



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
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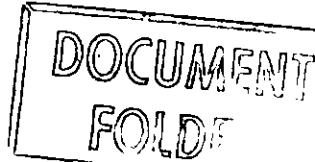
ISSUED:

April 20, 1990

IN REPLY PLEASE
 REFER TO OUR FILE

Kenneth E. Sands, Jr., Esquire
 528 Elm Street
 Reading, PA 19601

A-00108448



Application of Empire Wrecking Company of Reading Pennsylvania.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge George M. Kashi. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this Decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of Exceptions/Reply Exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (Name of Party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

cc:ALJ Kashi/Office of ALJ/Law Bureau/Bureau of Trans./Mr. Bramson/OSA/Chairman/Commissioner/
 Correspondence/our file

Very truly yours,

 Allison K. Turner
 Chief Administrative Law Judge

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

Application of Empire Wrecking Company :
of Reading, Pennsylvania :

Docket Number
A-00108448

DOCKETED
MAY 3 1990

INITIAL DECISION

Before
GEORGE M. KASHI
Administrative Law Judge

On September 9, 1988, Empire Wrecking Company of Reading, Pennsylvania (Applicant/Empire) filed an application with this Commission seeking a certificate for the right

To transport, as a common carrier, property, which because of its size or weight, requires the use of special equipment, between points in that part of Pennsylvania, on and east of U.S. Traffic Route 219.

Notice of the filing was duly published in the Pennsylvania Bulletin of December 3, 1988. Protests to the application were filed by: 1) Kennedy Transfer; 2) A. Duie Pyle, Inc.; 3) Seaboard Tank Lines, Inc.; and, 4) Daily Express, Inc.

An amendment to the application was filed by the Applicant on January 30, 1988 which enumerated the following three restrictions:

- 1) No right, power or privilege is granted to transport household goods and office furniture in use.

- 2) No right, power or privilege is granted to transport petroleum products, in bulk, within the Commonwealth of Pennsylvania.
- 3) No right, power or privilege is granted to transport iron and steel products for Lukens Steel Company at Coatesville, Chester County, Pennsylvania or Bethlehem Steel Corporation in Lehigh and Northampton Counties.

Subsequently, the protests of Kennedy, A. Duie Pyle and Seaboard were withdrawn, leaving Daily Express as the sole protestant.

The matter was assigned to this Administrative Law Judge on July 17, 1989 and a hearing was scheduled for and held before the undersigned in Harrisburg on July 26, 1989. A transcript of some 50 pages was produced through the direct testimony and cross-examination of the Applicant's president, two supporting shipping witnesses and the director of marketing for the Protestant. Main Briefs were filed by both parties and the record closed September 30, 1989.

In accordance with the provisions of Act 1978-294, 66 Pa. C.S.A., §332(g) as summarized by Administrative Circular SEC-51, on December 14, 1989, we requested and were granted a 90-day extension of time within which to file our decision.

Summary of the Evidence

Due to the nature and brevity of the transcript, no summary is set forth. Relevant portions of the testimony are cited in the Findings of Fact.

Findings of Fact

1. Applicant is Empire Wrecking Company of Reading, Pennsylvania, Inc., 1420 Clarion Street, Reading, Pennsylvania.
2. Applicant holds no PUC authority nor ICC authority (N.T. 7).
3. Applicant is an excavating contractor for general commercial work; it also has a home building division which constructs 30 homes per year and a demolition operation. Additionally, Applicant is involved in the selling of building products and medical waste disposal (N.T. 10).
4. Applicant has an approximate net worth of two million dollars and gross sales in excess of twelve million dollars in 1989 (N.T. 8).
5. Applicant derives approximately \$100,000 a year in the transportation of tractors and bulldozers and other equipment to job sites (N.T. 10-11).
6. Applicant owns 40 pieces of equipment (i.e., dozers, loaders, backhoes) which operate every day and of which 25 are moved every evening (N.T. 11).

7. To accomplish the moves set forth in Findings of Fact Nos. 5 and 6, Empire utilizes four lowboy trailers owned by it - one is a 35 ton capacity, one a 70 ton capacity and the other two are 50 ton capacity (N.T. 4, 6).

8. From time to time Applicant has been asked to haul heavy equipment (N.T. 4).

9. Applicant employs 22 full-time drivers and 15 office personnel. Additionally, Empire employs approximately 45 laborers, 10 heavy truck and heavy equipment mechanics and approximately 65 heavy equipment operators (N.T. 8, 9).

10. Applicant maintains a general liability insurance of \$1 million with a \$5 million excess blanket. The insurance company comes in quarterly and conducts safety meetings with the drivers and other operators (N.T. 9).

11. Applicant's operation is set up on five acres and consists of a shop building which is approximately 5,000 square feet, storage facilities of approximately 20,000 square feet and an office facility of approximately 5,000 square feet (N.T. 8).

12. Applicant has never been cited for violation of the Public Utility Code (N.T. 9).

13. Julius M. Simon, owner of Simon Eastern Corporation, Temple, Pennsylvania, testified in support of the application (N.T. 12-17).

14. Simon is in the scrap metals recycling business and owns and operates heavy equipment such as cranes, wheel loaders and skid loaders in the pursuit of that business (N.T. 17).

15. From time to time Simon needs to move the heavy equipment to a nearby site to pick up scrap (N.T. 13).

16. Simon has difficulty getting someone to move his heavy equipment since it is usually done for a short period of time some days and a short distance, one to five miles (N.T. 13).

17. If Applicant is granted the proposed rights, Simon would utilize Applicant (N.T. 15).

18. Simon Eastern conducts business in Berks, Lehigh, Lancaster and surrounding counties (N.T. 16).

19. On occasion, not very frequently, Applicant has moved equipment for Simon (N.T. 16, 17).

20. Simon requires outside moves of their heavy equipment approximately 25 times a year.

21. Frank Neubaum, an employee of Giles and Ransom, Inc., testified in support of the application (N.T. 17-26).

22. Giles and Ransom are engaged in the sale and lease of construction and mining equipment from three locations in Pennsylvania; Bensalem, Allentown and Fleetwood. It is from these three locations that equipment would move either to a purchaser or lessee located in southeastern Pennsylvania in the

counties of Philadelphia, Lehigh, Northampton, Montgomery, Delaware and Chester (N.T. 19, 20).

23. Presently Giles and Ransom accomplish 250 moves of equipment a year utilizing, out of its Philadelphia office, Specialty Haulers (N.T. 21).

24. Giles and Ransom utilize Protestant for long haul interstate movement of larger equipment that may weigh in excess of 80,000 pounds and requires specialized type lowboy equipment, high beam trailers, and drop side deck trailers (N.T. 22).

25. Larry Jones, director of marketing for Protestant testified in opposition of the application (N.T. 27-46).

26. Jones testified that Protestant maintains 48 pieces of equipment that would fall into the category of equipment suitable for the transportation proposed by Applicant (N.T. 30, Protestant Ex. No. 2).

27. Jones testified that the commodity description on the application does not require the use of specialized equipment set forth on Protestant's Ex. No. 2, but can be handled with any lowboy equipment (N.T. 31).

28. Protestant entered an exhibit which denoted all the movements it performed during the month of May between points in Pennsylvania in which it moved construction material and equipment by use of a lowboy trailer, some 41 movements (N.T. 34, Protestant's Ex. 3).

29. The 41 moves identified in Finding of Fact No. 28 represent less than 10% of the 425 moves listed on Protestant's Exhibit No. 3. Only two of the moves were involved with Berks County. Additionally, only 2 of the 41 moves were booked by contractors for the movement of equipment (N.T. 39-41).

30. None of the shippers or consignees listed on Protestant's Exhibit 3 were present in the hearing room to support the need for service sought by Applicant (N.T. 34).

31. While Protestant opposes the instant application it does not oppose authority which would restrict Applicant to transporting products for the supporting witnesses (N.T. 35).

32. Protestant is not likely to be able to give service on a two or four hour notice (N.T. 46).

Discussion

The statutory test for approval of a motor carrier application for a certificate of public convenience in Pennsylvania is found in the Public Utility Code, Act of July 1, 1978, P.L. 598, No. 116, 66 Pa. C.S.A. 1103(a) which directs the Commission to grant Certificates of Public Convenience, "if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public." The test was traditionally met whenever there is (1) a public need for the

proposed service; (2) inadequacy of the existing service to satisfy the need; and (3) capacity of the applicant to satisfactorily meet the need. Pennsylvania Public Utility Commission v. Pennsylvania Public Telephone Corp., 20 Pa. Cmwlth. 591, 342 A.2d 489 (1975).

In Application of Starr Transit Co., Inc., at A.0099608, F.2d Am-A, the Commission pointed out that this test is very general and an applicant has "various legal theories available for use in meeting this burden of furnishing the Commission with a basis for approval." The traditional approach of proving "necessity" was by demonstrating that existing service is inadequate. The applicant, to meet the statutory test, could also argue in terms of providing a different service, improving existing service, providing service that others have failed to provide, or by establishing increased need for service.

Moreover, the Legislature, in enacting the Public Utility Law, did not intend to benefit established carriers by erecting artificial barriers to the entry of new competitors. Metz White Way Tours v. Pennsylvania Utility Commission, 204 Pa. Super. 43, 201 A.2d 446 (1964); New Kensington City Lines, Inc. v. Pennsylvania Public Utility Commission, 200 Pa. Super. 490, 190 A.2d 179 (1963).

This Commission, like the Interstate Commerce Commission, has reexamined its fundamental policy of adhering to

traditional motor carrier entry standards. By Order published in the Pennsylvania Bulletin, Volume 12, No. 33, Saturday, August 14, 1982, at page 2697, the Commission proposed (made final on November 22, 1982) a rulemaking to revise application standards now found at 52 Pa. Code 41.14. Reversing historical precedent, the Commission clearly favors competition and has modified the evidentiary requirements used in deciding motor carrier applications, in part by eliminating proof of service inadequacy.

The conceded leading opinion on motor carrier entry in Pennsylvania is the application of Richard L. Kinard, A.95829, F.1, Am-D (January 5, 1984), aff'd 58 Pa. P.U.C. 548 (1984) in which the Commission discussed its policy:

We considered monopoly regulation to inhibit the industry's operational and marketing flexibility, propagate inefficient allocation of economic resources, and, with the increasing divergence of Federal and State regulation, cause additional regulatory burdens for motor carriers. In view of these factors, we proposed to encourage competition through the proposed rulemaking by excluding the "inadequacy" evidentiary standard previously adhered to. However, we emphasized our continued adherence to the basic requirement that an applicant show affirmatively that public benefit will result from approval of the application. York v. Pa. P.U.C., 449 Pa. 136 (1972).

By way of the proposed rulemaking, at Public Meeting of November 19, 1982, we adopted the policy statement at 52 Pa. Code 41.14. Thus, the applicant's burden of showing the inadequacy of existing service

was eliminated and protestants assumed the burden of establishing that the entry of a new carrier would impair the operations of existing common carriers, contrary to the public interest.

In his interpretation, the ALJ first recognized that the new policy was intended to include alternatives to inadequacy. The ALJ distinguished the Radio Common Carrier Entry Policy, M-830367 (November 25, 1983), which only recognized "fitness" and "adverse impact" as evidentiary standards, and concluded that "current Commission motor carrier policy contemplates alternatives to 'inadequacy' rather than franchising based merely on (1) fitness and (2) discretion over competition, essentially an 'adverse impact' standard." We agree with this analysis.

The ALJ considered Section 41.14(a) to be the cornerstone of the new policy, which imposes, upon the applicant, the "burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need." However, the ALJ assumed that mere shipper support would not satisfy the Section 41.14(a) burden to be carried by the applicant. Therefore, the ALJ turned to alternatives to "inadequacy" as criteria for establishing the Section 41.14(a) burden. The ALJ's alternatives to "inadequacy" are listed below:

- (1) Different service
- (2) Efficiency
- (3) Lower rates
- (4) Future need
- (5) Backup service
- (6) Shipper competition
- (7) ICC authority
- (8) Certification of authority
- (9) Benefit of applicant

On March 15, 1990 at its Public Meeting the Commission at Docket A-00088807, F.2, Am-K, Application of Blue Bird Coach

Lines, Inc. abandoned the Kinard interpretation of its transportation policy. The Commission stated that Section 41.14(a) of the Commission's Transportation Regulatory Policy requires an applicant to demonstrate that a "useful public purpose responsive to a public demand or need" exists for its transportation service. The Commission held that shipper support satisfies that burden. A carrier meeting fitness criteria¹ serves a "useful public purpose" in transporting commodities which a shipper "needs" to ship.

The Commission held that to require an additional showing of "useful public purpose" by way of "alternatives to inadequacy" is redundant. Thus Kinard is no longer the law.

The entry standards codified at 52 Pa. Code Section 41.14 became effective January 1, 1983, and are as follows:

Section 41.14. Evidentiary criteria used to decide motor common carrier applications.

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor carrier authority has a burden of demonstrating that it possesses the technical and financial

¹Section 41.14(b) of the Transportation Policy requires an applicant to demonstrate that it possesses technical and financial fitness, and authority may be withheld if an applicant lacks propensity to operate safely and legally.

ability to provide the proposed service and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest. (Emphasis Added)

Record evidence establishes that there are two shippers, Simon Eastern Corporation and Giles and Ransom, Inc., that have commodities that "need" to be shipped and that Empire has the ability to serve that need. Therefore, under Application of Blue Bird Coach Lines, Inc., Empire has met its entire burden of demonstrating that "a useful public purpose responsive to a public demand or need" exists.

The testimony of the Applicant and its two witnesses does not demonstrate that there is a very substantial volume of traffic moving, or to be moved in Pennsylvania intrastate commerce. While an applicant for a certificate of public convenience "need not show a demand for its service at every point within the proposed territory," we need to have a basis of a "representative" showing of public need. Purolator Courier Corp. v. Pa. P.U.C., 51 Pa. Cmwlth. 377, 414 A.2d 450 (1980); Pa. P.U.C. v. Purolator Courier Corp., 24 Pa. Cmwlth 301, 305, 355 A.2d 850(1976); Application of Logans Transportation Lines, Inc.,

42 Pa. P.U.C. 605 (1966); Reeder v. Pa. P.U.C., 112 Pa. Super 298 (1980).

The witness for Simon Eastern Corporation testified that it owns and operates cranes, wheel loaders and skid loaders. It expressed a need for Applicant's service to move such commodities, on short notice, for short distances -- "five miles, three miles, one mile" (N.T. 13). On cross-examination, the witness was asked whether its business was confined to Berks County. The response was that business was conducted in Berks and surrounding counties such as Lehigh and Lancaster. Protestant argues and we agree that a grant of authority allowing Applicant to transport commodities which because of size or weight require the use of special equipment between points in the eight-county area of Berks, Bucks, Chester, Lancaster, Lebanon, Lehigh, Montgomery, and Schuylkill should be more than adequate. The seven-named counties, excluding Berks, comprise all counties "surrounding" Berks.

The other supporting shipper witness -- Giles and Ransom, Inc. -- sells and leases construction and mining equipment (N.T. 18). The service territory for the three Giles and Ransom origins pertinent to this application encompasses the counties of Berks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia (N.T. 19). All of the traffic to be tendered to Applicant would originate at either Allentown,

Bensalem or Fleetwood. It is service from those origins to the seven-county destination territory that this shipper supports (N.T. 20).

Applicant is an "excavating contractor for general commercial work," generating annual revenues of \$12 million (N.T. 10). In the conduct of this business Applicant owns 40 bulldozers, loaders, backhoes and similar equipment. Every evening (after hours) Applicant is moving, on average, 25 pieces of its own equipment, utilizing 22 "full-time" drivers who run steadily (N.T. 8, 11). Because of this pattern of activity, Applicant's lowboys and the driver personnel "are available throughout the day" (N.T. 5). The purpose of this application is to allow Applicant to use its lowboy trailers in a for-hire carriage operation, when such equipment is not being utilized "for hauling our own equipment" (N.T. 5). As a matter of law, Applicant cannot be granted the common carrier authority it seeks. "[A] common carrier ... may not use the same vehicles for common and private carriage. See Makovsky Bros., Inc. v. Pa. Public Utility Commission, 55 Pa. Cmwlth. Ct. 435, 423 A.2d 1089 (1980)." Application of Mark M. Krivoski, t/d/b/a Totem Towing, Docket No. A-00106018;, F.1, Am-A (Order entered November 3, 1986, p. 2). The Commission goes on to state in the Krivoski order that "A contract carrier may use the same vehicle to transport under his permit and to transport his own property in

private carriage." (Ibid.). Because of the so-called Makovsky principle, contract carrier authorization to this Applicant is the only grant of authority that can lawfully be made.

The issuance of a contract carrier permit is governed by Section 2503(b) of the Public Utility Code, 66 Pa. C.S. §2503(b).

That Section states:

A permit shall be issued by the commission to any qualified applicant therefor authorizing in whole or in part the service covered by the application, if it appears...that the applicant is fit, willing and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful orders or regulations of the commission thereunder, and that the proposed service to the extent authorized by the permit will be consistent with the public interest and the policy declared in section 2501...; otherwise such application shall be denied.

The policy statement in Section 2501(a), 66 Pa. C.S. §2501(a), states that it is the intent of the General Assembly:

[T]o regulate ... the service of common carriers ... in such manner as to recognize and preserve the inherent advantages of ... such carriers ... It is hereby found as a fact ... that the service of common carriers by motor vehicle, forwarders, contract carriers by motor vehicle, and brokers ... are so closely interwoven and interdependent, and so directly affect each other, that in order effectively to regulate such common carriers by motor vehicle and forwarders, and to provide a proper and safe highway transportation system in the public interest, it is necessary to regulate the service of such contract carriers ...

The primary business of this Applicant is, and will continue to be, as an excavating contractor. The utilization of its idle lowboy trailers to perform sporadic for-hire service for others is economically opportunistic, but not in keeping with the historic concept of a "common carrier" which has a duty to provide service to all who seek it. There can be no doubt that the common carrier obligation to serve in the hands of this Applicant would simply give way to the economic self-interest of Applicant in seeing that its lowboy trailers were given preference for the hauling of its own equipment, rather than for providing service to the public at large. To the extent that individual contracting shippers are willing to subject themselves to the whims of Applicant to provide service, there would seem to be no compelling policy reason not to allow that to occur. However, to allow this Applicant to have an unrestricted opportunity to "skim the cream" from the shipping public at large, in competition with a common carrier such as Daily Express, is untenable. As the evidence of Daily demonstrates (see Exh. 3), a grant of unrestricted common carrier authority as sought by Applicant between all points within the eastern two-thirds of Pennsylvania would place Applicant in a position to compete for traffic from shippers who have not come forward in support of this application, and whose needs are not represented in any fashion by the two shippers who have discussed, on this

record, their very limited and discrete requirements for motor carrier service.

From a territorial standpoint, the "commensurate with the demonstrated public need" language of 52 Pa. Code §41.14(c) is totally compatible with the Commission's holding in Application of C. Veneziale Trucking, Inc., 44 Pa. P.U.C. 170, 181-182 (1960) that:

While evidence of public necessity within every square mile need not be presented, there must be such representative testimony that would make it apparent that a need exists in the territory sought [taking] into consideration ... the number and location of the points involved, the size and population ... etc.

The analysis outlined in the Commission's Veneziale decision has been applied in a ruling under the 52 Pa. Code §41.14(c) criteria. (See Application of B&D Transfer, A-00095587, F.1, Am-B, Ruling on Exceptions, Judge Gesoff, April 12, 1984).

In Wiley v. Pa. P.U.C., 186 Pa. Super. 309, 318, 142 A.2d 763, 767 (1958), the Superior Court interpreted the provisions of Section 2501 and 2503 of the Public Utility Code as follows:

The Commission in disposing of an application for a contract carrier permit, must consider existing common carrier service available to the shipper and, if that service is found to be "satisfactory and adequate", whether the interjection of the contract carrier in competition with the satisfactory and adequate common carrier service would be detrimental to the public interest. (emphasis in original)

More recently in Brink's v. Pa. P.U.C., 56 Pa. Cmwlth. Ct. 371, 424 A.2d 1010, 1012, (1981), the Commonwealth Court discussed the standard for contract carrier applications, determining that the public interest would not be served if "harmful competition" resulted to common carriers. The term harmful competition was defined by the Court as:

Competition with a common carrier where there is sufficient need for additional service to warrant a grant of authority to another common carrier or a contract carrier.

Brinks, 424 A.2d at 1012 n.2.

Additionally in Brink's, the court determined that competition without need for additional service would be "harmful competition" to the common carrier. In that regard, the Court stated:

. . . Findings of fact concerning the need for additional service would be necessary to support a grant of contract carrier authority, where it is shown that the application will result in competition with a common carrier. Clearly, competition without need for additional service would be harmful to the common carrier.

In interpreting the language of the preceding cases, the Initial Decision of Judge Robert P. Meehan in Application of Erie Enterprises (Warden I) at Docket No. A-00105329, issued September 23, 1986, set forth the criteria to be used in deciding motor contract carrier applications as follows:

. . . that an application for contract carrier authority must be granted, and a permit issued, if all of the following elements have been established:

1. There is a need for the proposed service where there will be competition with a common carrier.
2. The applicant is fit, willing, and able to perform the service.
3. The applicant will conform to the provisions of Chapter 25 of the Code and the lawful orders and regulations of the Commission.
4. Competition with satisfactory and adequate common carrier service will not be detrimental to the public interest.

I.D., pp. 20-22.

In its recent Order entered July 7, 1989, in Application of Erie Enterprises, Inc., Docket No. A-00105329, F.1, Am-D, the Commission stated its understanding of the current law governing contract carrier applications as follows:

It is our opinion that with regard to contract carrier Applications, qualified applicants need only show that they are fit, willing and able to provide the service. They are not required to show need even where there is competition with a common carrier. However, they must show that their entry into the field will not be detrimental to the public interest and/or the common carrier. Pennsylvania Public Utility Commission v. D'Agata National Trucking Company, 25 Pa. Commonwealth Ct. 359, 360 A.2d 279 (1976).

We believe the record evidence shows that the Applicant is fit, willing and able to serve a contract carrier for the two

supporting witnesses and even though there is common carriage available, we believe there is a need for the service as a contract carrier and that this will not be detrimental to the public interest.

Finally, under governing evidentiary criteria used to decide motor common carrier applications, it is provided that "The Commission will grant motor common carrier authority commensurate with the demonstrated public need ..." 52 Pa. Code §41.14(c) (emphasis supplied). It is the position of Daily Express, Inc., and we concur, that the "demonstrated public need" in this record will support a grant of authority no broader than the following:

To transport, as a contract carrier, property which because of its size or weight, requires the use of special equipment:

- (a) For the account of Simon Eastern Corporation between points in the counties of Berks, Bucks, Chester, Lancaster, Lebanon, Lehigh, Montgomery and Schuylkill; and
- (b) For the account of Giles and Ransom, Inc. from its facilities at Allentown, Bensalem and Fleetwood to points in the counties of Berks, Chester, Delaware, Lehigh, Montgomery, Northampton, and Philadelphia.

The foregoing formulation of authority will enable Applicant to serve the stated needs of the two supporting shippers. Both the commodity and territorial descriptions are framed in terms most generous to the transportation requirements vaguely expressed on

this record by the only two shippers offering support to Applicant's ambitious request for authority. We will grant an appropriate authority.

Conclusions of Law

1. The Commission has jurisdiction of the subject matter and the parties.
2. The matter is properly before the Commission.
3. The Applicant has failed to carry its burden to support a grant of authority as a common carrier.
4. Applicant has demonstrated a need for contract carriages; that it is fit, willing and able to perform such service; that it will conform to the provisions of Chapter 25 of the Public Utility Code and the lawful orders and regulations of the Commission; and that competition with satisfactory and adequate common carrier service will not be detrimental to the public interest.

THEREFORE, IT IS ORDERED:

1. That the application be and is hereby granted to the extent that a need for contract carriage has been evidenced and that a permit be issued granting the following right:

To transport, as a contract carrier, property which because of its size or weight, requires the use of special equipment:

- (a) For the account of Simon Eastern Corporation between points in the counties of Berks, Bucks, Chester, Lancaster, Lebanon, Lehigh, Montgomery and Schuylkill; and
- (b) For the account of Giles and Ransom, Inc. from its facilities at City of Allentown, Township of Bensalem and Borough of Fleetwood to points in the counties of Berks, Chester, Delaware, Lehigh, Montgomery, Northampton, and Philadelphia.

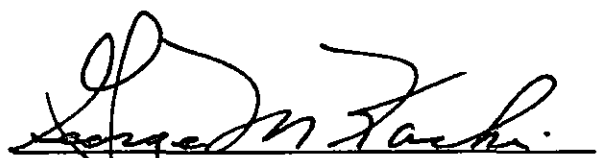
2. That upon compliance with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of the Commission relating to the filing of evidence of insurance and the filing of a schedule of minimum rates and charges in accordance with 66 Pa. C.S.A. §2506, a permit issue evidencing the Commission's approval of the right to operate as above determined.

3. That the issuance of the permit is subject to the Applicant filing an acceptable contract with the Commission in accordance with 66 Pa. C.S.A. §2506 and 52 Pa. Code §31.45.

4. That in the event Applicant has not, on or before 60 days from the date of the service of this order, complied with the requirements set forth above, the application shall be dismissed without further proceedings.

5. 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.

Date: March 28, 1990



GEORGE M. KASHI
Administrative Law Judge

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Route 219 South
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5/4

Case Identification:

A-00108448; Application of
Empire Wrecking Company of
Reading Pennsylvania

Initial Decision By:

ALJ George M. Kashi

Deadline for Return to OSA:

May 4, 1990

This decision has not been reviewed by OSA.

DOCKET
MAY 14 1990

FOLDER

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Bill Shanahan
Commissioner

5-2-90
Date

ACT 294

Case Identification: A-00108448; Application of
Empire Wrecking Company of
Reading Pennsylvania

Initial Decision By: ALJ George M. Kashi

Deadline for Return to OSA: May 4, 1990

This decision has not been reviewed by OSA.

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

W^m H. Smith

Commissioner

5-2-90

Date

ACT 294

Case Identification: A-00108448; Application of
Empire Wrecking Company of
Reading Pennsylvania

Initial Decision By: ALJ George M. Kashi

Deadline for Return to OSA: May 4, 1990

This decision has not been reviewed by OSA.

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

X Joseph P. Rucker, Jr.
Commissioner

5/1/90
Date

ACT 294

Case Identification: A-00108448; Application of
Empire Wrecking Company of
Reading Pennsylvania

Initial Decision By: ALJ George M. Kashi

Deadline for Return to OSA: May 4, 1990

This decision has not been reviewed by OSA.

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I want full Commission review of this decision.

Commissioner

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I do not want full Commission review of this decision.



Commissioner

5-4-90

Date

ACT 294

Case Identification: A-00108448; Application of
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Reading Pennsylvania

Initial Decision By: ALJ George M. Kashi

Deadline for Return to OSA: May 4, 1990

This decision has not been reviewed by OSA.

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Commissioner

Date

I do not want full Commission review of this decision.



Commissioner

4-30-90

Date

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