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THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00108543 Application of Central Control Delivery, Inc. A corporation of the State of Ohio, for the right to transport, as a common carrier, property (except household goods and commodities which because of size or weight require special equipment), between points in that part of Pennsylvania in and west of the Counties of McKean, Elk, Clearfield, Blair and Bedford. Prehearing conference.

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August 10, 1989

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Public Utility Commission

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Pages 1 to 14, inclusive

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BEFORE  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00108543 Application of Central Control Delivery, Inc. A corporation of the State of Ohio, for the right to transport, as a common carrier, property (except household goods and commodities which because of size or weight require special equipment), between points in that part of Pennsylvania in and west of the Counties of McKean, Elk, Clearfield, Blair and Bedford. Prehearing conference.

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Stenographic report of hearing held at the State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania

Thursday,  
August 10, 1989,  
10:15 o'clock a.m.

BEFORE  
RICHARD HERSKOVITZ, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

DAVID M. O'BOYLE, ESQUIRE  
1450 Two Chatham Center  
Pittsburgh, Pennsylvania 15219  
Appearing on behalf of Applicant

## 1 APPEARANCES CONTINUED:

2 JOHN A. PILLAR, ESQUIRE  
3 312 Boulevard of the Allies, Suite 700  
4 Pittsburgh, Pennsylvania 15222

5 Appearing on behalf of Protestants Scott Elgin;  
6 Ed's Transport Company, Inc.; Don Martin Trucking  
7 Company; Haser Trucking, Inc.; Reinsfelder, Inc.;  
8 Moore-Flesher Trucking Company, Inc.; W.D. Kerr &  
9 Sons, Inc.; Gateway Trucking, Inc.; Klapac  
10 Trucking, Inc.; Hardinger Transfer Company, Inc.;  
11 Wayne W. Sell Corporation; David Tesone Trucking,  
12 Inc.

13 WILLIAM J. LAVELLE, ESQUIRE  
14 Vuono, Lavelle & Gray  
15 2310 Grant Building  
16 Pittsburgh, Pennsylvania 15219

17 Appearing on behalf of Protestants Pitt-Ohio Express,  
18 Inc.; Hammel's Express, Inc.; Nicklaus Freight  
19 Lines, Inc.; Brocious Trucking, Inc.; Professional  
20 Courier International, Inc., t/d/b/a Professional  
21 Delivery & Courier; Perfetti Trucking, Inc.; Bulk  
22 Transportation Services, Inc.; Dart Trucking  
23 Company, Inc.; Bruce Trent Trucking, Inc.; C.D.  
24 Ambrosia Trucking Company; Wayne W. Friedline;  
25 William J. Brown Trucking, Inc.; South Hills  
Movers, Inc.; McNaughton Brothers, Inc.; Campbell  
Transfer & Storage Company, Inc.; Weleski Transfer,  
Inc.; Century III Services, Inc.; Fife Moving &  
Storage Company; Best Moving & Storage Company;  
Southway, Inc.

1 JUDGE HERSKOVITZ: This is the time and place set for a  
2 prehearing conference in the matter of the application of  
3 Central Control Delivery, Inc., and it's at Docket A-00108543.  
4 I'm Administrative Law Judge Richard Herskovitz assigned to  
5 hear this case and render an initial decision on behalf of the  
6 Commission.

7 I note the appearances, on behalf of the applicant,  
8 David M. O'Boyle, Esquire; and on behalf of a number of  
9 protestants, which I won't specifically name at this time,  
10 John Pillar, Esquire; and on behalf of even more protestants,  
11 William J. Lavelle, Esquire.

12 As I stated, this is a prehearing conference and this --  
13 first let me state on the record what I understand this  
14 application to be for, which is to transport property, except  
15 household goods and commodities requiring special equipment,  
16 between points in and west of McKean, Elk, Clearfield, Blair  
17 and Bedford Counties, and then there's certain restrictions  
18 that were originally proposed, and I'm sure there will be a  
19 few more by the time this is completed.

20 Protests were filed by, I think, 23 companies that Mr.  
21 Lavelle represents, and I believe it is 12 that Mr. Pillar  
22 represents. Also, a protest by Seaboard Tank Lines, who Mr.  
23 Loftus represents; and Lansberry, represented by Mr. Nurick;  
24 and Schwerman Trucking, represented by S. Bern Smith, who is  
25 in the same law firm with Mr. Nurick.

1 I received telephone calls on Tuesday from both Mr.  
2 Loftus and Mr. Nurick, indicating that they are aware of a  
3 proposed restrictive amendment by the applicant, that they  
4 would be satisfied with that amendment if approved by the  
5 Commission, and they requested that they not be required to  
6 attend today's prehearing, based on their anticipated  
7 withdrawal from this case on the restricted amendment.

8 I said that's okay, you don't have to come, but as  
9 always, attorneys who don't come to these proceedings are  
10 still bound by what is accomplished here, or what is done, but  
11 it does look as though Seaboard, Lansberry and Schwerman will  
12 be withdrawing, based on the restrictive amendment.

13 At this time let's hear from Mr. O'Boyle as to what he  
14 has in mind at this time.

15 MR. O'BOYLE: Your Honor, in preparation of this  
16 prehearing conference, I sent out to the protestants the  
17 proposed restrictive amendment that you referred to, and I  
18 also talked with Mr. Loftus and Mr. Nurick concerning the  
19 interests of their clients.

20 I received today a copy of a letter to you from Mr.  
21 Nurick confirming the conversation that you just related, and  
22 I also received a letter from Mr. Loftus with a copy to you,  
23 indicating that one of the restrictions in the amendment,  
24 which would exclude transportation of commodities in bulk,  
25 would satisfy Seaboard's interests.

1           The purpose for the prehearing conference is, of course,  
2 to discuss the nature of the restrictions, to see if we cannot  
3 eliminate the interests of some, if not all, of the  
4 protestants. And I have already discussed the matter with Mr.  
5 Pillar and Mr. Lavelle, and I believe that they will represent  
6 to you the status of their clients' interests.

7           As it stands now, it appears that there will be some  
8 protestants who will be remaining in the case, even if the  
9 proposed restrictive amendment is submitted. I would prefer  
10 to have confirmation of which protestants would withdraw if  
11 the amendment is submitted before submitting the amendment.  
12 So I do not contemplate at this point in time submitting the  
13 proposed amendment, but I suspect that we will be doing that  
14 in the near future.

15           JUDGE HERSKOVITZ: Okay. Mr. Pillar, do you have  
16 anything to state?

17           MR. PILLAR: I advised Mr. O'Boyle which of the carriers  
18 I represent would be satisfied if the amendment that he  
19 proposed were submitted. There are several carriers I  
20 represent who, even if the proposed amendment is submitted,  
21 would not withdraw, and on the basis of the proposal. So with  
22 certain exceptions, I would still be in the case, based on the  
23 proposal.

24           JUDGE HERSKOVITZ: Okay. Mr. Lavelle, do you have  
25 anything to state?

1 MR. LAVELLE: Yes. I also talked to Mr. O'Boyle about  
2 it, and I've confirmed that ten of the 23 protestants would  
3 withdraw on the basis of the amendment. My analysis of the  
4 interests of the remaining protestants is that I think the  
5 other 13 will probably withdraw also, based on some of the  
6 restrictions, but there's one or two that I have to check with  
7 and get definite confirmation before I can say that they will  
8 withdraw.

9 JUDGE HERSKOVITZ: Mr. Pillar, with those protestants  
10 who will not withdraw, based on what you've heard proposed so  
11 far, and I'll also throw this out to Mr. O'Boyle, is there --  
12 are there any amendments that could get these remaining  
13 protestants out that Mr. O'Boyle might want to offer? Has  
14 that been discussed?

15 MR. PILLAR: I really think the question is more  
16 properly addressed to me, since Dave wouldn't know  
17 particularly what my clients' interests are necessarily.

18 But it's the particular shippers that are named in the  
19 application, despite the fact that the application is  
20 restricted in some fashion to same day pickup, same day  
21 delivery, to shipments transported providing exclusive use of  
22 a vehicle, and shipments in excess of a thousand pounds.

23 That's essentially, in essence, what certain carriers I  
24 represent do for the shippers. My problem is not so much with  
25 the amendments, as who is named in the application.

1 JUDGE HERSKOVITZ: I see.

2 MR. PILLAR: I've advised Mr. O'Boyle which shippers in  
3 particular are of particular interest to carriers that I  
4 represent who want to remain in the case on the basis of the  
5 proposal. Of course, if the amendment were not made, all of  
6 the carriers I represent would stay in, as I'm sure would be  
7 true of the other ones.

8 But since we just have a proposal based on this  
9 amendment, I don't know that anything short of elimination of  
10 the shipper would do it, other than perhaps some other form of  
11 restriction that would differentiate the service proposed by  
12 this applicant from the services that are provided by my  
13 clients, and we really haven't explored that. There may be  
14 some possibility.

15 I've talked to Mr. O'Boyle previously about this case  
16 and he's advised me that he thought there may be some  
17 difference in the type of service that's proposed. I don't  
18 think it's been articulated yet in this proposal because the  
19 way it's worded now, we pick up and deliver on the same  
20 calendar day. We meaning my clients.

21 I think that's one of the hallmarks of this application,  
22 is that it was to be a pickup and a delivery on the same day.  
23 LTV calls Gateway Trucking and wants a pickup and delivery in  
24 the same day. They provide it. They provide the truck, they  
25 provide the shipment over a thousand pounds, and so forth.

1 That's, I think, the gist of it.

2 I might point out -- we haven't gotten to this point  
3 yet, but I also have some discovery that I'd like to get some  
4 sort of a time frame on if we're going to go to hearing.  
5 There's some interrogatories, and I have no objection to Mr.  
6 O'Boyle not having answered them, but if we're going to go to  
7 hearing, I'd sort of like to have some sort of a time frame  
8 for discovery.

9 JUDGE HERSKOVITZ: Okay. Well, I guess you -- with that  
10 statement you know what Mr. Pillar's looking for in the way of  
11 any restrictive amendments to get out the remaining  
12 protestants.

13 MR. O'BOYLE: Your Honor, I think we may be able to  
14 discuss off the record or afterwards --

15 JUDGE HERSKOVITZ: Yes. You can discuss that later.  
16 Assuming that not all the protestants withdraw, let's talk  
17 about when we want to have the hearing, how much time you need  
18 for discovery, how many days you need for hearing. So let's  
19 start, first of all, with -- well, let's get into the  
20 discovery aspect of it now. You've already filed something?

21 MR. PILLAR: Yeah. About the first of June, I guess, we  
22 -- the end of June, I think, I served some interrogatories,  
23 and they're not lengthy. There are just about six or seven of  
24 them. I don't anticipate any other discovery other than that,  
25 depending on what the answers are. So I'm not looking for

1 anything lengthy in terms of discovery, and I know Mr. O'Boyle  
2 has the interrogatories and I'm sure he'll answer them.

3 I just don't want to be precluded. If we have a hearing  
4 schedule, that if the answers to interrogatories come in and I  
5 want to get some further information, that I'll be precluded.

6 JUDGE HERSKOVITZ: Do you have -- were you planning on  
7 answering those soon or --

8 MR. O'BOYLE: Well, Your Honor, the reason we did not  
9 answer the interrogatories so far was because of the  
10 possibility of possibly having everyone withdraw from the  
11 case, so I didn't want to do any work unnecessarily. We can  
12 answer the interrogatories within the next, let's say three to  
13 four weeks, if that's not a problem.

14 JUDGE HERSKOVITZ: All right. Well, what I'm going to  
15 do, I'll set a date so that -- you know, otherwise it would  
16 just drag on here. Today is the 10th. How about by September  
17 1st, which is a little over three weeks? So we'll set  
18 September 1st.

19 MR. O'BOYLE: Your Honor, if I may, could we have one  
20 more week after that? I hope to be out at least one week  
21 during the next three weeks, if all goes well.

22 MR. PILLAR: I have no objection to that.

23 JUDGE HERSKOVITZ: Okay. Well, let's make it September  
24 8th, Friday, September 8th to answer the current, pending  
25 interrogatories.

1 MR. PILLAR: I would just ask if we could then have an  
2 additional 30 days beyond that for any additional discovery  
3 that may be warranted by virtue of the answers to  
4 interrogatories.

5 JUDGE HERSKOVITZ: Thirty days -- at least 30 days  
6 before the hearing is set up, is that what you --

7 MR. PILLAR: I was thinking 30 days beyond September the  
8 8th. I'm not sure we'll get a hearing before October.

9 JUDGE HERSKOVITZ: No, because September is -- at least  
10 my schedule, even the end of September would be bad, which it  
11 would be in mid-October probably. Can we use mid-October as a  
12 starting date for getting some hearing dates set up? Any  
13 problems with that?

14 MR. O'BOYLE: That's fine, Your Honor.

15 MR. PILLAR: No problem.

16 JUDGE HERSKOVITZ: How many days do you anticipate for  
17 that?

18 MR. O'BOYLE: As far as applicant's case, it would be  
19 two days.

20 JUDGE HERSKOVITZ: Okay. For protestants, as it stands  
21 right now, how many days would you need?

22 MR. LAVELLE: Your Honor, can I ask a preliminary  
23 question in that connection?

24 JUDGE HERSKOVITZ: Yes.

25 MR. LAVELLE: Mr. O'Boyle indicated he's fairly certain

1 that this amendment is going to be submitted, this one, or  
2 certainly making minor modifications to it. Whether or not we  
3 need eight days or two days for protestants depends on whether  
4 the restrictions particularly are made, and if I could ask Mr.  
5 O'Boyle a question on that point right now.

6 JUDGE HERSKOVITZ: Sure.

7 MR. LAVELLE: I have maybe eight or nine protestants  
8 that I think their interests are satisfied by the first  
9 proposed restriction and in the amendment that was submitted  
10 to us for consideration. It has to do with household goods  
11 and related types of electronic equipment. Whether or not you  
12 work it out with Mr. Pillar, or what have you, is there any  
13 problem with making that restriction?

14 MR. O'BOYLE: No, I don't foresee any. No.

15 MR. LAVELLE: Okay. That takes care of half of them.  
16 There's another group of six that are satisfied by the third  
17 restriction, having to do with exclusion of any transportation  
18 in bulk, and I think that's probably Mr. Loftus' basis for  
19 getting out, too.

20 MR. O'BOYLE: Yes.

21 MR. LAVELLE: Is there any reason why that would not be  
22 made?

23 MR. O'BOYLE: No, I can't foresee any at this point.

24 JUDGE HERSKOVITZ: Well, I think maybe what I'll do is  
25 -- did you have another question you wanted to --

1 MR. LAVELLE: Well, then I was going to ask if Mr. --  
2 well, maybe I'll put him on the spot here. If Mr. O'Boyle  
3 decides for some reason that not enough people are getting out  
4 of the case with those understandings, is that the idea, that  
5 the scope of the application might go back to the original?  
6 In other words, property unrestricted to named shippers, is  
7 that the part of the amendment that's in question right now?

8 MR. O'BOYLE: Pardon me?

9 MR. LAVELLE: Is that the portion of the proposed  
10 amendment that's in question that might be pulled off the  
11 table?

12 MR. O'BOYLE: Yes. As far as the bulk and the household  
13 goods, we have no problem in making those restrictions.

14 MR. LAVELLE: If I read it correctly, there's seven  
15 restrictive paragraphs. Four of them were in the original  
16 application as filed in one form or another, so they have to  
17 remain. The two I already mentioned he's going to make.  
18 There's a minor one here that doesn't concern me on lumber and  
19 lumber products, so I just wanted to get a feel as to where  
20 the problem area might be.

21 JUDGE HERSKOVITZ: Sure. What I'm going to do is I'm  
22 just going to schedule the two days for the applicant's case,  
23 and then we'll schedule the protestants' case after we hear  
24 the applicant's case. I'm thinking now of the week of October  
25 16th, or the week of October 23rd. Any problems with those

1 weeks?

2 MR. PILLAR: I don't have my calendar with me.

3 MR. O'BOYLE: I don't have mine with me either,  
4 unfortunately.

5 MR. PILLAR: I can't foresee any. I'm sure Mr.  
6 Huntington, when he schedules these, will look at all our  
7 calendars. He's pretty good about that.

8 JUDGE HERSKOVITZ: Sure. What I'll do, I'll tell him to  
9 -- let's start with the week of the 16th, and he'll go from  
10 there to see when everybody is available. This will be in  
11 Pittsburgh, I take it?

12 MR. O'BOYLE: Yes.

13 JUDGE HERSKOVITZ: Okay. Does anybody want to raise  
14 anything else before we conclude?

15 (No response.)

16 JUDGE HERSKOVITZ: All right. What I'll do is issue a  
17 short prehearing order, just summarizing what we've done here,  
18 which is basically set dates for answers to the pending  
19 interrogatories and what dates the hearings will begin, which  
20 would be on or after October 16th. Okay. Thank you very  
21 much. I appreciate your attendance.

22 MR. O'BOYLE: Thank you, Judge.

23 MR. PILLAR: Thank you.

24  
25 (The prehearing conference adjourned at 10:30 o'clock  
a.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

*Lisa J. Berkey*  
LISA J. BERKEY,  
Court Reporter

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**END**