

PUC-77

KJR

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheets

1. <u>REPORT DATE:</u> October 16, 1990	:	2. <u>BUREAU AGENDA NO.</u> NOV-90-T-1237*
3. <u>BUREAU:</u> Transportation	:	
4. <u>SECTION</u> Technical Review	:	5. <u>PUBLIC MEETING DATE:</u> November 8, 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> Pike 3-5947	:	
9. <u>DOCKET NO.:</u> A-00109487	:	
10. (a) <u>CAPTION</u> (abbreviate if more than 4 lines)		
(b) Short summary of history & facts, documents & briefs		
(c) Recommendation		

(a) Application of George F. Delbaggio, t/d/b/a D&G Trucking, Tyrone, Blair County, for the approval of the transfer to applicant of all the rights held by George F. Delbaggio and Ray E. Golden, Copartners, t/d/b/a D&G Trucking at A-00100961.

(b) Transferor proposes to transfer its P.U.C. common carrier rights for a total of \$165,000, which is \$155,000 for the certificate and \$10,000 for the assets.

(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.

DAP:11

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

CONTENT OF MOTION: Staff recommendation adopted.

DOCKETED

JAN 14 1991



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

November 14, 1990

IN REPLY PLEASE
REFER TO OUR FILE

A-00109487

James D. Campbell, Jr., Esquire
3631 North Front Street
Harrisburg, PA 17110

DOCKETED
NOV 15 1990

Application of George F. Delbaggio,
t/d/b/a D & G Trucking

DOCUMENT
FOLDER

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.

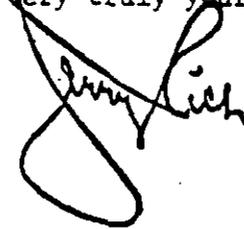
Commission regulations require compliance with all of the above requirements within sixty days of the date of this letter. Failure to comply within the sixty day period will cause the Commission to rescind the action of November 8, 1990 and dismiss the application without further proceedings.

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,



Jerry Rich, Secretary

smk
Enclosures
Certified Mail
Receipt Requested
George F. Delbaggio
R.D. #4, Box 201-A
Tyrone, PA 16686

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held November 8, 1990

Commissioners Present:

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

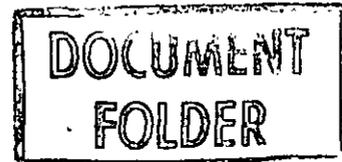
Application of George F. Delbaggio,
t/d/b/a D&G Trucking for the transfer
of all of the operating rights of
George F. Delbaggio and Ray E. Golden,
Copartners, t/d/b/a D&G Trucking
under the certificate issued at
A-00100961 subject to the same limita-
tions and conditions.

A-00109487

DOCUMENT FILED

NOV 15 1990

James D. Campbell, Jr. for the applicant.



O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed August 23, 1990. Public notice of the application was given in the Pennsylvania Bulletin of September 29, 1990. The unopposed application is certified to the Commission for its decision without oral hearing.

George F. Delbaggio, t/d/b/a D&G Trucking (D&G) an individual, is domiciled at RD #4, Box 201-A, Tyrone, Blair County. Applicant owns and will operate four tri-axle trucks. An unaudited financial statement submitted by the applicants shows total assets of \$453,00 with total liabilities of \$363,00. D&G will carefully screen all drivers and institute strong preventative maintenance and safety programs.

The rights to be transferred include rights over which this Commission has no jurisdiction. "Common carrier by motor vehicle", as stated at 66 Pa. C.S.A. §102(4) does not include: "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," (underlining added for emphasis). In light of the above provision we will eliminate the reference to excavated materials and road construction materials from right number 1 and 2. This will not effect the transferee's ability to handle these commodities, but authorization from this Commission is not necessary since such transportation is exempt from the Commission's jurisdiction.

The total consideration for the rights and other assets including good will is \$165,000. The rights have been assigned a value of \$155,000 with the assets \$10,000. The sales agreement requires the consideration to be paid as follows: ten percent at the execution of the sales agreement, July 24, 1990, fifteen percent within thirty days after the execution of the sales agreement, with the balance to be paid within forty-eight hours of the approval of the transfer by this Commission.

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 D carrier, sand, gravel, limestone, coal and amesite, in dump vehicles, between points in the counties of Armstrong, Blair, Cambria, Centre, Clarion, Clearfield, Elk, Huntingdon, Indiana and Jefferson, provided no haul shall exceed a distance of forty (40) statute miles from point of origin to point of destination.
2. To transport, as a Class D carrier, sand, gravel, limestone and amesite, for Interstate Amesite, Inc., St. Mary's Paving Company and Warner Company, from the facilities of said companies located in the counties of Armstrong, Blair, Cambria, Centre, Clarion, Clearfield, Elk, Huntingdon, Indiana

and Jefferson, to points in said counties, and vice versa, provided no haul shall exceed one hundred (100) statute miles from point of origin to point of destination.

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 \$165,000 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, George F. Delbaggio and Ray E. Delbaggio, Copartners, t/d/b/a D&G Trucking at A-00100961 be cancelled and the record be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich", is written over the typed name below. The signature is stylized and somewhat cursive.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: November 8, 1990

ORDER ENTERED: NOV 14 1990



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

KJR

November 16, 1990

IN REPLY PLEASE
REFER TO OUR FILE

R-16

James D. Campbell, Jr., Esquire
3631 North Front Street
Harrisburg, PA 17110

Re: A-00109487 - George F. Delbaggio, t/d/b/a D & G Trucking.



Dear Mr. Campbell:

Under date of November 14, 1990, the Secretary's office transmitted to you the Commission's compliance order adopted November 8, 1990, evidencing approval of the above application which is in effect a transfer of the rights formerly held by George F. Delbaggio and Ray E. Golden, copartners, t/d/b/a D & G Trucking at A-00100961. Also the present tariff does not contain a rule to determine mileage. The letter transmitting the order directs attention to the requirement for the filing of a tariff.

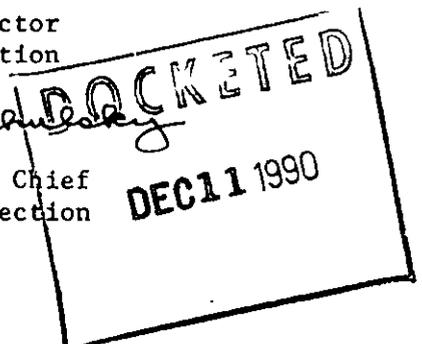
Pa. Code, Title 52, Section 23.13(c) provides that in the case of change of ownership, etc., if feasible to do so, the tariffs of the former operator shall be adopted by the new operator, and no change in rates is permitted to cover the transfer of rights.

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. 1. 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: George F. Delbaggio, t/a D & G Trucking
R.D. #4, Box 201-A
Tyrone, PA 16686

Contact Person: G.L. Baker
(717) 783-5936