

PUC-77

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheets

1. <u>REPORT DATE:</u>	:	2. <u>BUREAU AGENDA NO.</u>
June 30, 1989	:	
3. <u>BUREAU:</u>	:	JUL-89-T-778*
Transportation	:	
4. <u>SECTION</u>	:	5. <u>PUBLIC MEETING DATE:</u>
Technical Review	:	
6. <u>APPROVED BY:</u>	:	July 20, 1989
Director: Ernst 7-2154	:	
Supervisor: Bigelow/Marzolf 3-5945	:	
7. <u>MONITOR:</u>	:	
	:	
8. <u>PERSON IN CHARGE:</u>	:	
White 7-4387	:	
9. DOCKET NO. A-00108100, F. 1, Am-A	:	
(formerly A-00103854, F. 1, Am-I)	:	
10. (a) CAPTION (abbreviate if more than 4 lines)	:	
(b) Short summary of history & facts, documents & briefs	:	
(c) Recommendation	:	

DOCKETED**AUG 24 1989**

(a) Application of Edward R. Rathway Trucking, Inc. (formerly Edward R. Rathway, t/d/b/a Edward R. Rathway Trucking), R.D. 2, Perryopolis, Fayette County, for amendment to its contract carrier permit, to transport by motor vehicle, (1) coal, for Intercarbon Coal Company, between points in the county of Somerset, and from points in said county, to points in Pennsylvania and vice versa; and (2) coal, for Panther Coal Sales Company, between points in Pennsylvania.

(b) Five carriers protested the application, but withdrew upon reconsideration and without restrictive amendment. While the instant application was pending, Edward R. Rathway Trucking, Inc., a newly formed corporation, filed an application docketed at A-00108100, for the transfer to it of all of the rights held by Edward R. Rathway, t/d/b/a Edward R. Rathway Trucking at A-00103854. The transfer was approved by our order entered on August 23, 1988. A portion of the authority proposed in this application is duplicated by authority already held by the applicant, and it has been eliminated from the authority conveyed in this order. We find the applicant to be fit, ready, willing and able to render the service as proposed and modified.

RW:rs

(Continued)

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

CONTENT OF MOTION: Staff recommendation adopted.

**DOCUMENT
FOLDER**

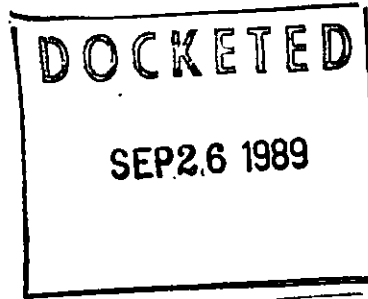
(c) The Bureau of Transportation recommends that the Commission adopt the proposed order approving the application as modified, and that the record of Edward R. Rathway, t/d/b/a Edward R. Rathway Trucking at A-00103854, be redocketed to stand in the name of Edward R. Rathway, Trucking, Inc., at A-00108100.



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

July 25, 1989

IN REPLY PLEASE
REFER TO OUR FILE



A-00108100
Folder 1, Am-A
(formerly
A-00103854
Folder 1, Am-I

John A. Pillar, Esquire
412 Boulevard of the Allies
Suite 700
Pittsburgh, PA 15222

Application of Edward R. Rathway Trucking, Inc. (formerly Edward R. Rathway,
t/d/b/a Edward R. Rathway Trucking)

Enclosed is the compliance order issued by the Commission in
this proceeding.

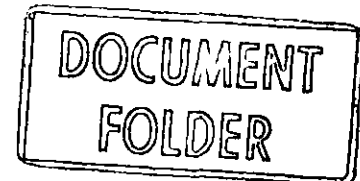
The applicant will not be permitted to operate or engage in
any transportation granted by the enclosed order until a tariff has been
prepared and filed in accordance with the enclosed instructions.

Motor carriers operating without complying with the above
requirement will be subject to the penalty provisions of the Public
Utility Code.

Commission regulations require compliance with the above
requirement within sixty (60) days of the date of this letter. Failure
to comply within the sixty (60) day period will cause the Commission to
rescind the action of July 20, 1989 and dismiss the application
without further proceedings.

Very truly yours,

Jerry Rich
Secretary



jz
Enclosure
Certified Mail
Receipt Requested
Tariff Contact Person: Joseph Machulsky (717) 787-5521

cc:applicant
R.D. #2, Box 174
Perryopolis, PA 15473

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

DOCKETED
SEP 26 1989

Public Meeting held July 20, 1989

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice-Chairman
Joseph Rhodes, Jr.
Frank Fischl

Application of Edward R. Rathway Trucking, Inc.
(formerly Edward R. Rathway, t/d/b/a Edward R.
Rathway Trucking), for amendment to its con-
tract carrier permit, to transport, by motor
vehicle, (1) coal, for Intercarbon Coal Com-
pany, between points in the county of Somerset,
and from points in said county to points in
Pennsylvania, and vice versa; and (2) coal, for
Panther Coal Sales Company, between points in
Pennsylvania.

A-00108100
F. 1
Am-A
(formerly
A-00103854
F. 1
Am-I

Pillar and Mulroy, by John A. Pillar for the applicant.
Vuono, Lavelle & Gray, by William J. Lavelle for protestants: Neal
Bulk Transport, Inc., M. N. Zuzik, Bruce W. Trent, Wayne W.
Friedline and Homer R. Sleek & Sons, Inc.

O R D E R

DOCUMENT
FOLDER

BY THE COMMISSION:

This matter comes before the Commission by an application filed on
September 14, 1987, and published in the Pennsylvania Bulletin of October 3,
1987. Five carriers protested the application. A hearing was held on
April 7, 1988, in Pittsburgh with Administrative Law Judge Michael Neme-
c presiding. All of the protestants withdrew upon reconsideration of their
interests in the matter.

The applicant was present at the hearing and represented by
counsel. A total of 32 pages of testimony were developed from evidence
presented by Edward R. Rathway, owner of the business. None of the
protestants appeared. At the conclusion of the applicant testimony, the

matter was referred for further handling under modified procedure. The unopposed record is now certified to the Commission for its decision without further oral hearing. In addition to the oral testimony, the applicant submitted a verified statement.

On March 25, 1988, while the instant application for additional contract carriage authority was pending before us, Edward R. Rathway Trucking, Inc., a newly formed Pennsylvania business corporation, filed an application docketed at A-00108100, for approval of the transfer to it of all of the existing contract carrier rights of Edward R. Rathway, t/d/b/a Edward R. Rathway Trucking. By our order entered August 23, 1988, the transfer application was approved.

Edward R. Rathway and his wife, Anne Louise Rathway, are the sole stockholders of the newly formed corporation, Edward R. Rathway Trucking, Inc. Since it is the intention of Edward R. Rathway to hold all of his trucking operations under the corporation, he has requested that Edward R. Rathway Trucking, Inc. be substituted as the applicant herein in lieu of Edward R. Rathway, t/d/b/a Edward R. Rathway Trucking, and that the docket number be changed to reflect the docket number assigned to the corporation, (A-00108100).

We believe the request for the substitution of applicant names in this instance has merit. The similarity in names is such that it cannot be construed as misleading or give cause for objection by other interested carriers. We have allowed substitutions of applicants in other instances under certain conditions. For example, in the application of Robert E. Black, A-00102796, F. 2, we allowed the substitution of the son of Robert E. Black as applicant after applicant's death following a heart attack. In the immediate instance, the record of Edward R. Rathway, t/d/b/a Edward R. Rathway Trucking at A-00103854, F. 1, Am-I will be redocketed to stand in the name of Edward R. Rathway Trucking, Inc., at A-00108100, F. 1, Am-A.

Edward R. Rathway is president of Edward R. Rathway Trucking, Inc. (or applicant), a Pennsylvania corporation chartered on March 7, 1988, and has entered a verified statement. His wife, Anne Louise Rathway is secretary and treasurer. They hold all of the corporation's stock as tenants by the entirety. The applicant is affiliated with another carrier to the extent that Anne Louise Rathway, t/d/b/a A. L. R. Trucking, holds a common carrier certificate at A-00105382.

The applicant operates from a terminal located at R.D. 2, Perryopolis, Fayette County, where it dispatches six tractor-dump trailer units and seven tri-axle dump trucks. It employs 13 full-time drivers who perform regular servicing and safety checks to insure safe operating condition of the equipment. In addition to the company equipment, the applicant also leases 15 to 30 dump vehicles as needed.

An opening balance sheet reveals that as of June 15, 1988, the applicant corporation had total assets of \$5,950, including cash on hand of \$5,000. There are no liabilities of any kind.

DISCUSSION AND FINDINGS

By this application, Edward R. Rathway Trucking, Inc. seeks to amend its contract carrier permit so that it will have the right to:

- (1) transport coal for Intercarbon Coal Company between points in the county of Somerset and from points in said county, to points in Pennsylvania and vice versa; and
- (2) transport coal for Panther Coal Sales Company between points in Pennsylvania.

Intercarbon Coal and Panther Coal are commonly owned companies that operate coal mines at various locations and which ship and receive coal between sidings, docks, power plants, tipples and other points. Rathway has provided Intercarbon Coal with regular, daily service within Pennsylvania, but is restricted against serving them to, from or between points in Somerset County. The authority proposed here would lift the Somerset County restriction. The applicant does not presently hold authority to serve Panther Coal.

We find it necessary to digress to the transfer proceeding and our order at A-00108100 entered on August 23, 1988, which approved the transfer of authority to the applicant corporation. The operating authority that was transferred consisted of nine individual rights to serve specifically named shippers. The Order was subject to several conditions, including the filing of acceptable contracts with each of the shippers.

On January 6, 1989, Rathway filed a Letter-Petition to modify our August 23, 1988 order by deleting certain rights since some of the shippers are no longer in business and/or have sold their assets to another company. The Letter-Petition was treated as a Petition for Amendment and Reconsideration of a Commission Order. The Petition was granted and a corrected order was adopted on March 15, 1989, wherein the obsolete rights were eliminated.

A review of the corrected order of March 15, 1989, shows that we transferred one of the still valid rights in an incorrect manner. Specifically, Edward R. Rathway held a right at A-00103854, F. 1, Am-D which authorized the transportation of coal for Intercarbon Coal Company between points in Pennsylvania, subject to a restriction against providing service to, from or between points in the county of Somerset. The Somerset County restriction was inadvertently omitted in our corrected order so that, in effect, the applicant was left with the right to transport coal for Intercarbon Coal between all points in Pennsylvania.

In order to avoid muddying the waters any further, since the right to transport coal for Intercarbon Coal between all points in Pennsylvania negates the right proposed here to transport coal for Intercarbon Coal between points in Somerset County and from that county to points in Pennsylvania, and vice versa, we believe it best to leave the authority

conveyed by the corrected order intact and omit the right to serve Intercarbon Coal from the authority granted hereinafter. This will eliminate an obvious duplication of authority.

The applicant has not submitted contracts with the shippers as required by 66 Pa. C.S. §2506. Prior to providing service, the applicant is required to file a copy of a contract between itself and Panther Coal Sales Company which complies with the provisions at 52 Pa. Code §31.45.

We find:

1. That the applicant proposes to provide contract carrier service for two shippers, i.e., Intercarbon Coal Company and Panther Coal Sales Company.

2. That the applicant currently holds authority to serve Intercarbon Coal Company between all points in Pennsylvania.

3. That the authority proposed here to serve Intercarbon Coal Company is fully embraced within the applicant's existing authority and is therefore duplicative and superfluous.

4. That the applicant is fit, ready, willing and able to render the proposed service as hereinafter modified.

5. That approval of the application as modified, is in the public interest; THEREFORE,

IT IS ORDERED: That the application be and is hereby approved as modified and that the permit issued to the applicant on April 28, 1989, be amended to include the following right:

To transport, as a contract carrier by motor vehicle, coal, for Panther Coal Sales Company, between points in Pennsylvania.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of the Commission relative to the filing and acceptance of a schedule of minimum rates and charges and a bilateral contract between itself and the shipper.

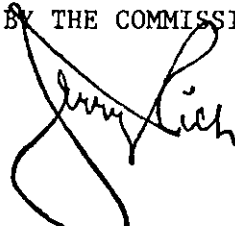
IT IS FURTHER ORDERED: That the application in all other respects be and is hereby denied for being duplicative of applicant's existing authority.

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

IT IS FURTHER ORDERED: That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That the record of Edward R. Rathway, t/d/b/a Edward R. Rathway Trucking at A-00103854, F. 1, Am-I be redocketed to stand in the name of Edward R. Rathway Trucking, Inc., at A-00108100, F. 1, Am-A.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich", written over the printed text "BY THE COMMISSION,".

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: July 20, 1989

ORDER ENTERED: JUL 25 1989
JUL 2 1989

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

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

3. Article Addressed to: <i>copy of A-108100 F.1-Am-A order</i>	4. Article Number 44310
Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
Always obtain signature of addressee or agent and <u>DATE DELIVERED</u> .	
5. Signature - Address <i>John J. Lavelle, Esquire</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent <i>[Signature]</i>	
7. Date of Delivery <i>Aug 21 1988</i>	

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

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

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

3. Article Addressed to: <i>Comp. A-108100 order F.1-Am-A</i>	4. Article Number 44311
Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
Always obtain signature of addressee or agent and <u>DATE DELIVERED</u> .	
5. Signature - Address <i>John A. Pillar, Esq</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent <i>[Signature]</i>	
7. Date of Delivery <i>NOT KNOWN</i>	

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

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

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

3. Article Addressed to: <i>Compliance A-108100 order F.1-Am-A</i>	4. Article Number 44438
Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
Always obtain signature of addressee or agent and <u>DATE DELIVERED</u> .	
5. Signature - Address <i>John A. Pillar, Esquire</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent <i>S. W. ...</i>	
7. Date of Delivery <i>AUG 21 1988</i>	

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

0001
EDWARD R. RATHWAY,
T/A EDWARD R. RATHWAY TRUCKING
R.D.#2, BOX 174
PERRYSPOLIS PA 15473
SELF

0002
JOHN J PILLAR ESQ
312 BOULEVARD OF THE ALLIES
SUITE 700
PITTSBURGH PA 15222
APPLICANT

0003
WILLIAM J LAVELLE ESQ
2310 GRANT BUILDING
PITTSBURGH PA 15219
NEAL BULK TRANSPORT INC PROTESTANT

0004
WILLIAM J LAVELLE ESQ
2310 GRANT BUILDING
PITTSBURGH PA 15219
M N ZUZIK PROTESTANT

0005
WILLIAM J LAVELLE ESQ
2310 GRANT BUILDING
PITTSBURGH PA 15219
BRUCE W TRENT PROTESTANT

0006
WILLIAM J LAVELLE ESQ
2310 GRANT BUILDING
PITTSBURGH PA 15219
WAYNE W FRIEDLINE PROTESTANT

0007
WILLIAM J LAVELLE ESQ
2310 GRANT BUILDING
PITTSBURGH PA 15219
HOMER R SLEEK & SONS INC PROTESTANT