

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

|                                       |                                  |
|---------------------------------------|----------------------------------|
| 1. <u>REPORT DATE:</u> March 6, 1989  | : 2. <u>BUREAU AGENDA NO.</u>    |
| 3. <u>BUREAU:</u> Law                 | : MAR-89-L-182*                  |
| 4. <u>SECTION(S):</u> Motor Carrier   | : 5. <u>PUBLIC MEETING DATE:</u> |
| 6. <u>APPROVED BY:</u>                | : March 30, 1989                 |
| Director: Povilaitis <i>JP</i> 7-5000 | : Supervisor: House : 3-3713     |
| 7. <u>MONITOR:</u>                    | :                                |
| 8. <u>PERSON IN CHARGE:</u>           | :                                |
| Rhonda Daviston 3-5713                | :                                |
| 9. <u>DOCKET NO:</u>                  | :                                |
| A-00108100                            | :                                |

10. (a) CAPTION (abbreviate if more than 4 lines)  
 (b) Short summary of history & facts, documents & briefs  
 (c) Recommendation

(a) Edward R. Rathway Trucking, Inc., Perryopolis, PA; Petition for Amendment and Reconsideration of Commission Order.

(b) On August 23, 1988, the Commission entered an Order at A-00108100, approving the transfer application of Edward R. Rathway Trucking, Inc. (Rathway) for a transfer of the rights issued at A-00103854. The Order was subject to several conditions, including the filing of nine acceptable contracts. On January 6, 1989, Rathway filed a Letter-Petition to modify the Commission's August 23, 1988 Order. We will treat the Petition as a Petition for Amendment and Reconsideration of a Commission Order. Rathway requests that Tri-State Pallet & Repair, Inc., Northbrook Mining, Inc., R.P. Suto Coal and Minerals, Inc., Burrell Group, Inc., Burrell Construction and Supply Company, Standard Terminals, Inc., Burrell Trucking, Inc. and Penn Builders Supply Company be deleted from its authority.

(c) The Law Bureau recommends that the Petition be treated as one for Amendment and Reconsideration of the Commission's Order entered August 23, 1988 and that the Commission adopt the attached proposed order which grants the Petition.

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

CONTENT OF MOTION: Staff recommendation adopted.

**DOCUMENT  
FOLDER**

**DOCKETED**  
APR 21 1989



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

April 10, 1989

IN REPLY PLEASE  
REFER TO OUR FILE

A-00108100

John A. Pillar, Esquire  
Pillar & Mulroy  
Suite 700  
312 Boulevard of the Allies  
Pittsburgh, PA 15222

DOCUMENT  
FILED

Edward R. Rathway Trucking, Inc., Perryopolis, PA; Letter-Petition for  
amendment and reconsideration of Commission Order.

DOCKETED  
MAY 09 1989

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

A Contract Carrier Permit evidencing the Commission's approval  
of the right to operate will not be issued until the applicant has  
complied with the following insurance and tariff requirements:

- I. Arrange through an insurance agent to have an insurance company file with the Commission a Form E as evidence of public liability and property damage insurance coverage as shown on the back of this sheet.
- II. File a bilateral contract, if required by the order.
- III. Prepare and file a schedule of minimum rates and charges according to the enclosed instructions.

Minimum Limits for PA Public Utility Commission Authorized Service

Passenger Carriers:

15 passengers or less: \$35,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.

\$25,000 first party medical benefits, \$10,000 first party wage loss benefits and \$1,500 first party funeral benefits for all passengers and pedestrians.

\$10,000 first party medical benefits, \$5,000 first party wage loss benefits, and \$1,500 first party funeral benefits for drivers (PA registered vehicles only).

16 to 28 passengers: \$1,000,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.

29 passengers or more: \$5,000,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.

Property Carriers:

Common or Contract: \$300,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.

\$10,000 first party medical benefits, \$5,000 first party wage loss benefits, and \$1,500 first party funeral benefits (PA registered vehicles only).

Common only: \$5,000 per accident per vehicle for loss or damage to cargo.

No motor carrier shall operate or engage in any transportation until compliance with all of the above requirements and a contract carrier permit has been issued authorizing actual operations. Motor carriers operating without complying with the above requirements will be subject to the penalty provisions of the Public Utility Code.

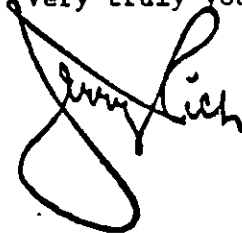
Commission regulations require compliance with all of the above requirements within sixty days of the date of this letter. Failure to comply within the sixty days will cause the Commission to rescind the action of March 30, 1989 and dismiss the application without further proceedings.

If you foresee any problems in meeting these requirements, please direct your questions to the following contact persons:

Insurance Filings: Mr. James McCarthy-Insurance Section  
(717) 783-5933

Tariff Filings: Mr. Joseph Machulsky-Tariff Section  
(717) 787-5521

Very truly yours,



Jerry Rich, Secretary

cc: Edward R. Rathway Trucking, Inc.  
R.D. 2, Box 174  
Perryopolis, PA 15473

fao

Enclosures  
Certified Mail  
Receipt Requested

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120

Public Meeting held March 30, 1989

Commissioners Present:

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

DOCKET  
FOLDER

Edward R. Rathway Trucking, Inc.,  
Perryopolis, PA; Letter-Petition  
for Amendment and Reconsideration  
of Commission Order.

Docket No.  
A-00108100

POCKETED  
MAY 09 1989

O R D E R

BY THE COMMISSION:

On August 23, 1988, the Commission entered an Order at A-00108100, approving the transfer application of Edward R. Rathway Trucking, Inc. (Rathway) for a transfer of the rights issued at A-00103854. The Order was subject to several conditions, including the filing of nine acceptable contracts. On January 6, 1989, Rathway filed a Letter-Petition to modify the Commission's August 23, 1988 Order. We will treat the Petition as a Petition for Amendment and Reconsideration of a Commission Order.

Rathway requests that Tri-State Pallet & Repair, Inc., Northbrook Mining, Inc., R.P. Suto Coal and Minerals, Inc., Burrell Group, Inc., Burrell Construction and Supply Company, Standard Terminals, Inc., Burrell Trucking, Inc. and Penn Builders Supply Company be deleted from its authority. Tri-State Pallet & Repair, Inc., Northbrook Mining, Inc., and R.P. Suto Coal & Minerals, Inc. are no longer in business. Burrell Group, Inc., Burrell Construction & Supply Company, Standard Terminals, Inc., Burrell Trucking, Inc. and Penn Builders Supply Company have sold all of their assets to a new company called Burrell Industries, Inc., and applicant has filed a new application to serve the purchaser of those assets.

The Public Utility Code grants the Commission broad discretionary powers concerning the reconsideration, amendment, rescission, or modification of its orders; such discretion is limited only by the due process considerations of providing notice and an opportunity to be heard by the parties.

Pennsylvania Public Utility Commission v. Yellow Cab Co., 51 Pa.

P.U.C. 149 (1977). Specifically, the Commission has the power to grant reconsideration of a previous order in light of newly discovered evidence, a change in circumstances justifying modification, or if persuaded that its previous decision was in error. Application of Commonwealth Telephone Co., 24 Pa. Commonwealth Ct. 243, 355 A.2d 611 (1976); Brinks Inc. v. Pa. P.U.C., 16 Pa. Commonwealth Ct. 300, 328 A.2d 582 (1974); Pennsylvania Public Utility Commission v. Philadelphia Electric Co., 58 Pa. P.U.C. 407 (1984); Cannuni v. Duquesne Light Co., 57 Pa. P.U.C. 92 (1983); Pennsylvania Public Utility Commission v. Bell Telephone Co. of Pa., 54 Pa. P.U.C. 473 (1980).

The purpose of Rathway's Petition is to have paragraphs 1, 2, 3, and 5 deleted from the authority transferred by the August 23, 1988 Order. The fact that the shippers are no longer in business and/or have sold their assets to another company constitutes a change in circumstances. Also, this modification does not expand Rathway's present authority. Accordingly, it is appropriate to modify our previous order. Our Order entered August 23, 1988, at A-00108100 should be modified to provide contract carrier authority as follows:

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

To transport, as a contract carrier by motor vehicle, property, in bulk, in dump vehicles, for Matt Canestrone Contracting, Inc., between points in the counties of Washington and Westmoreland, and from points in said counties to points in Pennsylvania, and vice versa.

To transport, as a contract carrier by motor vehicle, property, in bulk in dump vehicles, for Russell Minerals-Fayette, Inc., from its facilities located in the counties of Fayette and Westmoreland, to points in Pennsylvania, and vice versa.

To transport, as a contract carrier by motor vehicle, coal and coke, for Purco Coal, Inc., and Sunshine Fuels Company, between points in the counties of Fayette and Westmoreland, and from points in said counties to points in Pennsylvania and vice versa.

To transport, as a contract carrier by motor vehicle, coal and coke, for Marquis Mining Corp., and J.M. Adams Coal, between points in Pennsylvania;

THEREFORE,

IT IS ORDERED: That the Petition for Amendment and Reconsideration of the Commission Order entered August 23, 1988, filed by Edward R. Rathway Trucking, Inc., on January 6, 1989, is

hereby granted.

IT IS FURTHER ORDERED: That the August 23, 1988 Commission Order at A-00108100, is hereby modified and amended to grant the following rights:

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

To transport, as a contract carrier by motor vehicle, property, in bulk, in dump vehicles, for Matt Canestrone Contracting, Inc., between points in the counties of Washington and Westmoreland, and from points in said counties to points in Pennsylvania, and vice versa.

To transport, as a contract carrier by motor vehicle, property, in bulk in dump vehicles, for Russell Minerals-Fayette, Inc., from its facilities located in the counties of Fayette and Westmoreland, to points in Pennsylvania, and vice versa.

To transport, as a contract carrier by motor vehicle, coal and coke, for Purco Coal, Inc., and Sunshine Fuels Company, between points in the counties of Fayette and Westmoreland, and from points in said counties to points in Pennsylvania and vice versa.

To transport, as a contract carrier by motor vehicle, coal and coke, for Marquis Mining Corp., and J.M. Adams Coal, between points in Pennsylvania.

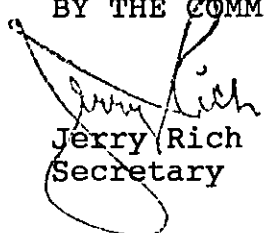
IT IS FURTHER ORDERED: That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to Rathway, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That Rathway shall not engage in any transportation granted herein until it has 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 evidence of insurance and a schedule of minimum rates and charges in accordance with 66 Pa. C.S. § 2502.

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

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

BY THE COMMISSION,

  
Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: March 30, 1989

ORDER ENTERED: APR 10 1989

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

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

|   |   |
|---|---|
| 3. Article Addressed to:<br><i>A. 108100 6</i><br><i>John A. Pillay, Esq.</i> | 4. Article Number<br><b>44740</b>   |
| 5. Signature - Address<br><b>X</b>  | Type of Service:<br><input type="checkbox"/> Registered <input type="checkbox"/> Insured<br><input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD<br><input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise<br>Always obtain signature of addressee or agent and <b>DATE DELIVERED.</b> |
| 6. Signature - Agent<br><b>X</b> <i>S. Wardzynski</i>                         | 8. Addressee's Address (ONLY if requested and fee paid)   |
| 7. Date of Delivery<br><i>4/11</i>  |   |

PS Form 3811, Mar. 1988

\* U.S.G.P.O. 1988-212-865

DOMESTIC RETURN RECEIPT



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

April 24, 1989

A-00108100

IN REPLY PLEASE  
REFER TO OUR FILE

R-16

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

R. Rathway Trucking, Inc.

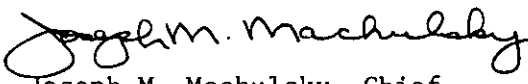
Dear Sir:

Under date of April 10, 1989 the Secretary's office transmitted to you the Commission's compliance order of March 30, 1989, evidencing approval of the above carrier's application at A-00108100, which is in effect a transfer of the rights formerly held by Edward R. Rathway, t/d/b/a Edward R. Rathway Trucking, at A-00103854. The letter transmitting the order directs attention to the requirement for the filing of a tariff.

PA Code, Title 52, Section 23.13(c) provides that in the case of change in ownership, etc., if feasible to do so, the tariffs of the former operator shall be adopted by the new operator. In this instance, however, it is not possible to meet the tariff requirements by the adoption of the former schedule for the reason that new contracts will be executed between the shipper and the carrier. Also, one of the present tariffs description of operating authority does not conform with the approval of this application.

It will be necessary, therefore, to prepare and file a new schedule to be designated as Contract PA PUC Nos 1, 2, 3, 4, and 5, to provide for the rates as named in the contract.

Very truly yours,  
Barry L. Ernst, Director  
Bureau of Transportation

  
By: Joseph M. Machulsky, Chief  
Financial Document Section

MHD:lpw

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

Contact Person: G. B. Harry  
(717) 783-5937

DOCUMENT  
FOLDER

DOCKETED  
MAY 01 1989