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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held March 14, 1991

Commissioners Present:

- William H. Smith, Chairman
- Joseph Rhodes, Jr., Vice-Chairman
- Frank Fischl, Commissioner
- Wendell F. Holland, Commissioner
- David W. Rolka, Commissioner

Application of Edward R. Rathway Trucking, Inc., a corporation of the Commonwealth of Pennsylvania, for the right to begin to transport, as a common carrier, by motor vehicle, (A) (1) coal, for Intercarbon Coal Company, between points in Pennsylvania; (2) 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; (3) 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; (4) 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; (5) coal and coke for Marquis Mining Corp., and J. M. Adams Coal, between points in Pennsylvania; (6) coal, for Panther Coal Sales Company, between points in Pennsylvania; (7) property, for Burrell Industries, Inc., between points in Pennsylvania; with Right No. 7 subject to the following condition: That no right, power or privilege is granted to transport petroleum and petroleum products, in bulk, in tank vehicles; and (8) (pending Folder 3) property for Morton Thiokol, Inc., Morton Salt Division, between points in the county of Allegheny, and from points in said county to points in Pennsylvania; with the right to return refused, rejected, damaged and returned shipments to the point of origin: WHICH IS TO BE IN LIEU OF its contract carrier permit issued at A-00108100, Folders 1 and

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2 and the pending Folder 3 to Edward R. Rathway Trucking, Inc.; and (B) (1) coal from mines or stripping operations in the city of Uniontown, Fayette County, and within twenty-five (25) miles by the usually traveled highways of the limits thereof to railroad sidings, coke ovens, ramps or docks in the said territory, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination; (2) coal from mines or stripping operations in the city of Uniontown, Fayette County, and within twenty-five (25) miles by the usually traveled highways of the limits thereof to domestic consumers in the said area provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination excluding the right to transport coal for domestic consumption from any of the H. C. Frick Coke Company mines except Leisening Nos. 1 and 2 Shoaf and Kyle Mines; (3) building materials in bulk in dump trucks between points in the city of Uniontown, Fayette County, and within fifteen (15) miles of the limits thereof, provided no haul shall exceed a distance of fifteen (15) miles from point of origin to point of destination; (4) coal, coke, coke breeze, stone, sand, gravel and cinders between points in the counties of Fayette, Westmoreland, Washington and Greene, provided no haul shall exceed a distance of fifty (50) miles from point of origin to point of destination; (5) slag for the Duquesne Slag Products Company from plants in the city of McKeesport and the borough of West Mifflin, Allegheny County, to dumps and construction sites in said city and borough and within twenty (20) miles of each of said municipalities; (6) coal, coke, sulfur and building materials, in bulk (excluding brick) in dump trucks, between points in the city of McKeesport, Allegheny County, and within twenty-five (25) miles of the limits of said city, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination; and (7) coal, coke, sand, gravel, cement, cinders, contractors' equipment, building materials and other materials, such as are usually transported in dump trucks, between points in the county of Allegheny and within fifty (50) miles by the usually traveled highways of the limits of the said county, excluding the county of

Washington, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination; which is to be a transfer of the rights authorized under the certificate issued at A-00105382 to Anne Louise Rathway, t/d/b/a A.L.R. Trucking, subject to the same limitations and conditions.

Pillar and Mulroy, by John A. Pillar for the applicant.

O R D E R

BY THE COMMISSION:

This matter comes before the Commission by an application filed on December 6, 1989, and published in the Pennsylvania Bulletin of December 23, 1989. There are no protests and the record is now certified to the Commission for its decision without oral hearing.

Edward R. Rathway Trucking, Inc. (applicant) currently holds contract carrier permits at Folders 1 and 2, which combined, authorizes it to provide service for nine individual shippers. It has also placed an application before us for additional contract carrier authority to serve one shipper which has been docketed at Folder 3. In addition, Anne Louise Rathway, the wife of Edward R. Rathway, operating under the name of A.L.R. Trucking, holds a common carrier certificate at A-00105382. She is also the owner, together with her husband, of all of the stock of Edward R. Rathway Trucking, Inc.

By the immediate application, Edward R. Rathway Trucking, Inc., seeks to convert all of the contract carrier permits at Folders 1, 2 and 3 to a common carrier certificate, and also have the common carrier rights of Anne Louise Rathway, t/d/b/a A.L.R. Trucking transferred to the corporation. We note here, that the Folder 3 application for additional contract carrier authority was approved at the Public Meeting of February 14, 1991. All of the shippers involved in the contract carriage authority, including the shipper in the Folder 3 authority, have submitted affidavits attesting to their having no objection to being served by the applicant in the capacity of a common carrier. By converting to common carriage, the applicant will avoid the role of a dual operator in keeping with the provisions of Title 66, C.S. §2504.

The applicant corporation was organized under the laws of Pennsylvania on March 7, 1988, and has its principal place of business located at Perryopolis, R.D. 2, Fayette County. All of the stock is owned by Edward R. Rathway and Anne Louise Rathway, his wife, as tenants by the entirety. Edward is president and treasurer and Anne Louise is secretary. Other than the existing affiliation between the applicant and the transferor, there is no affiliation with other carriers.

The applicant owns 12 tractors and 14 trailers which are suitable for use in the service involved herein. An unaudited balance sheet indicates that as of June 30, 1989, the applicant had current assets of \$207,412, total assets of \$365,426, with current liabilities of \$236,071, and total liabilities of \$484,156, leaving a deficit in stockholders' equity of \$118,730.

Pursuant to the terms of a sales agreement dated October 16, 1989, the applicant will pay the sum of \$1.00 for the operating rights, the token fee being attributable to the husband/wife relationship of the applicant principal and the transferor. No tangible assets are involved. Settlement will be made within 30 days after the entry date of our order approving the transaction.

With regard to the applicant's recently approved contract carrier application docketed at A-00108100, Folder 3, it is acknowledged that because the authority is involved in the conversion portion of this application, time constraints will not permit the applicant to comply with the various filing provisions, leading to issuance of the permit. The authority contained therein, albeit now in the form of common carrier authority, will be conveyed to the applicant herein and is therefore subject to the compliance provisions of this order.

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

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

We find:

1. That the applicant holds contract carrier permits at A-00108100, Folders 1 and 2.
2. That an application for additional contract carrier authority docketed at A-00108100, Folder 3 was approved by our order adopted at the Public Meeting of February 14, 1991.
3. That by this application, the applicant seeks to convert the contract carrier permits to a common carrier certificate, and also to have the common carrier authority held by Anne Louise Rathway, t/d/b/a A.L.R. Trucking at A-00105382, transferred to it.
4. That the contract carrier authority authorizes the applicant to serve a total of 10 individual shippers.

5. That none of the 10 shippers object to being served by the applicant in the capacity of a common carrier as opposed to a contract carrier.

6. That conversion of the contract carrier permits to a common carrier certificate will eliminate dual operations, thereby allowing compliance with the provisions of Title 66, C.S. §2504.

7. That the applicant is fit, ready, willing and able to provide the service sought herein.

8. That the transfer of authority and approval of the application in its entirety is in the public interest and is necessary for the continued accommodation and convenience of the public; THEREFORE,

IT IS ORDERED: That the application be and is hereby approved and that a certificate be issued granting the applicant the right to operate as follows:

1. To transport, as a Class D carrier, property, for Burrell Industries, Inc., between points in Pennsylvania;

subject to the following condition:

That no right, power or privilege is granted to transport petroleum and petroleum products, in bulk in tank vehicles.

2. To transport, as a Class D carrier, coal, for Intercarbon Coal Company, between points in Pennsylvania.
3. To transport, as a Class D carrier, 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.
4. To transport, as a Class D carrier, 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.
5. To transport, as a Class D carrier, 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.

6. To transport, as a Class D carrier, coal and coke, for Marquis Mining Corp., and J.M. Adams Coal, between points in Pennsylvania.
7. To transport, as a Class D carrier, coal, for Panther Coal Sales Company, between points in Pennsylvania.
8. To transport, as a Class D carrier, property, for Morton Salt, Division of Morton International, Inc., between points in the county of Allegheny, and from points in said county, to points in Pennsylvania, with the right to return refused, rejected, damaged and returned shipments to the point of origin.
9. To transport, as a Class D carrier, coal from mines or stripping operations in the city of Uniontown, Fayette County, and within twenty-five (25) miles by the usually traveled highways of the limits thereof to railroad sidings, coke ovens, ramps or docks in the said territory, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination.
10. To transport, as a Class D carrier, coal from mines or stripping operations in the city of Uniontown, Fayette County, and within twenty-five (25) miles by the usually traveled highways of the limits thereof to domestic consumers in the said area provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination excluding the right to transport coal for domestic consumption from any of the H.C. Frick Coke Company mines except Leisenring Nos. 1 and 2 Shoaf and Kyle mines.
11. To transport, as a Class D carrier, building materials in bulk in dump trucks, between points in the city of Uniontown, Fayette County, and within fifteen (15) miles of the limits thereof, provided no haul shall exceed a distance of fifteen (15) miles from point of origin to point of destination.
12. To transport, as a Class D carrier, coal, coke, coke breeze, stone, sand, gravel, and cinders between points in the counties of Fayette, Westmoreland, Washington and Greene, provided

no haul shall exceed a distance of fifty (50) miles from point of origin to point of destination.

13. To transport, as a Class D carrier, slag for the Duquesne Slag Products Company from plants in the city of McKeesport and the borough of West Mifflin, Allegheny County, to dumps and construction sites in said city and borough and within twenty (20) miles of each of said municipalities.
14. To transport, as a Class D carrier, coal, coke, sulphur and building materials, in bulk (excluding brick) in dump trucks, between points in the city of McKeesport, Allegheny County, and within twenty-five (25) miles of the limits of said city, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination.
15. To transport, as a Class D carrier, coal, coke, sand, gravel, cement, cinders, contractors' equipment, building materials and other materials, such as are usually transported in dump trucks, between points in the county of Allegheny and within fifty (50) miles by the usually traveled highways of the limits of the said county, excluding the county of Washington, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination;

with all of the above subject to the following general conditions:

1. That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on the rights to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by applicant, or to approve or prescribe rates sufficient to yield a return thereon.
2. That applicant shall not record in its utility accounts any amount representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.

3. That the applicant charge to Account 1550, Other Intangible Property, \$1.00, being the amount of the consideration payable by it for the rights and going concern value attributable thereto; less any amount recorded under condition 2 above.
4. That the certificate holder shall not transfer, sell or in any way convey any of its outstanding capital stock to any individual, partnership, corporation or any entity, without the prior filing of an application and approval thereof by the Commission under 66 PA C.S.A. Section 1102(a)(3).

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing of evidence of cargo insurance and the filing and acceptance of a tariff establishing just and reasonable rates.

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


IT IS FURTHER ORDERED: That issuance of the certificate be withheld pending receipt of the 1990 Annual Report of the transferor.

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

IT IS FURTHER ORDERED: That 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 upon compliance with this order, the rights granted the transferor, Anne Louise Rathway, t/d/b/a A.L.R. Trucking, at A-00105382, and the contract carrier permits held by Edward R. Rathway Trucking, Inc., at A-00108100, Folders 1, 2 and the pending permit at A-00108100, Folder 3, be cancelled and the records be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich". The signature is written in a cursive style with a large, looping initial "J".

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: March 14, 1991

ORDER ENTERED: MAR 19 1991

SENDER:

- Complete items 1 and 2 for additional services.
- Complete items 3, and 4.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also to receive the following ces (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to

A-108100
F 1,2,3

4a. Article Number

044867

4b. Service Type

- Registered Insured
- Certified COD
- Express Mail Return Receipt for Merchandise

7. Date of Delivery

3-21-92

5. Signature (Addressee)

Edward Pathway Furling

6. Signature (Agent)

Edward Pathway Furling

8. Addressee's Address (Only if requested and fee is paid)