



A-00109478

KJR

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

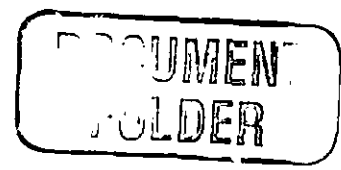
Public Meeting held September 3, 1992

Commissioners Present:

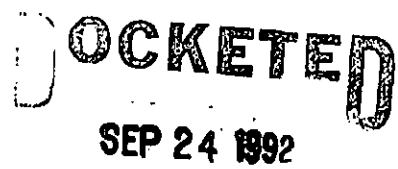
- David W. Rolka, Chairman
- Joseph Rhodes, Jr., Vice-Chairman
- Wendell F. Holland, Commissioner

Application of Pennsylvania Delivery Systems, Inc., a corporation of the Commonwealth of Pennsylvania, for the transfer of a portion of the operating rights of Carlisle Carrier Corp., a corporation of the Commonwealth of Pennsylvania, under the certificate issued at A-00109478, subject to the same limitations and conditions.

A-00110288



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John A. Gill 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 June 11, 1992. Public notice of the application was given in the Pennsylvania Bulletin of July 11, 1992. The unopposed application is certified to the Commission for its decision without oral hearing.

Pennsylvania Delivery Systems, Inc., seeks to begin providing service in Pennsylvania by acquiring part of the rights issued to Carlisle Carrier Corp. Through the authority to transfer, it will provide service for Purina Mills, Inc., from its facilities in the township of Hampden, Cumberland County; from the facilities of its subsidiary Bay Mor Pet Feeds, Inc., in the borough of Cressona, Schuylkill County; and from the facilities of Ralston Purina Company in the township of Hampden, Cumberland County, to points in Pennsylvania, and vice versa. This right authorizes the transportation of property, but excludes the transportation of petroleum and petroleum products in bulk in tank vehicles.

Pennsylvania Delivery Systems, Inc., is domiciled at 50 Utley Drive, Camp Hill, Cumberland County. It will use six tractors and two

trailers to provide service. Thomas R. Carbonaro, president and 60 percent shareholder of the applicant is experienced in the transportation industry. He has been involved in the industry since 1972 having held various positions with shippers and carriers.

As evidence of its financial capacity to initiate the proposed service the applicant entered a balance sheet dated December 31, 1991 reporting total assets of \$6,704 with total liabilities of \$300.

The total consideration for the rights is \$3,000. No tangible assets are involved. The sales agreement requires the consideration to be paid as follows: the total purchase price will be paid upon approval of the transfer application.

Since the applicant is buying a part of the authority of the transferor it is necessary to examine the authority being retained and the authority being sold to determine if duplications will result. The majority of authority being retained by Carlisle Carrier Corp. is shipper specific inasmuch as the authority requires the service be performed "for" named shippers. One paragraph of retained authority, however, is not shipper specific. The transferor is retaining authority which permits the transportation of property between the facilities owned, leased or utilized by Excel Logistics, Inc., and from said facilities to points in Pennsylvania, and vice versa, excluding the transportation of petroleum and petroleum products, in bulk in hopper-type vehicles or dry litharge in bulk. This authority will require stipulation to eliminate potential duplications. This paragraph of retained authority will be stipulated so that no service will be provided for Ralston Purina Company.

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 right:

To transport, as a Class D carrier, property for Purina Mills, Inc., from its facilities in the township of Hampden, Cumberland County; from the facilities of its subsidiary Bay Mor Pet Feeds, Inc., in the borough of Cressona, Schuylkill County; and from the facilities of Ralston Purina Company in the township of Hampden, Cumberland County, to points in Pennsylvania, and vice versa;

subject to the following condition:

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

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 applicant charge to Account 1550, Other Intangible Property, \$3,000, 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; and subject to further adjustment due to any normal interim transactions to the date of actual transfer.
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.
6. That the certificate/permit 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(a)(3).

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 issuance of the certificate be withheld pending receipt of the 1991 Annual Report of the transferor.

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 the provisions of this order, the rights granted the transferor at A-00109478, Folder 1, Am-A contained in the order adopted May 23, 1991, entered May 30, 1991, be and are hereby cancelled.

IT IS FURTHER ORDERED: That the operating rights authorized for transfer, and all rules, regulations and rates applicable thereto, as contained in the transferor's tariff are hereby cancelled.

BY THE COMMISSION,



John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: September 3, 1992

ORDER ENTERED: SEP 10 1992