

1. <u>REPORT DATE:</u>	February 6, 1992	:	2. <u>BUREAU AGENDA NO.</u>	
3. <u>BUREAU:</u>	Transportation	:		FEB-92-T-164*
4. <u>SECTION</u>	Technical Review	:	5. <u>PUBLIC MEETING DATE:</u>	
6. <u>APPROVED BY:</u>		:		February 27, 1992
Director:	Ernst 7-2154	:		
Supervisor:	Bigelow/Marzolf 3-5945	:		
7. <u>PERSON IN CHARGE:</u>	Hoshour 7-5513	:		
8. <u>DOCKET NO.:</u>	A-00108408, F. 1, Am-B	:		

DOCKETED

MAR 23 1992

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

(a) Application of C. T. Hertzsch, Inc., Speed, Indiana, a corporation of the State of Indiana, for the transfer of a portion of the operating rights of Schwerman Trucking Co., under the certificate issued at A-00092811, F. 1, subject to the same limitations and conditions.

(b) The applicant seeks to acquire by transfer a single common carrier right held by the transferor for the total consideration of \$1,000. No tangible assets are involved.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order approving the transfer application; and cancel by supplemental order the single common carrier right of the transferor.

WH:rs

**DOCUMENT
FOLDER**

11. MOTION BY:	Commissioner Chm. Rolka	Commissioner	Holland - Yes
		Commissioner	
SECONDED:	Commissioner Rhodes	Commissioner	

CONTENT OF MOTION: Staff recommendation adopted.



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

March 10, 1992

KJR

IN REPLY PLEASE
REFER TO OUR FILE

A-00108408
Folder 1, Am-B

S BERNE SMITH ESQUIRE
MCNEES WALLACE & NURICK
100 PINE STREET
HARRISBURG PA 17108-1166

Application of C.T. Hertzsch, Inc., a corporation of the State of Indiana

Dear Sir:

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 February 27, 1992 and dismiss the application without further proceedings.

Very truly yours,

John G. Alford, Secretary

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

cc:applicant
282 U.S. Highway 31
SPEED IN 47172

Modification

DOCUMENT
FOLDER

SECRETED

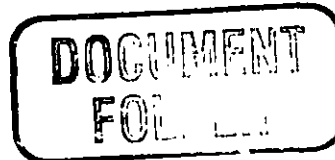
MAR 16 1992

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held February 27, 1992

Commissioners Present:

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



Application of C. T. Hertzsch, Inc., a corporation of the State of Indiana, for the transfer of a portion of the operating rights of Schwerman Trucking Co., under the certificate issued at A-00092811, F. 1, subject to the same limitations and conditions.

A-00108408
F. 1
Am-B

McNees, Wallace & Nurick by S. Berne Smith for the applicant.

MAR 18 1992

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed January 13, 1992. Public notice of the application was given in the Pennsylvania Bulletin of February 1, 1992. No protests were filed. The unopposed application is certified to the Commission for its decision without an oral hearing.

C. T. Hertzsch, Inc. (applicant) is a corporation of the State of Indiana domiciled at 282 U.S. Highway 31, Speed, Indiana. By the instant application, the applicant seeks to acquire by transfer a single common carrier right held by Schwerman Trucking Co. under the certificate issued at A-00092811, F. 1. Specifically, the right authorizes the transportation of roofing and building materials, and materials, equipment and supplies used in or incidental to the manufacture, installation and distribution of roofing and building materials, from the facilities of Georgia-Pacific Corporation located in the township of Richland, Bucks County, to points in Pennsylvania, and vice versa, subject to the condition which excludes the transportation of petroleum products in bulk. The transferor is retaining 13 additional common carrier rights issued at A-00092811, F. 1, and additional rights at Folder 2.

The total consideration for the single right is \$1,000. No tangible assets are involved. The purchase agreement requires that the total

consideration be paid to the transferor within 20 days of the issuance of the final order approving the transfer.

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

To eliminate the possibility of duplicate authority, the transferor's authority at A-00092811, F. 1, will be conditioned to exclude transportation to and from the facilities of Georgia-Pacific Corporation, Richland Township, Bucks County.

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 proceeding.

We find:

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

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

IT IS ORDERED: That the transfer application be and is hereby approved and that the certificate issued to the applicant on December 8, 1989, as amended, be further amended to include the following right:

To transport, as a Class D carrier, roofing and building materials, and materials, equipment and supplies used in or incidental to the manufacture, installation and distribution of roofing and building materials, from the facilities of Georgia-Pacific Corporation located in the township of Richland, Bucks County, to points in Pennsylvania, and vice versa;

with the above right subject to the following condition:

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

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

right 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 right herein granted in excess of the actual cost of such right to the original holder thereof.
3. That the applicant charge to Account 1550, Other Intangible Property, \$1,000, being the amount of the consideration payable by it for the right and going concern value attributable thereto; less any amount recorded under condition 2 above; and subject to further adjustment due to any normal interim transactions to the date of actual transfer.
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. §1102(3).

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

IT IS FURTHER ORDERED: That the applicant 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 this Commission relative to the filing and acceptance of a tariff establishing just and reasonable rates.

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

IT IS FURTHER ORDERED: That upon compliance with this order, the right granted the transferor, Schwerman Trucking Co., at A-00092811, F. 1, Am-G be cancelled.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: February 27, 1992

ORDER ENTERED: March 10, 1992

SENDER:

- Complete items 1 and 2 for additional services.
- Complete items 3, a, & b.
- 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 wish to receive the following services (for an extra fee):

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

Consult postmaster for fee.

3. Article Addressed to: *A - 108408*

Modification F. 1-B.

4a. Article Number

044436

4b. Service Type

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

7. Date of Delivery

7603-92

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

Schwerman Trucking

6. Signature (Agent)

Ernie K. K...

PS Form 3811, November 1990 *U.S. GPO: 1991-287-068

DOMESTIC RETURN RECEIPT

SENDER:

- Complete items 1 and 2 for additional services.
- Complete items 3, a, & b.
- 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 wish to receive the following services (for an extra fee):

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

Consult postmaster for fee.

3. Article Addressed to: *A-00108408*

Modification F. 1-Am-B

4a. Article Number

044444

4b. Service Type

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

7. Date of Delivery

7603-92

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

A. Berne Smith, Esq.

6. Signature (Agent)

[Signature]

PS Form 3811, November 1990 *U.S. GPO: 1991-287-068

DOMESTIC RETURN RECEIPT



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

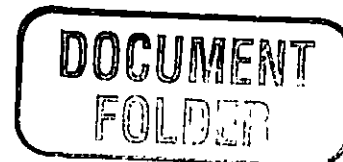
KRP

March 11, 1992

IN REPLY PLEASE
REFER TO OUR FILE

R-16

S. BERNE SMITH ESQUIRE
100 PINE STREET
HARRISBURG PA 17108-1166



Re: A-00108408, F. 1, Am-B - C.T. Hertzsch, Inc.

Dear Mr. Smith:

Under date of March 10, 1992, the Secretary's office transmitted to you the Commission's compliance order adopted February 27, 1992, evidencing approval of the above application which is in effect a transfer of a part of the rights formerly held by Schwerman Trucking Co. at A-00092811, F. 1. 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 of ownership, etc., if feasible to do so, the tariffs of the former operator shall be adopted by the new operator, and no change in rates is permitted to cover the transfer of rights.

In this instance it is not possible to meet the tariff requirements by the adoption of the former tariffs for the reason that the transfer is partial in scope and it is, therefore, necessary to file a new tariff.

The new tariff may be issued to become effective on one day's notice under authority of Pa. Code, Title 52, Section 23.42 and should be designated Freight Pa. P.U.C. No. 2.

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

By: Joseph M. Machulsky, Chief
Financial Document Section

cc: C.T. Hertzsch, Inc.
282 U.S. Highway 31
Speed, IN 47172

Contact Person: G.L. Baker
(717) 783-5936