



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

September 7, 1994

IN REPLY PLEASE
 REFER TO OUR FILE

A-00109478
 F0001, Am-I

DAVID J RADCLIFF ESQ
 2216 WALNUT STREET
 HARRISBURG PAS 17103

APPLICATION OF CARLISLE
 CARRIER CORPORATION

DOCUMENT
 FOLDER

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Robert A. Christianson. 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 17105-3265, 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.

las

Encls.
 Certified Mail
 Receipt Requested

WILLIAM CAMPBELL
 P O BOX 931
 SCRANTON PA 18501-0931

Very truly yours,

Allison K. Turner

Allison K. Turner
 Chief Administrative Law Judge

BTL

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Carlisle Carrier :
Corporation for the right to :
transport property (excluding :
household goods in use and :
commodities in bulk), for Grand :
Metropolitan, PLC, and its :
subsidiaries, the Pillsbury :
Company and Alpo Pet Foods, :
Inc., between points in :
Pennsylvania. :

Docket No.
A-00109478, F0001 Am-I

INITIAL DECISION

Before
Robert A. Christianson
Administrative Law Judge

DOCKETED
SEP 12 1994

HISTORY OF THE PROCEEDING

This Application was filed by Carlisle Carrier Corporation (Applicant) on February 2, 1994. Notice of the Application was published and one protest was filed, by Kane Freight Lines, Inc. (Kane).

The matter was set for hearing on August 3, 1994, by a notice dated June 16, 1994. I sent a letter concerning the hearing to counsel for applicant, copy to Kane, dated June 20, 1994. I mentioned the hearing date in this letter. The hearing was held, as scheduled, on August 3, 1994. Kane did not appear for the hearing and has not contacted me concerning this matter. I am, therefore, dismissing the protest. I retain the assignment and will proceed to reach the merits of this unopposed application.

DOCUMENT
FOLDER

The transcript of the hearing includes 42 numbered pages. Applicant presented two witnesses and four exhibits.

FINDINGS OF FACT

1. Kane had ample notice of the hearing but did not appear at the hearing. Tr. 3-5.
2. Applicant presented the testimony of David L. Metzler, its principal stock holder and president. Tr. 7, 8.
3. Applicant holds broad interstate authority and holds Pennsylvania authority. Tr. 8, 9.
4. Applicant is principally dedicated to providing service to the foodstuff and food products industry. Tr. 9.
5. Applicant has appropriate facilities and equipment. Tr. 11-14.
6. Applicant has instituted an appropriate maintenance program. Tr. 15-16.
7. Applicant has instituted a detailed safety program. Tr. 16-19.
8. Applicant employs 86 drivers plus 10 loaders and, in addition, has four people involved with maintenance. Tr. 19.
9. Applicant has an operations department and appropriate communications facilities. Tr. 20-21.
10. Applicant has received awards recognizing its high quality service. Tr. 22.
11. Applicant is financially sound and holds appropriate insurance. Tr. 23-24.

12. Applicant is serving the supporting shippers interstate and seeks to extend this service to intrastate service. Tr. 24.

13. Applicant provides multiple stops, pallet exchange and driver assistance in unloading, as required. Tr. 24.

14. Applicant will undertake special projects for its customers. Tr. 24-25.

15. Applicant is ready, willing and able to provide the additional service, throughout Pennsylvania, for the supporting shippers. Tr. 25.

16. Applicant's witness did not know of any relevant traffic carried by Kane. Tr. 26.

17. Applicant is careful about selecting drivers and goes to considerable effort in finding appropriate drivers. Tr. 39-40.

18. The witness for the supporting shippers was Wayne Grosskettler, Distribution Center Manager of the Parkesburg Distribution Center. Tr. 27.

19. The witness was authorized by the supporting shippers to represent them at the hearing. Tr. 28.

20. The shipper witness makes carrier selections for the Pillsbury Company. Tr. 29.

21. The witness is familiar with the service proposal associated with this application. Tr. 29.

22. Approval of the application would benefit the supporting shippers. Tr. 29.

23. The supporting shippers maintain a Parkesburg Distribution Center and a Alpo production facility in Lehigh Valley. Tr. 29.

24. There is a third party facility used at Fogelsville, Lehigh County. Tr. 29-30.

25. The Fogelsville facility took over when Pillsbury closed their facility in East Greenfield. Tr. 30.

26. The supporting shippers also use a logistics management group, Exel Distribution out of Mechanicsburg. Tr. 30.

27. From time to time, these arrangements may vary as to location. Tr. 30.

28. Destinations include Philadelphia, Harrisburg, York, Lancaster, Oaks, Milton, Pittsburgh, Punxsutawney, Altoona, New Kingston, Scranton, Wilkes-Barre, Wyomissing, Yeadon, Chambersburg, Christiana, Clearfield, DuBois, Fairless Hills, Greencastle, Stroudsburg, Swedesburg, Tobyhanna, Langhorne, New Cumberland, Belle Vernon, Pittston, Quakertown, Mechanicsburg, Temple, Uniontown and Williamsport. Tr. 31.

29. The supporting shippers require various specialized services. Tr. 31-32.

30. The supporting shippers have general need for service throughout Pennsylvania. Tr. 33.

31. Alpo receives inbound traffic from Hazelton, Scanton, Lancaster, Fredericksburg, and Wyomissing. Tr. 33.

32. Various commodities are brought inbound, basically cardboard, slip sheets, labels and various packaging supplies. Tr. 33.

33. Outbound shipments from Alpo would include petfoods, predominately dog food and cat food. Tr. 33.

34. Pillsbury ships out dry products like flour, cake mix, brownies and instant mashed potatoes, plus canned goods such as peas, beans and corn. Tr. 34.

35. Out of Fogelsville, they handle prepared dough products, such as biscuits, along with frozen food associated with Green Giant and pizza products. Tr. 34.

36. The shippers are seeking broader authority for applicant because they're interested in applicant's experienced personnel, prompt response to customer requests, familiarity with the shippers' facilities and products, and excellent safety record and full range of trailer types. Tr. 34.

37. The supporting shippers need additional trucking in Pennsylvania. Tr. 34.

38. Applicant has provided excellent service interstate. Tr. 35.

39. The supporting shippers are looking for a carrier which specializes in foodstuff. Tr. 35.

40. Congestion at loading facilities is a problem. Tr. 36.

41. The supporting shippers have experienced difficulty in obtaining the service they seek and in obtaining the number of trucks required. Tr. 37.

42. The food industry is experiencing a lack of qualified drivers. Tr. 37.

43. People in the industry realize that the shortage of drivers is adversely affecting business. Tr. 38.

DISCUSSION

The fundamental basis for Commission action on applications for public utility authority is found at Subsection 1103(a) of the Public Utility Code, 66 Pa. C.S. §1103(a). However, this standard is very general and the Commission has adopted more specific evidentiary criteria for motor common carrier applications. These criteria are found at 52 Pa. Code §41.14. This policy statement has been given various interpretations but the definitive interpretation is now set forth in the Commission decision at Application of Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262 (1990).

The provisions of Section 41.14 are divided into three distinct parts. The parts made be referred to "need", "fitness", and "adverse impact". In some instances, distinct consideration should also be given to the appropriate scope of authority to be granted.

Under Blue Bird, shippers support is sufficient to satisfy the applicant's burden and the applicant need not demonstrate either the inadequacy of existing service or alternatives to inadequacy. The Commission seeks proof of public demand or need for the proposed commodity description, and the proposed service, between specified points within the proposed service territory.

The "fitness" standard is rather clear and is not in major concern in this proceeding. The "fitness" standard can speak for itself. In this instance, applicant is currently operating and has clearly demonstrated its fitness to hold the additional authority here requested.

Applicant has demonstrated a fundamental need for the authority in question. The supporting shippers have clearly articulated reasons why they seek the services of applicant. However, some consideration should be given to the appropriate scope, both in the sense of commodity and in the sense of territory, appropriate for this kind of authority.

The supporting shippers have provided details concerning many points of origin and destination and concerning commodities. The authority being sought is quite specialized and limited. Under the circumstances, I have no trouble in approving the application as filed.

The application is now unopposed and I see no particular reason to give much consideration to the possibility of adverse impact. On balance, the application should be approved, the possibility of some adverse impact notwithstanding.

The Protestant, Kane, had been given official notice of the hearing. This was confirmed by my letter. Moreover, counsel for applicant stated at hearing that he had spoken with representatives of Kane. The conversation included reference to the date of the hearing. I conclude that Kane simply chose to not attend the hearing and to allow the application to go forward without opposition. Under the

circumstances, I am formally dismissing the protest, to make the application an unopposed application.

CONCLUSION

1. The Commission has jurisdiction of the subject matter and the parties.

2. The protest of Kane Freight Lines is hereby dismissed, for lack of prosecution.

3. Approval of the application is necessary or proper for the service, accommodation, convenience or safety of the public.

ORDER

THEREFORE, IT IS ORDERED:

1. That the application of Carlisle Carrier Corporation at A-00109478, F0001, Am-I, is approved and that the certificate issued to applicant at A-00109478, F0001, pursuant to the order adopted October 24, 1990, as amended, be further amended to include the following right:

To transport, a Class D carrier, property (excluding household goods in use and commodities in bulk), for Grand Metropolitan, PLC, and its subsidiaries, the Pillsbury Company and Alpo Pet Foods, Inc., between points in Pennsylvania.

2. That the applicant shall not engage in any transportation granted herein until it shall had complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing of proof of

insurance and the filing and acceptance of a tariff establishing just and reasonable rights.

3. That the authority granted herein, to the extent that is duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

4. That, in the event the applicant has not, on or before sixty (60) days from the final date of service of this order, complied with the requirements set forth herein, the application may be dismissed without further proceeding.

Robert A. Christianson

ROBERT A. CHRISTIANSON
Administrative Law Judge

Dated: _____

8/29/94

DOCKETED

Act 294

SEP 26 1994

Case Identification:

A-00109478, F0001 AM-I;
Application of Carlisle Carrier
Corporation

Initial Decision By:

ALJ Robert A. Christianson

Deadline for Return to OSA:

September 19, 1994

This decision has not been reviewed by OSA.

RECEIVED
SEP 15 1994
OFFICE OF SPECIAL
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* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

David W. Rolka, Jr.
Commissioner

9-15-94
Date

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24 SEP 26 AM 10:54
PA. P. U. C.
O. CONTROL DIV.

SEP 26 1994

Act 294

Case Identification: A-00109478, F0001 AM-I;
Application of Carlisle Carrier Corporation

Initial Decision By: ALJ Robert A. Christianson

Deadline for Return to OSA: September 19, 1994

This decision has not been reviewed by OSA.

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SEP 13 1994
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Commissioner

Date

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X Joseph P. Ruelke, Jr.
Commissioner

9/12/94
Date

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A-00109478, F0001 AM-I;
Application of Carlisle Carrier
Corporation

Initial Decision By:

ALJ Robert A. Christianson

Deadline for Return to OSA:

September 19, 1994

This decision has not been reviewed by OSA.

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SEP 20 1994

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X *Robert A. Christianson*
Commissioner

9-16-94
Date

Act 294

Case Identification: A-00109478, F0001 AM-I;
Application of Carlisle Carrier
Corporation

Initial Decision By: ALJ Robert A. Christianson

Deadline for Return to OSA: September 19, 1994

This decision has not been reviewed by OSA.

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SEP 20 1994
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AGENTS

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Date

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Lise Cuttfield

Commissioner

9 | 19 | 94

Date

Act 294

Case Identification: A-00109478, F0001 AM-I;
Application of Carlisle Carrier
Corporation

Initial Decision By: ALJ Robert A. Christianson

Deadline for Return to OSA: September 19, 1994

This decision has not been reviewed by OSA.

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SEP 13 1994

OFFICE OF SPECIAL
ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I ~~do not~~ want full Commission review of this decision.

~~John Hanger~~

Commissioner

9-13-94

Date