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1. <u>REPORT DATE:</u>	October 2, 1990	:	2. <u>BUREAU AGENDA NO.</u>	OCT-90-T-1149*
3. <u>BUREAU:</u>	Transportation	:		
4. <u>SECTION</u>	Technical Review	:	5. <u>PUBLIC MEETING DATE:</u>	October 18, 1990
6. <u>APPROVED BY:</u>		:		
Director:	Ernst 7-2154	:		
Supervisor:	Bigelow/Marzolf 3-5945	:		
7. <u>MONITOR:</u>		:		
8. <u>PERSON IN CHARGE:</u>	Zeigler 3-5946	:		
9. <u>DOCKET NO.:</u>	A-00109472	:		
10. (a)	CAPTION (abbreviate if more than 4 lines)			
(b)	Short summary of history & facts, documents & briefs			
(c)	Recommendation			

(a) Application of John L. Battaglia and James A. Battaglia, copartners, t/d/b/a Battaglia Moving & Storage, Beaver Falls, Beaver County, for the transfer of all of the operating rights of Harry F. Swager, Sr., Stella V. Swager and Gertrude C. Swager, copartners, t/d/b/a E. W. Swager Sons, under the certificate issued at A-0102000, subject to the same limitations and conditions.

(b) The application for transfer is unopposed. The transferor seeks to sell all their operating authority to the applicant for the total consideration of \$13,000. No tangible assets are being transferred.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order approving the transfer application; and cancelling the certificate issued to the transferor by supplemental order.

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

CONTENT OF MOTION: Staff recommendation adopted.

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

KJR

October 26, 1990

IN REPLY PLEASE
REFER TO OUR FILE

A-00109472

John A. Vuono, Esquire
2310 Grant Building
Pittsburgh, PA 15219

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Application of John L. Battaglia and James A. Battaglia,
copartners, t/d/b/a Battaglia Moving and Storage

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

A Certificate of Public Convenience 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 the following forms with the Commission.
 - a. A Form E as evidence of minimum public liability and
property damage insurance coverage as shown on the back
of this sheet.
 - b. A Form H or Form UCPC-31 as evidence of cargo insurance
coverage in an amount not less than \$5,000 per vehicle.
Under certain circumstances, exemption from the cargo
insurance requirement may be secured by filing the
enclosed Form PUC-288.
- II. Prepare and file a tariff according to the enclosed
instructions except applicants for transfer of authority must
file a tariff adoption supplement which will be forwarded by
separate cover at a later date.

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 certificate has been issued authorizing actual operations. A motor carrier operating without complying with the above requirements will be subject to the penalty provisions of the Public Utility Code.

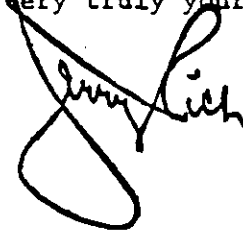
Commission regulations require compliance with all of the above requirements within sixty days of the date of this letter. Failure to comply within the sixty day period will cause the Commission to rescind the action of October 18, 1990 and dismiss the application without further proceedings.

If you foresee 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,

A handwritten signature in black ink, appearing to read "Jerry Rich", written over a large, stylized, looped flourish.

Jerry Rich, Secretary

smk
Enclosures
Certified Mail
Receipt Requested
John L. & James A. Battaglia, copts.
262 Hickory Drive
Beaver Falls, PA 15010

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held October 18, 1990

Commissioners Present:

William H. Smith, Chairman
Frank Fischl
David W. Rolka
Joseph Rhodes, Jr.

Application of John L. Battaglia and
James A. Battaglia, copartners, t/d/b/a
Battaglia Moving and Storage, for the
transfer of all of the operating rights
of Harry F. Swager, Sr., Stella V.
Swager and Gertrude C. Swager, copartners,
t/d/b/a E. W. Swager Sons, under the certi-
ficate issued at A-00102000 subject to the
same limitations and conditions.

A-00109472

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John A. Vuono for the applicant.

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O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed July 30, 1990. Public notice of the application was given in the Pennsylvania Bulletin of September 15, 1990. The unopposed application is certified to the Commission for its decision without oral hearing.

John L. Battaglia and James A. Battaglia are copartners trading as Battaglia Moving & Storage. The applicant is domiciled at 262 Hickory Drive, Beaver Falls, Beaver County. The partnership seeks to acquire through transfer all of the operating rights of E. W. Swager Sons. The partners have been involved in the transportation of household goods and related commodities for some years with experience gained by employment with existing household goods carriers providing service in Pennsylvania and elsewhere. The partners are familiar with the safety regulations of the Commission and the Pennsylvania Department of Transportation.

As evidence of their financial capacity to initiate the proposed service, the partnership entered a pro forma balance sheet dated June 30, 1990 reporting total assets of \$25,000 with no liabilities. The applicant has six late-model vehicles available to provide service.

The total consideration for the rights is \$13,000. No tangible assets are involved. The sales agreement requires the consideration to be paid as follows: \$500 has been paid upon signing of the sales agreement dated June 25, 1990. \$7,000 will be paid by cashier's check or cash upon settlement which is to occur within 30 days of issuance of our order. The balance of \$5,500 is secured by a promissory note payable at the end of one year from settlement with interest of 9 percent on this unpaid balance.

The fourth right to transfer in this matter authorizes the transportation of "road and building materials" from points in the borough of Rochester, Beaver County, and within five miles by the usually traveled highways of the limits of said borough to points within 35 miles by the usually traveled highways of the limits of said borough, and vice versa. The Public Utility Code at 66 Pa. C.S. §102(4) exempts from its definition of common carrier by motor vehicle any person or corporation who or which uses, or furnishes for use, dump trucks for the transportation of ashes, rubbish, excavated and road construction materials. By extension, the exemption of this commodity from the definition of common carrier by motor vehicle does not require a certificate of public convenience for its transportation. In this instance, we are transferring to the applicant the right to transport building materials, but we are eliminating road materials as this transportation does not fall within our jurisdiction.

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 proceeding.

We find:

1. The applicant is fit, willing and able to provide the service proposed.
2. 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 a certificate be issued granting the following rights:

1. To transport, as a Class B carrier, property between points in the borough of Rochester, Beaver County, and within five (5) miles by the usually traveled highways of the limits of said borough.
2. To transport, as a Class C carrier, property from points in the borough of Rochester, Beaver County, and within five (5) miles by the usually traveled highways of the limits of said borough to points in Pennsylvania within twenty (20) miles by the usually traveled highways of the limits of said borough.
3. To transport, as a Class D carrier, household goods and office furnishings, in use, from points in the borough of Rochester, Beaver County, and within five (5) miles by the usually traveled highways of the limits of said borough, to points in Pennsylvania within seventy-five (75) miles by the usually traveled highways of the limits of said borough, and vice versa.
4. To transport, as a Class D carrier, building materials from points in the borough of Rochester, Beaver County, and within five (5) miles by the usually traveled highways of the limits of said borough to points within thirty-five (35) miles by the usually traveled highways of the limits of said borough, and vice versa.
5. To transport, as a Class D carrier, contractor's equipment and machinery and building construction materials, such as are usually transported in dump trucks, between points not to exceed a distance of twenty-five (25) miles from point of origin to point of destination in the county of Beaver.
6. To transport, as a Class D carrier, coal, coke and other solid fuels from points in the borough of Rochester, Beaver County, to points within twenty-five (25) miles by the usually traveled highways of the limits of said borough, and vice versa;

all rights above subject to the following condition:

That no right, power or privilege is granted to transport property for Ro-MED Construction Co., Inc., West Penn Asphalt Co., and Mahoning Valley Sand Co., Inc., between points in the counties of Allegheny, Lawrence, Beaver and Butler, and from points in said counties to points in Pennsylvania, and vice versa.

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 property and 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 \$13,000 consideration paid by applicant for the rights and going concern value of the business be capitalized by applicant in Account 1550 - Other Intangible Property or in the alternative be charged off against applicant's ownership equity less any amount recorded under condition 2 above; provided the latter is sufficient in amount to absorb said charge off.
4. That the accounts of the transferee shall reflect the same book values as the records of the transferor at the effective date of the transfer, any previously recorded appreciation having been deleted therefrom; provided that the applicant shall not record in its utility accounts any amounts representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.
5. That the operating authority granted herein, or now held or subsequently granted to the applicant to the extent that it is duplicative

shall not be construed as conferring more than one operating right.

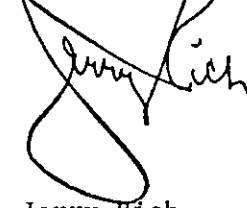
IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it has complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing and acceptance of evidence of insurance and a tariff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

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

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 rights granted the transferor, Harry F. Swager, Sr., Stella V. Swager and Gertrude C. Swager, copartners, t/d/b/a E. W. Swager Sons, at A-00102000 be cancelled and the record be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich", written over a large, stylized loop.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: October 18, 1990

ORDER ENTERED: OCT 26 1990



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

P. 112

October 30, 1990

IN REPLY PLEASE
REFER TO OUR FILE

R-16

John A. Vuono, Esquire
2310 Grant Building
Pittsburgh, PA 15219

DOCUMENT
FOLDER

Re: A-00109472, John L. Battaglia and James A. Battaglia, copartners,
t/d/b/a Battaglia Moving and Storage

Dear Mr. Vuono:

Under date of 10-26-90, the Secretary's office transmitted to you the Commission's compliance order adopted 10-18-90, evidencing approval of the above application which is in effect a transfer of the rights formerly held by Harry F. Swager, Sr., Strella V. Swager and Gertrude C. Swager, copartners, t/d/b/a E.W. Swager Sons. 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 tariff for the reason that the present tariff's description of operating authority does not conform with the approval of this application.

It will be necessary, therefore, to file a new tariff which should be designated Freight Pa. P.U.C. No.'s 1, 2 and 3. The tariff should name the same rates, rules and regulations as were filed by the former operator and may be issued to become effective on one day's notice under authority of Pa. Code, Title 52, Section 23.42.

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

By: Joseph M. Machulsky, Chief
Financial Document Section

cc: John L. and James A. Battaglia t/a
Battaglia Moving and Storage
262 Hickory Drive
Beaver Falls, PA 15010
Contact Person: G.L. Baker
(717) 783-5936

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