he just did not have a truck
23 available at 8:00 in the morning, so that has happened
24 on very many numerous occasions.

25 That would be too numerous even to guess, but

1 sometimes that can be a definite problem within our
2 plant as far as room is concerned; but he has normally
3 cooperated to the extent that I need him.

4 Q Any time you've ever said that you need a truck,
5 he's been able to get you the truck, correct?

6 A To my recollection, yes, sir.

7 Q And that frequently happens on extremely short
8 notice, correct?

9 A As far as calling and asking for a truck or
10 moving the scheduled time?

11 Q Yes.

12 A Yes, sir.

13 Q And he is located, is he not, just a short
14 distance down the road from you?

15 A I believe something like 15 miles or something of
16 that nature, 12 to 15 miles, yes, sir.

17 Q You, in your statement, also in paragraph 8 said
18 that there is another carrier that refused to provide
19 service to you. Who is that?

20 A That's Horst Trucking.

21 Q Is that H-o-r-s-e?

22 A H-o-r-s-t.

23 Q Do you know what, if any, PUC authority Horst
24 Trucking has?

25 A I know that he has some PUC authority; but to

1 what extent, I don't know.

2 Q So you don't know, do you, if any refusal on the
3 part of Horst Trucking to provide service to you may be
4 the result of Horst Trucking not having the legal
5 ability to provide service to you?

6 A I believe that they do have the legal ability to
7 provide service. He chooses not to become involved.

8 Q What PUC authority does Horst Trucking hold; and
9 if you believe he has the legal ability, what is his PUC
10 authority?

11 A That I cannot tell you because I do not know for
12 sure. As I said, I believe he has the PUC rights for
13 the particular load in question which is from Somerset
14 to Hershey.

15 Q Have you secured from Horst Trucking a copy of
16 his PUC authority?

17 A Not that I'm aware of, no.

18 Q Have you ever called the PUC to see what his
19 authority is?

20 A Not to my knowledge. I have not personally
21 called, no.

22 Q Does Milk Transport get involved sometimes in
23 handling shipments to Hershey Creamery in Harrisburg?

24 A Yes, they have.

25 Q You say in your statement on page 3, quote, "we

1 did have an agreement with Dan Fleegle, period. Fleegle
2 was not providing us the service, and we have since
3 terminated this agreement," end of quote.

4 That's not really true, is it? You are still
5 using Fleegle extensively to provide service to your
6 company?

7 A Yes. We are using Fleegle's. As far as the
8 contract that existed, I have only read it. I think I
9 read it on two different occasions. Now, as far as I
10 know, the letter of the contract was lived up to. The
11 one stipulation in it was that--and I'm going into
12 memory here.

13 I cannot remember whether the contract stated
14 that one load per week or one load per month would be
15 provided to Fleegle Trucking. Now, also 30-days' notice
16 was required to terminate that particular agreement; so
17 at this time, we are using Mr. Fleegle extensively, but
18 on basically a per-load basis, yes.

19 Q Are you aware, Mr. Pickard, and you may not be,
20 that the reason the contract was terminated is because
21 Fleegle went from being a contract carrier to being a
22 common carrier; and that common carriers don't have
23 contracts. Are you aware of that?

24 A No. I was not aware of that. But at the time
25 that that contract was so-called "still in existence,"

1 Mr. Fleegle did have PUC rights; and they did terminate
2 that without 30-days' notice to him, and he requested
3 that he be reinstated for that particular time period
4 because of the contracts; so he apparently felt that the
5 contract was valid.

6 Q Well, without getting into the contract, the fact
7 remains whether there's a contract or not a contract--I
8 mean, you are still utilizing Mr. Fleegle extensively
9 for the movements from Somerset County to Hershey
10 Creamery in Harrisburg, correct?

11 A That's correct.

12 Q And you are using him almost exclusively for
13 those movements, correct?

14 A That's correct.

15 Q And those are the principal movements without
16 question that your company has where you pay the freight
17 and where you choose the carrier that are within
18 Pennsylvania?

19 A Okay. To qualify a little bit on the brokerage
20 positions, probably 40 percent of our business is done
21 through brokerage, individual brokerage firms; and that
22 may--there's a vast number of those around the country.
23 T. C. Jacoby is one. Tetford/Detelly/Coe out of
24 Tennessee is another one, etc.

25 Now, those individuals might call me and say I

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

need a load of cream to go to such and such a destination. How about taking care of the trucking? And under those circumstances, I have done so, but that doesn't necessarily mean I pay for it.

Q But that would be the exception rather than the rule, correct? In other words, usually, they choose the carrier?

A Normally, if I do not know the destination, I very seldom ever arrange any trucking. In other words, I get a lot of orders for a lot of product that would come into the plant that I am unaware of the destination; and to point that out a little more vividly, I shipped that load of Kraft that you questioned Mr. Barefoot on.

I personally arranged the shipping on that thing after--in other words, the broker contacted Mr. Barefoot. Mr. Barefoot came in. I directed to have that load loaded and still did not know the destination.

The bill that I had or the information that I had indicated that it was going out of state, yet it was delivered within the state; and this happens on a fairly regular basis where we would have no control.

Q While you you don't know where the shipment is going, the broker certainly knows where it is going?

A Absolutely.

1 Q He would have to, correct?

2 A Yes. And the reason that they do this is that
3 they do not want individual companies like Mayfair
4 Creamery going to their customers, so they're protecting
5 their own business.

6 Q And their customers would be both the trucking
7 company and the receiver of the freight, correct?

8 A Certainly.

9 Q That's how they end up making money. They, in
10 effect, are a party that brings other parties together?

11 A Absolutely.

12 Q When was the last time that you had an outbound
13 shipment which moved from your facility to a point other
14 than Harrisburg?

15 A Well, that happens every day, every day.

16 Q Does it--I'm sorry--within Pennsylvania?

17 A Oh, that I can't swear to because I'm not a
18 hundred percent sure without looking at my revised
19 schedule, my schedule for outbound material.

20 Q By the way, and I don't mean--I mean where you
21 arrange for the carrier as opposed to a broker arranging
22 for it. Is it entirely possible that you haven't had in
23 the last 30 days a shipment where you arranged as
24 opposed to a broker arranging for the shipment where it
25 went from Somerset to a point in Pennsylvania other than

1 to Harrisburg? Is that entirely possible?

2 A I would say that there's a great probability in
3 that. I cannot recollect that in the last 30 days, no.

4 Q Could you even recollect a shipment in the last
5 six months where you controlled the traffic, and it went
6 to some point in Pennsylvania other than Harrisburg, and
7 if so, where?

8 A Well, I've had situations where I've--I was
9 technically not under control of the delivery; but I
10 would have been requested to contact a carrier.

11 Q I want to know where you're in control of the
12 delivery, where you are the one that is responsible?

13 A Where I actively go out and shop for a trucker
14 without any other direction?

15 Q Yeah. I want to exclude the ones where somebody
16 calls you up and says hey, who might be able to haul
17 this? I want ones where you are the one that is
18 responsible for calling the carrier and paying for the
19 carrier. Have you had any in the last six months other
20 than to Harrisburg that have been within Pennsylvania?

21 A Not that I can recollect. Nothing stands out to
22 me. Let me put it that way, and I might add that one of
23 the reasons that it doesn't stand out is that I am in
24 contact with trucking firms all the time; so for me to
25 say that I arranged one to go from Point A to Point B in

1 Pennsylvania at any given time, I can't really tell you
2 unless I would look at my records. In other words, I
3 would know then whether I had done them; but nothing
4 stands out at this time.

5 Q Now, you had mentioned in your direct testimony
6 as one of the basis, I think, for support of this
7 application that you've explored business in
8 Philadelphia and in Carlisle and in Du Bois. Is that
9 out--would that be outbound business, if it developed?

10 A It would probably be both ways.

11 Q Now, who is the party in Philadelphia that you've
12 explored the business with?

13 A Kraft.

14 Q And have you ever shipped to Kraft in
15 Philadelphia other than where the broker has made the
16 arrangements?

17 A Not that I'm aware of, no.

18 Q And who is the customer in Carlisle that you have
19 explored business with?

20 A Holly Milk Company would be one. We've also
21 explored some business with Beatrice Cheese products in
22 Allentown, Pennsylvania, as well.

23 Q Have you ever had any shipments to Holly Milk in
24 Carlisle other than through a broker?

25 A I think we have, but nothing stands out at this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

particular time that I would have arranged.

Q What about Beatrice Cheese in Allentown? Have you ever had any movements to Beatrice Cheese in Allentown?

A Yes. And that is normally through a broker.

Q I forgot to tack that on at the end. Other than through a broker, have you ever had any shipments to Beatrice Cheese in Allentown?

A I'm not sure. See, I'm not always aware of the particular dynamics of an individual sale. In other words, I may be required to produce the product and be directed to ship it via an individual trucking company, but would not have been aware of whether we instituted that or whether a broker had called in because there are other individuals involved with that.

Q You had mentioned Du Bois. Who is the potential customer--or who have you explored business with in Du Bois?

A It would be Beaver Meadow Incorporated, I believe.

Q Beaver Meadow Creamery?

A Right. And it is another butter manufacturing facility, but not as extensive as ours. He had problems on different occasions getting rid of his buttermilk which is a by-product of the butter industry.

1 Now, we would bring that back into Somerset in a
2 raw form and then condense it and reship it either back
3 to him or to a customer that he had designated, or we
4 might have brought it into the plant and dried that
5 particular product there.

6 Q When's the last time that you had a shipment to
7 Du Bois where you made the arrangements and paid the
8 freight as opposed to a broker?

9 A Not this year. I do know that.

10 MR. GRAY: Thank you very much, sir.

11 ADMINISTRATIVE LAW JUDGE COHEN: Let's take 10
12 minutes and give you an opportunity for the redirect.

13 (Recess.)

14 ADMINISTRATIVE LAW JUDGE COHEN: Redirect?

15 MR. WALTER: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. WALTER:

18 Q Mr. Pickard, you indicated in response to some of
19 Mr. Gray's questions that you are currently using Mr.
20 Fleegle almost exclusively for the traffic that's at
21 issue here. Is that acceptable to you?

22 A Well, not totally because at this point, we don't
23 have anyone else. We are forced to use Mr. Fleegle at
24 this particular point.

25 Q And also in response to Mr. Gray's testimony, you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

at one point said something like that there are problems within your facility with Mr. Fleegle; and the testimony never got back around to that. Would you explain what you meant by that?

A What I had indicated is that all of the objections from Mayfair Creamery to Mr. Fleegle's services were not necessarily coming from strictly Hershey Creamery.

In other words, there had been some other problems within our plant. One which comes up is Mr. Fleegle does not choose to communicate with the plant superintendent, I assume, due to a mutual, personal problem between the two of them; but he is an integral part of this particular business, and it is required that he communicate with that other individual who is Charles Randall.

ADMINISTRATIVE LAW JUDGE COHEN: For the record, communicate about what?

THE WITNESS: About the business. In other words, I am not exclusively--I do not handle all of this scheduling exclusively for the plant. Mr. Randall also handles that.

ADMINISTRATIVE LAW JUDGE COHEN: Scheduling of deliveries?

THE WITNESS: Right, scheduling of deliveries,

1 incoming as well as outgoing, etc. There had been--if I
2 may refer to my notes, there had been some concern that
3 possibly Mr. Fleegle was selling his business.

4 This had been indicated by Mr. Fleegle himself
5 to me; and then at a later time when I questioned him
6 about it, he indicated that he was choosing not to sell
7 the business; so there was some question as to his
8 intent as far as the business is concerned as well as
9 financial stability involved here.

10 BY MR. WALTER:

11 Q Why are you concerned or what leads you to be
12 concerned about his financial stability?

13 A Well, just some of the things that came up. One
14 of the items was fuel. For instance, he was purchasing
15 fuel through Mayfair Creamery; and by the way, as far as
16 I know, everything was okay on that, just that there was
17 an advancement, so to speak, on fuel allocations. Now,
18 exactly what transferred or what the reason for that
19 was, I am not privy to that information.

20 Q In your responses to Mr. Gray, you also indicate,
21 I think, that you weren't sure about whether you,
22 Mayfair, or Hershey Creamery pays the freight on this
23 thing? Do you know who writes the check for it?

24 A Yes, we do.

25 Q Now, if this application were somehow or other

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

limited to service from Somerset to Harrisburg, which is where Hershey Creamery is located, would that satisfy the needs of Mayfair Creamery?

A Well, not necessarily because as far as I am aware and have been instructed, the support of Barefoot Trucking is not necessarily to exclude Fleegle Trucking. Now, if that is the intent, I am not aware of that. It has not been indicated to me by the general manager at this point.

ADMINISTRATIVE LAW JUDGE COHEN: Let me ask this question for the record. Assuming just for sake of argument that the application was granted, would Mr. Fleegle or Mr. Barefoot--who would be the primary carrier? Would it be just an additional carrier? Either would be backing up the other?

THE WITNESS: Right. As far as I'm concerned from my own personal scheduling of the thing, my feelings are that neither would be the primary carrier. They would both be basically the primary carrier.

ADMINISTRATIVE LAW JUDGE COHEN: You would have two primary carriers?

THE WITNESS: Right.

MR. WALTER: That's all I have, sir. Thank you.

MR. GRAY: I have a couple of questions.

RE CROSS EXAMINATION

1 BY MR. GRAY:

2 Q Mr. Pickard, I don't want to get the cast of
3 characters down here. You mentioned a general manager.
4 Who is that?

5 A That's Kenneth Northway.

6 Q And you mentioned Mr. Charles Randall who I
7 thought you said was plant supervisor, is that correct?

8 A Plant superintendent, yes.

9 Q And your title is what?

10 A Production supervisor.

11 Q Who at your company generally does the ordering
12 of trucks? Which one of you three, or is there even
13 someone else?

14 A Most of it is done between Mr. Randall and
15 myself. Now, that would be on bulk items and fluid.
16 There is another individual that handles box trailers
17 and reefers.

18 Q So you and Mr. Randall handle the shipments that
19 we're involved with here?

20 A Right.

21 Q And is it not true that it's you that calls the
22 carriers as opposed to Mr. Randall--it's you that calls
23 the carriers and orders them in at a particular time and
24 on a particular day and so forth?

25 A Lately, yes. But that has only taken place since

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

April, but I can't exactly tell you the date. The first of April-type area is when I started doing it.

Q But today and for the foreseeable future, that's your responsibility?

A As far as I know. Now, that is not exclusive. I must pin that out. That is not exclusive to me because I still take my orders.

Q What about Mr. Northway. Does he do any scheduling of the trucks and so forth?

A He does but we prefer that he does not.

MR. GRAY: I won't ask why for the record. That's all. Thank you very much, sir.

ADMINISTRATIVE LAW JUDGE COHEN: Thank you, sir. Move for the admission of A-2?

MR. WALTER: That's the third exhibit. Yes, sir.

MR. GRAY: No objection, Your Honor.

ADMINISTRATIVE LAW JUDGE COHEN: Admitted.

(Whereupon, the document marked as Applicant Exhibit No. 3 was received in evidence.)

MR. GRAY: Does the Applicant rest?

MR. WALTER: We do.

MR. GRAY: I call Mr. Fleegle.

Whereupon,

DANIEL GLENN FLEEGLE

1 having been duly sworn, testified as follows:

2 ADMINISTRATIVE LAW JUDGE COHEN: State your name
3 and please spell your last name for the reporter?

4 THE WITNESS: Daniel Glenn Fleegle,
5 F-l-e-e-g-l-e.

6 ADMINISTRATIVE LAW JUDGE COHEN: Thank you, sir.

7 DIRECT EXAMINATION

8 BY MR. GRAY:

9 Q Mr. Fleegle, do you operate a trucking company as
10 a sole proprietor?

11 A Yes.

12 Q In other words, you're not incorporated, correct?

13 A No.

14 Q What is your business address--or what is the
15 business address of your trucking operation?

16 A It's located at Boswell R.D. 2 with a Box No. of
17 Box 388, Jennerstown.

18 Q Where is--what county is Boswell in?

19 A Somerset.

20 Q How far are you from the facilities of Mayfair
21 Creamery?

22 A About eight miles.

23 Q Do you hold authority to provide service as a
24 common carrier from the Public Utility Commission?

25 A Yes.

1 Q Did you previously hold contract carrier
2 authority through the Public Utility Commission?

3 A Yes.

4 Q Was that authority that you previously held for
5 the predecessor company of Mayfair?

6 A Yes.

7 Q In other words, you understand that Mayfair had a
8 change of ownership?

9 A Yes.

10 MR. GRAY: Your Honor, could we have marked as
11 Exhibit P-1 a copy of the PUC-operating authority of Dan
12 Fleegle doing business as Dan Fleegle Trucking?

13 ADMINISTRATIVE LAW JUDGE COHEN: Yes. Admitted.

14 (Whereupon, the document was marked as
15 Protestant Exhibit No. 1 for
16 identification.)

17 BY MR. GRAY:

18 Q Mr. Fleegle, is Exhibit P-1 a true and correct
19 copy of your existing PUC rights?

20 A Yes, it is.

21 Q Do you have rights which conflict with the scope
22 of this application? Are your rights in conflict with
23 the scope of this application?

24 A Yes.

25 Q Are you--strike that. Do you presently provide

1 service to Mayfair Creamery, the shipper, in this
2 proceeding?

3 A Yes.

4 Q And have you in the past provided service for
5 Mayfair Creamery?

6 A Yes.

7 Q Where--you said your terminal is eight miles from
8 the Mayfair facility, correct?

9 A Yes.

10 Q What do you have at that terminal? Do you have
11 an office? Do you have maintenance facilities? What do
12 you have there?

13 A We have a garage, maintenance, and office, and
14 that's our terminal.

15 Q How many employees do you have at that terminal?

16 A We have seven full time and three part time.

17 Q What do the seven full-time employees consist of
18 as far as what they are? Are they drivers, mechanics,
19 office people?

20 A Six would be drivers and one is a full-time
21 secretary.

22 Q What about the three part-timers?

23 A Mostly they're weekend drivers or they deliver at
24 night, in the evenings.

25 Q How do you maintain your equipment? Do you hire

1 any mechanics, or do you have any mechanics?

2 A We have one of our drivers and myself working.
3 I'm the full-time mechanic and he helps part time.

4 Q So you're a mechanic in addition to running the
5 business?

6 A Yes.

7 Q Do you do most of the maintenance on your
8 vehicles then inhouse? Do you do it yourself?

9 A Yes. We do it all.

10 Q Do you dispatch equipment from your terminal that
11 you've just described to provide service to the shipper?

12 A Yes.

13 Q You said you're providing service to the shipper
14 at the present time. Within Pennsylvania, where is that
15 service--where does that service originate; and where is
16 it provided to?

17 A Well, we move cream condensed from Somerset,
18 Mayfair to Hershey Creamery in Harrisburg, from
19 Johnstown Sani-Dairy to Mayfair in Somerset, and
20 occasionally spot loads from like Uniontown or vice
21 versa.

22 Q Is the movement from Somerset to Harrisburg to
23 Hershey Creamery a regular daily movement?

24 A Yes.

25 Q How many shipments per week, on the average, do

1 you haul for--from Somerset to Harrisburg--to Hershey
2 Creamery in Harrisburg?

3 A I'd say around seven.

4 Q That would be an average over a year's period of
5 time?

6 A Yeah, more or less.

7 Q How many shipments do you average on a weekly
8 basis from Johnstown to Mayfair's facility in Somerset?

9 A Well, right now it's about one a week but it
10 varies. It's sporadic.

11 Q What are the freight charges on the movements
12 from Somerset to Hershey Creamery in Harrisburg?

13 A \$266.

14 Q So that's a flat rate that's charged in each and
15 every case, \$266 per load?

16 A Yes.

17 Q And what about the Johnstown to Somerset
18 movement? What are the freight charges on that?

19 A \$130.

20 Q What amount of equipment does your company
21 presently operate?

22 A We have three tri-axles, a fuel tanker.

23 Q Those are tractors then?

24 A They are tri-axles and we have three tractors and
25 three tanker trailers.

1 Q I'm sorry. What is a tri-axle then, if you could
2 define that for the record?

3 A It is a straight truck.

4 Q In other words, the engine--

5 ADMINISTRATIVE LAW JUDGE COHEN: What was that?

6 MR. GRAY: It's a straight truck, he said.

7 BY MR. GRAY:

8 Q You mean the engine--there's no separate tractor
9 and trailer or there's no tractor and trailer. It's one
10 unit?

11 A Right.

12 Q So I've probably confused everything. You have
13 three tri-axles and also you have three tractors and
14 three trailers?

15 A Yes.

16 Q Do you provide certain equipment regularly to
17 Mayfair?

18 A Yes.

19 Q And what amount of equipment do you regularly
20 provide to Mayfair?

21 A Four of those are dedicated to Mayfair.

22 Q They're not dedicated to the exclusive use of
23 Mayfair?

24 A No, but pretty much to their top building.

25 Q Now, have you been able to meet the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

transportation needs of Mayfair?

A Yes.

Q Have you ever ever not provided equipment to Mayfair where they requested it?

A No.

Q There was some testimony from the witness from Mayfair in this case that there had been some possible criticism of your service by Hershey Creamery. Did you look into that matter?

A Yes, I did. We found out that it was not Mr. Pickard's problem at that time. It was being handled by Mr. Randall, and this is where a lot of the problems started from. The loads were not being loaded on time. The trucks were getting down there late.

Q Down where late?

A Down to Hershey.

Q They were getting down to Hershey late because they were being sent out late, correct?

A Yes. And there wasn't a good line of correspondence between Mr. Randall myself and Hershey Creamery. We had addressed this problem numerous times in Mr. Northway's office.

Q Now, did you specifically meet with someone at Hershey Creamery to review this matter?

A I called Mr. Tom Ryan and we discussed it, and

1 what we did was we took the weigh bills and the times
2 they were weighed out. From the time they got from the
3 scales to Hershey Creamery was three hours.

4 Q And what is your allotted time to get from the
5 Somerset facility to Hershey Creamery?

6 A Three hours.

7 Q In other words, that's the travel time?

8 A Yes.

9 Q So in reviewing the weigh bills, what did you
10 find was causing the problem that Hershey was
11 complaining about?

12 A Well, the problem was that the loads weren't
13 being loaded on time, and Mr. Ryan was being told that I
14 did not have the equipment there on time.

15 Q Was that at all true?

16 A No.

17 Q So in other words, your equipment was there on
18 time; but it was not being loaded by Mayfair when you
19 got it there which was causing the shipments to not get
20 to Hershey when they wanted it, correct?

21 A Yes. As a matter of fact, the week that this
22 problem started, I had two trucks sitting there for
23 eleven hours that day, waiting to get loaded and they
24 were late.

25 Q And did you have the meeting with the personnel

1 at Hershey Creamery?

2 A Yes.

3 Q And after the meeting, were they completely
4 satisfied that it was not your fault?

5 A Yes.

6 Q And did they tell you that?

7 A Yes, they did.

8 Q And have you, subsequently since Mr. Pickard has
9 been involved in this situation--has the situation or
10 the problem that you just discussed basically resolved
11 itself?

12 A Yes, it has.

13 Q And now they're getting loaded on time, and it's
14 getting to Hershey on time?

15 A Yes, and there's no problems.

16 Q Was there previously a similar problem with Gold
17 Bond Ice Cream?

18 A Yes, there was.

19 Q Those were out-of-state shipments, correct?

20 A Yes, it was.

21 Q And was that problem created by similar
22 circumstances to what you just discussed?

23 A Yes.

24 Q You have no control, do you, over when Mayfair
25 starts loading your equipment?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No.

Q You just put the equipment there for them to load?

A Yes.

Q Is this traffic that you handle for Mayfair important to your company?

A Yes. It's very important.

Q If you were to lose this traffic, these seven shipments per week to Hershey and the one shipment per week from Johnstown to Mayfair, what effect would that have on your company?

A It would be very devastating.

Q What are your revenues--what were your revenues for 1990, approximately?

A \$500,000.

Q Approximately, what amount of revenues do you derive from Mayfair?

A I believe it was around \$200,000.

Q Of that amount, \$200,000 including ICC and PUC?

A Yes.

Q Do you know what amount of it is PUC only?

A I would say half of it, \$100,000.

Q So if you were to lose 20 percent of your revenues, what effect would it have on your operation?

A It would be very devastating. I'd have to lay

1 off drivers.

2 Q Is the traffic that you handle for Mayfair--is
3 that--is Mayfair your largest customer for PUC traffic?

4 A I would say it would be our second largest.

5 Q For PUC or total? Do you know what PUC is? In
6 other words, for intrastate business.

7 A Yeah. It would probably be our biggest.

8 Q And overall, would they be your second biggest?

9 A Yes.

10 Q Who is your biggest?

11 A Milk Marketing Incorporated.

12 Q Mr. Pickard testified concerning shipments that
13 you handle into their facility for Milk Marketing. Is
14 that some of what you do for Milk Marketing?

15 A Yes.

16 Q There was some testimony from Mr. Pickard about
17 your possibly selling your business. Do you have any
18 intention whatsoever of selling your business?

19 A No. At one point, I had a lot of people calling,
20 trying to buy the business.

21 Q How long ago was that?

22 A That was between March and April, and they were
23 really quite--everybody was interested in the Hershey
24 business; and that was the reason I had intentions of
25 selling one trailer to replace it, not selling the

1 entire business although people wanted to buy my
2 authority; and they tried to tack that onto this
3 trailer, but there was no intentions of selling.

4 Q As you sit here today, Mr. Fleegle, do you have
5 any intention whatsoever of selling your business?

6 A None.

7 Q Do you intend to continue providing whatever
8 service is required by the shipper in this proceeding,
9 Mayfair Creamery?

10 A Would you ask that again?

11 Q Do you intend to continue providing whatever
12 service Mayfair Creamery calls upon you to provide?

13 A Yes.

14 Q Do you want to continue providing the same level
15 of service that you're presently providing or more
16 service?

17 A Yes.

18 Q Now, the movements that you haul from Somerset to
19 Hershey Creamery in Harrisburg--what are the commodities
20 that you haul?

21 A Cream condense mainly.

22 Q Are your vehicles suitable for providing that
23 transportation?

24 A Very suitable.

25 Q Have you ever had complaints from Mayfair about

1 not having suitable vehicles?

2 A No.

3 Q Have you basically ever had complaints from
4 Mayfair, period, except about this problem with getting
5 the loads not delivered on time because the freight
6 wasn't ready on time?

7 A No, occasionally. The only thing I could think
8 of is a convenient leaking or something, something minor
9 from the company.

10 Q Did you make a profit last year or lose money?

11 A I lost money last year.

12 Q Do you know how much money you lost?

13 A Around \$16,000.

14 Q \$16,000 on almost \$500,000, roughly?

15 A Yes.

16 Q If you were to lose the loads that you're hauling
17 for Mayfair or any of the loads that you're hauling for
18 Mayfair, what effect would that have on your financial
19 situation?

20 A Oh, it would hurt it really bad, and I'd have to
21 lay off drivers. I'd have to work--the work just isn't
22 that easy to pick up.

23 Q Mr. Fleegle, why are you opposing this
24 application?

25 A Well, I really feel that there's adequate

1 carriers there now that can do the job.

2 Q Including you?

3 A Yes, including myself, Milk Transport. It's been
4 the past--Mayfair is not one that's committed to follow
5 up on the PUC rules, and that's been noted time and
6 again; and we all got to follow the law, and there's
7 enough there that the haulers that are there can live
8 comfortably. But by calling more people in and dividing
9 up more, nobody can make it.

10 Q Do you desperately need this business to survive?

11 A Desperately.

12 MR. GRAY: That's all I have. I move the
13 admission of Exhibit P-1 subject to cross examination.

14 ADMINISTRATIVE LAW JUDGE COHEN: Cross-examine.

15 CROSS EXAMINATION

16 BY MR. WALTER:

17 Q Mr. Fleegle, you were present, I believe, when
18 Mr. Pickard testified, were you not?

19 A Yes.

20 Q And you have indicated that you move on an
21 average currently of about seven loads per week for
22 Mayfair.

23 A Yes.

24 Q Do you agree with Mr. Pickard's testimony that in
25 the winter months, as I think he characterized it, that

1 traffic falls off by almost 50 percent?

2 A Yes.

3 Q And by winter months, I think he said anywhere
4 from December, January, February, and maybe even into
5 March. Is that your recollection as well?

6 A Yeah, that being the slow time.

7 Q Now, how many full-time drivers did you say you
8 have currently?

9 A Seven--six drivers and one full-time secretary.

10 Q So you have six drivers. During that winter
11 quarter, during those winter months, do you lay those
12 drivers off?

13 A Not normally. It's occasionally happened for
14 like a week or so.

15 Q You also testified, I think, and please correct
16 me if I am wrong, that the freight charge for the
17 movement from Somerset to Harrisburg for Hershey
18 Creamery is \$266?

19 A Yes, it is.

20 Q Is that the rate that appears in your tariff
21 filed with the commission?

22 A That was. We've since filed for a new tariff.

23 Q Has that new tariff rate been approved?

24 A I believe it's still in the process. It has not
25 been approved yet.

1 Q I'm sorry. I didn't mean to interrupt you. But
2 the legal rate, if you will, the filed rate, would be
3 the \$266 per load?

4 A Yes.

5 Q Have you--strike that. Is that the rate that
6 became effective on the filing of your tariff after the
7 approval of the authority which Mr. Gray has offered
8 into evidence, approximately July of 1990?

9 A Could you ask me that again?

10 Q You would have had to file a tariff with the
11 commission when this new authority was granted to you,
12 approximately July--the end of July of 1990. Has your
13 rate for Mayfair changed since the filing of that
14 initial tariff?

15 A No.

16 Q And so that for the period of time, again
17 approximately the end of July through now or whenever
18 this tariff supplement that you're seeking to have
19 approved changed, you should have been charging the \$266
20 per load, is that correct?

21 A Yes.

22 Q Is there any time period within the period of
23 July of 1990 through July of '91 when you were charging
24 different rates to Mayfair?

25 A Yes. Whenever we were called back in to haul

1 this, I spoke with Mr. Northway; and I told him that,
2 you know, we have intended to raise the rate on the
3 Hershey run from Somerset to Hershey; and there was a
4 misunderstanding. My secretary thought to charge them
5 now, and she issued them a bill for the higher rate,
6 which the money was refunded back to Mayfair Creamery.

7 Q Do you know how many of those loads were billed
8 at the different rate?

9 A I couldn't say. My secretary handles that.

10 Q Do you know what time frame that occurred? How
11 many days, how many weeks, however long it was?

12 A Well, at that time Mr. Northway and I agreed on a
13 two-week pay schedule, so I couldn't say for sure
14 because I really don't know; and that would be my
15 secretary's knowledge, but all money was refunded that
16 was overcharged.

17 ADMINISTRATIVE LAW JUDGE COHEN: How much was the
18 higher rate?

19 THE WITNESS: \$310 is what the new tariff is from
20 \$266.

21 BY MR. WALTER:

22 Q Are you saying that would have occurred only
23 within a two-week period; or from now on, you've got a
24 two-week pay period? I'm not sure what you're saying.

25 A Yeah. When we started--and I can't be sure of

1 the date that we started. From that, Mr. Northway
2 agreed to pay us every two weeks, which it's actually
3 every three weeks because you issue the bill; and on the
4 following Friday, you're paid.

5 Q But this still does not quite, I believe, address
6 how long the bills were tendered to Mayfair that were at
7 that higher rate?

8 A It might have been two weeks.

9 Q You also indicated in response to some of Mr.
10 Gray's testimony that you felt that all of the problems
11 with the Hershey Creamery had to do with the inability
12 to pick up the product. Is it not correct that Mr.
13 Pickard himself has complained to you on more than one
14 occasion about drivers not showing up on time?

15 A I think that they were there in time when they
16 knew their load was to go.

17 Q Is your answer to my question yes? He has, in
18 fact, communicated that to you?

19 A Yes. Mr. Pickard and I--we have no trouble with
20 communications. There's no problem with that.

21 Q But he did, in fact, advise you that he felt
22 there was a problem with the driver not showing up on
23 time?

24 A I can't tell and I don't--I can't recall. I
25 don't recall.

1 Q Is it not correct--and don't let me put words in
2 your mouth--but did you actually entertain offer or
3 offers for the purchase of your business during this
4 period of time?

5 A I was purchasing a trailer. People wanted to buy
6 the trailer with the authority; and if we might bring
7 names into it, it was Mr. Boring that really was after
8 my authority. That was the bottom line. He wanted the
9 authority.

10 He wanted the trailer, but he wanted the
11 authority; and I was not interested in it. He wanted to
12 see my authority. I'm sure--he told me right out that
13 Somerset entertained the idea of him buying it. He told
14 me that. Somerset was entertaining people to come up
15 and buy that authority off of me. They were grooming
16 them.

17 Q I think you said you were purchasing
18 authority--trailer. You meant to say you were selling
19 the trailer?

20 A I was selling the trailer to Mr. Boring.

21 Q And did you, in fact, send a copy of your
22 authority to Mr. Boring to review?

23 A Yes, I did.

24 Q You also indicated that you felt there were
25 enough haulers serving this area. Do you believe that

1 you have an exclusive franchise for this particular
2 movement?

3 A I don't understand what you mean by that.

4 Q Well, do you think that no one else should be
5 able to move product between Somerset and Hershey?

6 A I didn't say that. Horst has authority to haul
7 that. I mean, there's adequate people there to haul
8 that.

9 Q Do you know where Horst Transport is located?

10 A Yes.

11 Q Where?

12 A Hagerstown, Maryland.

13 Q And do you know where Milk Transport is located?

14 A Yes.

15 Q Where are they?

16 A Grove City.

17 MR. WALTER: That's all I have, Your Honor.

18 ADMINISTRATIVE LAW JUDGE COHEN: Have you been
19 cited by the PUC for any violations within the last two
20 years?

21 THE WITNESS: None.

22 ADMINISTRATIVE LAW JUDGE COHEN: Thank you.

23 MR. GRAY: I have just one question, Your Honor.
24 I think just one.

25 REDIRECT EXAMINATION

1 BY MR. GRAY:

2 Q Mr. Fleegle, was this matter that was--that you
3 were just asked about involving the tariff
4 situation--was that entirely an honest mistake?

5 A Yes, it was. And as a matter of fact, I
6 contacted Mr. Northway and I told him on two different
7 occasions.

8 Q And has there been any criticism of you at all by
9 Mayfair about that mistake?

10 A No.

11 Q And in fact, has Mayfair agreed to the increased
12 tariff rate that you are putting into effect?

13 A Yes.

14 Q And you've had specific discussions with Mr.
15 Northway about that?

16 A They knew that before I was hired to haul there.

17 MR. GRAY: That's all. Thank you.

18 MR. WALTER: I don't have anything further, Your
19 Honor.

20 MR. GRAY: Move the admission, Your Honor, again
21 of Exhibit P-1. The Protestant rests, Your Honor.

22 ADMINISTRATIVE LAW JUDGE COHEN: Admitted.

23 (Whereupon, the document marked as
24 Protestant Exhibit No. 1 was received
25 in evidence.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Discussion off the record.)

ADMINISTRATIVE LAW JUDGE COHEN: On the record, 90 days for September 25? Five weeks if required, ten days as directed.

MR. GRAY: Your Honor, not to be difficult--could we make it 15 days thereafter because by the time we exchange in the mails, if either one of us have a hearing or something scheduled, it makes it really hard. Fifteen days?

ADMINISTRATIVE LAW JUDGE COHEN: Okay, 15 days. My practice is, in good cause, I'll consider an extension. Is there anything further, gentlemen?

MR. GRAY: No.

MR. WALTER: No. Thank you very much, Your Honor.

(Whereupon, at 12:37 p.m., the hearing was adjourned.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

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

COMMONWEALTH REPORTING COMPANY, INC.

By: Rhonda J. Smith (jds)
Rhonda J. Smith