

1. <u>REPORT DATE:</u>	:	2. <u>BUREAU AGENDA NO.:</u>
December 18, 1991	:	
3. <u>BUREAU:</u>	:	
Office of Special Assistants	:	DEC-91-OSA-207*
4. <u>SECTION(S):</u>	:	5. <u>PUBLIC MEETING DATE:</u>
	:	December 19, 1991
6. <u>APPROVED BY:</u>	:	
Director: C. W. Davis 7-1827	:	
Supervisor:	:	
7. <u>MONITOR:</u>	:	
	:	
8. <u>PERSON IN CHARGE:</u>	:	
G. Strella 7-1023	:	
9. <u>DOCKET NO.:</u>	:	
A-00109497	:	
10. (a) CAPTION (abbreviate if more than 4 lines)	:	
(b) Short summary of history & facts, documents & briefs	:	
(c) Recommendation	:	
(a) Application of Matthew S. Sieber, t/d/b/a Sieber Trucking	:	
(b) On September 13, 1990, Matthew S. Sieber, t/d/b/a Sieber Trucking ("Applicant") filed an Application for authority to transport, as a common carrier, wood products from points in the Counties of Juniata, Mifflin and Perry to points in Pennsylvania. On July 15, 1991, Administrative Law Judge ("ALJ") Herbert S. Cohen issued an Initial Decision ("I.D.") recommending that the Application be granted. On August 2, 1991, Robert G. Hack ("Protestant") filed Exceptions to the decision. The Applicant filed a Reply to the Exceptions on August 6, 1991.	:	
(c) The Office of Special Assistants recommends that the Commission adopt a proposed Opinion and Order which denies the Exceptions and adopts the Initial Decision of the ALJ, thus granting the Application. The OSA further recommends issuing an Order to Show Cause against Jay Fulkroad and Sons, Inc., A-105335, for illegally leasing its common carrier authority.	:	
11. MOTION BY: Commissioner Chm. Smith	:	Commissioner Holland - Yes
	:	Commissioner
SECONDED: Commissioner Rolka	:	Commissioner Rhodes - Yes

DOCUMENT  
FOLDERDOCKETED  
FEB - 6 1992

CONTENT OF MOTION: That Ordering Paragraph number four (4) of the Opinion and Order, be modified to read: 1) 4. That the Application of Matthew S. Sieber, t/d/b/a Sieber Trucking at Docket No. A-00109497 be, and hereby is, granted, and that a certificate be issued granting the following right: To transport, as a Class D Common Carrier, wooden pallets, skids and trusses from points in the Counties of Juniata and Perry to points in Pennsylvania; subject to the following conditions: provided that no right, power or privilege is granted to perform transportation to points in the County of Clearfield;

Continued

Continued

CONTENT OF MOTION:

- 2) that the Initial Decision of the Administrative Law Judge be adopted, as modified by this Motion;
- 3) that the Office of Special Assistants prepare an Order consistent with this Motion.



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

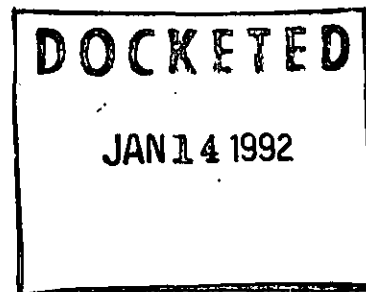
KJR

January 7, 1992

IN REPLY PLEASE  
REFER TO OUR FILE

A-00109497

DAVID RADCLIFFE ESQUIRE  
407 NORTH FRONT STREET  
HARRISBURG PA 17101



Application of MATTHEW SIEBER t/d/b/a SIEBER TRUCKING

Dear Sir:

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.

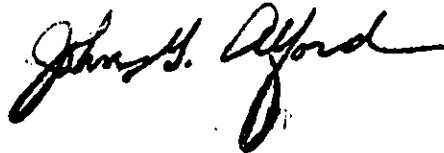
Commission regulations require compliance with all of the above requirements within sixty days of the date of this letter. Failure to comply within the sixty day period will cause the Commission to rescind the action of December 19, 1991 and dismiss the application without further proceedings.

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,



John G. Alford, Acting Secretary

JZ

Enclosures

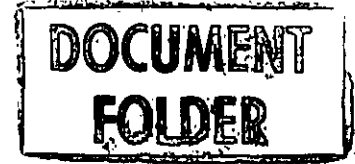
Certified Mail

Receipt Requested

cc:applicant

203 Licking Street  
Mifflin PA 17058

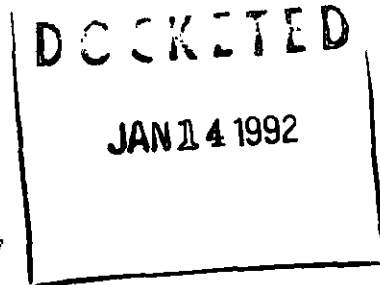
PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
HARRISBURG, PA. 17120



Public Meeting held December 19, 1991

Commissioners Present:

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



Application of Matthew Sieber  
t/d/b/a Sieber Trucking

A-00109497

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for disposition are the Exceptions ("Exc.") filed by Robert G. Hack ("Protestant") on August 2, 1991, to the Initial Decision ("I.D.") of Administrative Law Judge ("ALJ") Herbert S. Cohen served on July 15, 1991. The Initial Decision recommended that the Application be granted. On August 6, 1991, Matthew Sieber, t/d/b/a Sieber Trucking ("Applicant") filed a Replies to the Exceptions ("R.E.").

Background

By this Application, filed on September 13, 1990, the Applicant sought to obtain the following authority:

To transport, as a common carrier by motor vehicle, wood products from points in the Counties of Juniata, Mifflin and Perry, to points in Pennsylvania.

(I.D., p. 1).

On October 1, 1990, the Applicant filed two additional Applications for Temporary Authority and Emergency Temporary

Authority for the same service sought in this Application. Those Applications were denied. However, on March 29, 1991, by Order on Exceptions, this Commission granted the Application for Temporary Authority limited to providing service for Perry Pallet, Inc., from Millerstown, Perry County, to points in Pennsylvania.

Protests were filed by Gary L. Ramsey Trucking, Inc., Robert G. Hack, and Butler Trucking Company. The Protest of Butler Trucking was withdrawn based on a restrictive amendment to the Application, under which the Applicant will perform no service to points in the County of Clearfield. The ALJ held hearings on February 4, and March 4, 1991. (I.D., pp. 1-2).

In the Initial Decision, the ALJ made numerous Findings of Fact and Conclusions of Law (I.D., pp. 14-35, and p. 40, respectively), which we incorporate by reference, and adopt, unless otherwise modified by this Opinion and Order. Furthermore, any exception or issue raised on Exceptions which we do not specifically address is denied without further comment.

#### Discussion

Before discussing the Exceptions, we will review the requirements of law regarding the granting of an Application to provide service as a common carrier. The Public Utility Code states that it shall be lawful to provide service as a public utility only after applying for and obtaining a certificate of public convenience from this Commission. 66 Pa. C.S. Section 1101. Included in the definition of a "public utility" is any person or corporation transporting persons or property as a common carrier. 66 Pa. C.S. Section 102. The Public Utility Code further states:

A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary

or proper for the service, accommodation, convenience, or safety of the public.

(66 Pa. C.S. Section 1103 (a)).

In applying these requirements to motor carrier applications, we have adopted Section 41.14 of our regulations, which states:

- (a) An applicant seeking motor common carrier authority has the burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.
- (b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.
- (c) The Commission will grant motor carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest.

(52 Pa. Code Section 41.14).

In Application of Blue Bird Coach Lines, Inc., (Blue Bird) 72 Pa. P.U.C. 262 (1990), we stated:

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant's proposed service will satisfy the supporting witnesses' asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14(a) by establishing that "approval of the application will serve a useful public



purpose, responsive to a public demand or need." E.g., Seaboard Tank Lines, Inc., 93 Pa. Commonwealth Ct. at 613, 502 A.2d at 768; Re Lenzner Coach Lines, Inc., 63 Pa. P.U.C. 217 (1987). See also Morgan Drive Away, Inc., v. Pennsylvania Public Utility Commission (Morgan Drive Away, Inc. II) 16 Pa. Commonwealth Ct. 293, 328 A.2d 194 (1974). This interpretation of subsection 41.14(a) is consonant with our avowed reason for promulgating the transportation regulatory policy statement at 52 Pa. Code [Section] 41.14, namely, to eliminate monopolistic protection of existing motor carriers and to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.

(Blue Bird, at 274).

We further stated:

Moreover, the supporting witnesses must identify Pennsylvania origin and destination points between which they require transportation, and these points must correspond with the scope of the operating territory specified in the application. E.g. Re Nothstein Bros. Inc., 64 Pa. P.U.C. 411 (1987); Re Purolator Courier Corp., 50 Pa. P.U.C. 308 (1976).

The particular circumstances of a case determine what constitutes sufficient evidence of a public demand/need for the applicant's proposed service. Noerr Motor Freight. Inc. v. Pennsylvania Public Utility Commission, 181 Pa. Superior Ct. 322, 124 A.2d 493 (1956); Re Purolator Courier Corp. Therefore, the number of witnesses which will comprise a cross section of the public on the issue of the public demand/need for an applicant's proposed service will necessarily vary with the circumstances of the case such as the breadth of the applicant's intended operating territory, the population density in the intended operating territory, and the scope of the requested operating authority. Purolator Courier Corp. II; Purolator Courier Corp. I; Noerr Motor Freight. Inc.; Application of Suburban Transit, Inc., A-

00107286 (order adopted October 27, 1988, entered November 4, 1988); Re Purolator Courier Corp. Where the intended operating territory is broad and heavily populated and the applicant seeks an expansive grant of operating authority, more witnesses are required to show a cross section of the public needing the applicant's proposed transportation in the intended operating territory. Conversely, where the intended operating territory is restricted and not populous and the applicant seeks a narrow grant of operating authority, fewer witnesses are required to show a cross section of the public needing the applicant's proposed transportation in the intended operating territory.

(Blue Bird, at 274-275).

In its first Exception, the Protestant argues that the ALJ erred in finding that the Applicant has demonstrated the requisite propensity to operate legally. The Protestant contends that the record in this proceeding clearly requires a contrary finding because the Applicant has violated the Commission's leasing regulations and has engaged in prior uncertificated and illegal operations. The Protestant further argues that the Applicant never ceased providing illegal service, and that the burden of proving good faith is on the Applicant and this burden must be met by clear and convincing evidence, citing National Retail, 530 A.2d at 993 and Re Antonio Romeo, 70 Pa. P.U.C. 366 (1989). (Exc., pp. 1-2).

The Protestant further argues that the Applicant's lack of fitness is demonstrated in the record. He points to the Applicant's testimony that, even though he has been in the trucking business since 1982, he is ignorant of this Commission's regulatory requirements (N.T., p. 12); that the Applicant knew that he needed authority from this Commission as early as June, 1990, but continued to provide service until filing an application (N.T., p. 16); that the lease presented at Applicant's Exhibit No. 3 is not signed by the authorized

carrier; that the Applicant, and not the authorized carrier, bills the shippers (N.T., pp. 13-14); there is no contact with the authorized carrier by the shippers (N.T., pp. 37, 50, 59 and 74); and that the Applicant charges rates agreed upon between it and the shippers, and not based on the tariff of the claimed authorized carrier (N.T., pp. 35-36). Accordingly, the Protestant argues that the ALJ erred in finding that this illegal service was a mere "technical violation" at page 38 of the Initial Decision. (Exc., pp. 2-3).

In response, the Applicant argues that the ALJ did not err in finding that the Applicant does not lack the propensity to operate legally. The Applicant contends that he provided all of the alleged illegal service under a lease with Jay Fulkroad which was executed on August 28, 1990, two days before the filing of this Application. The Applicant contends that he sought the advice of counsel as to whether he needed authority from this Commission as a result of learning that he needed authority from the Interstate Commerce Commission ("ICC") to provide interstate transportation. The Applicant argues that he immediately applied for, and received, authority from the ICC. He also applied for Emergency Temporary Authority and Temporary Authority from this Commission. (R.E., pp. 5-6).

In considering this matter, the ALJ stated:

While Applicant's prior uncertificated operations demonstrate negligent conduct respecting adherence to Commission Regulation and/or legislative direction, it does not, in our opinion, rise to the court enunciated standards of a persistent disregard for, flouting or defiance of the Public Utility Code and the Orders and Regulations of this Commission. When told he needed authority to continue in his operations, Applicant retained counsel and took the appropriate legal steps to obtain proper certification.

(I.D., p. 37).

We concur. The record shows that the Applicant took reasonable steps to obtain authority Temporary and Emergency Temporary Authority while the Application for permanent authority was pending. The Applicant continued operating under the lease agreement. We concur with the ALJ that the lease agreement is invalid, since it represents a leasing of authority. But there is nothing in the record to establish that the Applicant was aware that this arrangement was not legal. Therefore, we find that the Applicant operated in good faith.

While we do not hold the Applicant culpable for the invalid lease, we will not let this matter go unaddressed. In Re Antonio Romeo, 70 Pa. P.U.C. 362 (1989) ("Romeo"), we allowed the Applicant to rely on evidence which was similarly tainted by an illegal lease. However, we directed the Commission's Bureau of Safety and Compliance to prepare for our consideration an Order directing the certificated carrier to whom the Applicant was allegedly leased to show cause why its certificate of public convenience should not be revoked, or other penalties imposed, in light of its leasing of its operating authority to the Applicant in that case. (Romeo, at p. 376). We will take the same course of action in this proceeding.

In its second Exception, the Protestant argues that the Applicant was not properly insured while performing illegal operations. (Exc., pp. 7-9). In response, the Applicant argues that a check of the Commission's insurance filings will show that the insurance required for the Applicant's temporary Authority is on file with this Commission, which supports the ALJ's finding that the Applicant is adequately insured. Furthermore, the Applicant contends that Exhibit A-1 shows that his equipment is insured for \$750,000 for public liability damage, \$75,000 per load for cargo insurance, subject to a \$1,000 deductible. The Applicant contends that he carries uninsured motorist coverage and first party benefits. (R.E., pp. 6-7).

We have reviewed the insurance filings which carriers must file with this Commission and have found that the Applicant has the necessary insurance for its operations under its temporary authority. Therefore, we concur with the ALJ's finding and this Exception is denied.

In its third Exception, the Protestant argues that the ALJ erred in failing to consider the evidence which shows that the Applicant is financially unfit. The Protestant contends that the Applicant's Exhibit 1, Appendix G shows that the Applicant has failed to provide for current depreciation, that the Applicant's capital account shows a deficit of \$35,592.34, and that there is insufficient cash flow to make any current principal payments on a debt shown as \$76,921. The Protestant further argues that Appendix G shows no owners salary, nor does it show the Applicant as an employee. (Exc., pp. 9-10).

In response, the Applicant argues that his financial statement attached to Exhibit 1 shows that he has a cash position in excess of \$9,000, his total assets are \$361,000 and, in 1990, he operated at a profit on \$21,803.52, which reduced his equity deficit to \$13,788.82. (R.E., p. 7).

In weighing these facts, the ALJ concluded that the Applicant has demonstrated his financial ability. (I.D., p. 38). We agree. While the Applicant is not in the strongest financial situation, the record shows that he has the necessary equipment and financial capability to provide the proposed service. The record indicates that several of the supporting shippers are unsatisfied with, or have received inadequate service from, the existing carriers. The granting of this Application will tend to correct this, and is, therefore, in the public interest.

We note, however, that the Protest of Butler Trucking was withdrawn based upon a restrictive amendment to the

Application which would prohibit the Applicant from performing service to points in the County of Clearfield. The ALJ failed to include this restrictive amendment in the recommended grant of authority. Therefore, we are modifying the grant of authority to include this restrictive amendment.

When the evidence is considered as a whole under the Blue Bird requirements, we conclude that the Application should be granted, as recommended by the ALJ; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by Robert G. Hack on August 2, 1991, to the Initial Decision of Administrative Law Judge Herbert S. Cohen issued on July 15, 1991, be, and hereby are, denied.
2. That said Initial Decision of the Administrative Law Judge be, and hereby is, adopted, as modified in this Opinion and Order.
3. That the Bureau of Safety and Compliance, within sixty (60) days of the entry date of this Opinion and Order, prepare for consideration by this Commission at its Public Meeting, an Order directing Jay Fulkroad and Sons, Inc., A-105335 to show cause as to why its certificate of public convenience should not be revoked or other penalties imposed for entering into an invalid lease with the Applicant, Matthew Sieber, t/d/b/a Sieber Trucking, and thereby leasing its operating authority to the Applicant, as demonstrated by the evidence of record in this proceeding.
4. That the Application of Matthew S. Sieber, t/d/b/a Sieber Trucking at Docket No. A-00109497 be, and hereby is, granted, and that a certificate be issued granting the following right:

To transport, as a Class D common carrier, wooden pallets, skids and trusses from points in the Counties of Juniata and Perry to points in Pennsylvania;

subject to the following condition:

provided that no right, power or privilege is granted to perform transportation to points in the County of Clearfield.

5. That the Applicant shall not engage in any transportation granted herein until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing of insurance and the filing and acceptance of a tariff establishing just and reasonable rates.

6. That the certificate holder shall comply with all the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all pertinent regulations of this Commission now in effect, or as may hereafter be prescribed by the Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate.

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

8. That, in the event the Applicant has not, on or

before sixty (60) days from the entry date of this Order,  
complied with the requirements set forth herein, the Application  
shall be dismissed without further proceedings.

BY THE COMMISSION

  
Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: December 19, 1991

ORDER ENTERED: January 7, 1992