

APPLICATION

A-00109506 F1 AMB

LAW OFFICES

**VUONO, LAVELLE & GRAY**

2310 GRANT BUILDING

PITTSBURGH, PA. 15219-2383

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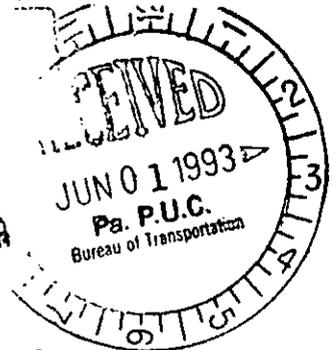
May 27, 1993

\* ALSO MEMBER OF FLORIDA BAR

Re: South Hills Movers, Inc. -  
--Purchase-SHM, Inc.  
Our File 3713-12

Mr. John G. Alford, Secretary  
Pennsylvania Public Utility Commission  
North Office Building  
P. O. Box 3265  
Harrisburg, PA 17105-3265

RECEIVED  
JUN 01 1993  
SECRETARY'S OFFICE  
Public Utility Commission



Dear Mr. Alford:

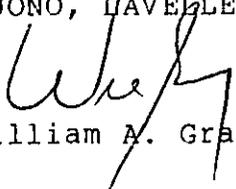
We enclose for filing with the Commission the signed original and two copies of the application of the above carrier.

We are enclosing a check in the amount of \$350.00 to cover the filing fee.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to us in the self-addressed, stamped envelope provided for that purpose.

Very truly yours,

VUONO, LAVELLE & GRAY

  
William A. Gray

dc

Enclosures

cc: South Hills Movers, Inc.

DOCUMENT  
FOLDER

APPLICATION FOR APPROVAL OF TRANSFER  
AND EXERCISE OF COMMON OR CONTRACT CARRIER RIGHTS

RECEIVED

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUN 01 1993

SECRETARY OF  
Public Utility Commission

848140  
06/18/93

Application of SOUTH HILLS MOVERS, INC.  
(Applicant/Transferee-Buyer)

for approval of the transfer and to exercise the right

as a common carrier, described as Docket  
(common-contract)

No. A-00099073, Folder No. 2, Am-I, issued to

SHM, INC.

(Transferor-Seller)

for transportation of property  
(persons-property)

**PUC USE ONLY**  
Docket No. A-189506  
Folder No. E1, AM-B

RECEIVED  
JUN 01 1993  
Pa. P.U.C.  
Secretary of Transportation

SEE INSTRUCTIONS BEFORE COMPLETING APPLICATION

1. South Hills Movers, Inc. (New)  
(Full and correct name of applicant/transferee)

2. (not applicable)  
(Trade name, if any)

The trade name \_\_\_\_\_ been registered with the Secretary of the  
(has or has not)

Commonwealth on \_\_\_\_\_ (attach copy of stamped registration form.)  
(date)

3. 3132 Industrial Boulevard  
(Business Street Address) (P.O. Box, if any)

Bethel Park Allegheny PA 15102 (412) 835-8600  
(City) (County) (State) (Zip) (Telephone)

DOCUMENT  
- 1 FOLDER

DOCKET  
APPLICATION  
AUG 2 1993  
ENTRY No. [Signature]

4. Applicant's attorney (for this application) is:

William A. Gray, Esq. 2310 Grant Building  
Vuono, Lavelle & Gray Pittsburgh, PA 15219 (412) 471-1800  
(Name) (Address) (Telephone)

5. Any documents should be mailed to:

William A. Gray, Esq. 2310 Grant Building  
Transferee: Vuono, Lavelle & Gray Pittsburgh, PA 15219 (412) 471-1800  
(Name) (Address)

William A. Gray, Esq. 2310 Grant Building  
Transferor: Vuono, Lavelle & Gray Pittsburgh, PA 15219 (412) 471-1800  
(Name) (Address)

6. Applicant does hold Pa. PUC authority under Docket Number  
(doing or does not)

A-00109056 and operates as a common carrier.  
(common or contract)

7. Applicant does hold Interstate Commerce Commission authority  
(doing or does not)

at Docket No. MC-72914.

8. Applicant is (check one):

Individual.

Partnership. Must attach a copy of the partnership agreement (unless a copy is presently on file with PUC), and list names and addresses of partners below (use additional sheet if necessary).

\_\_\_\_\_  
(Name) (Address)  
\_\_\_\_\_  
\_\_\_\_\_

Corporation. Organized under the laws of the State of Pennsylvania  
and qualified to do business in Pennsylvania by registering with the Secretary of the Commonwealth on \_\_\_\_\_ (Attach copy of Certificate of Incorporation or Authority and statement of charter purpose). Include as an attachment a list of corporate officers and their titles and the names, addresses and number of shares held by each stockholder. (See Appendices 12-8 and 12-9)

9. If applicant, its stockholders or partnership members are in control of or affiliated with any other carrier, state name of carrier(s); Docket Number(s) and nature of control or affiliation.

(See Supplement to Paragraph 9)

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10. Applicant proposes to acquire all of the operating rights now held  
(all or part)  
by transferor. Attach sheet describing rights to be transferred to applicant and rights to be retained by transferor, if any. If any rights are to be omitted, give reasons.

11. The reason for the transfer is (See Explanatory Statement)

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12a. The following must be attached:

- Sales Agreement. (Appendix 12-1)
- List of equipment to be used to render service. (summarize by type) (Appendix 12-2)
- Operating authority to be transferred/retained. (Appendix 12-3)
- Statement of Financial Condition. (Appendix 12-4)
- Statement of unpaid business debts of transferor and how they will be satisfied. (Appendix 12-5)
- Statement of safety program. (Appendix 12-6)
- Statement of transferee's experience. (Appendix 12-7)

b. Attach the following, as appropriate (check those attached):

- Partnership Agreement. (Not Applicable)
- Trade Name registration certificate. (Not Applicable)
- Certificate of Incorporation. (Pa. Corporation only) (Appendix 12-8)
- Certificate of Authority. (Foreign ((out-of-state)) Corporation only) (Not Applicable)
- Statement of corporate charter purpose. (corporations only) (Appendix 12-9)
- List of corporate officers and stockholders. (corporations only) (Appendix 12-9)
- Copy of short form certificate showing date of death of transferor and name of executor or administrator/administratrix. (Not Applicable)

13. Transferor attests that all general assessments and fines are paid, that no annual reports are due and agrees to continue to render the service which is to be transferred until this application is approved, whereupon transferor will surrender said certificate or permit for cancellation.
14. Transferee agrees to assume and pay any General Assessments that may be made against transferor as a common carrier for any and all operating periods up to the actual date of the transfer.

WHEREFORE, Transferee and Transferor request that the Commission grant the Transfer.

Transferee sign here: SOUTH HILLS MOVERS, INC.  
(each partner must sign) (Date)  
(Corporate Seal)  
By: Robert E. Lee May 18, 1993  
Robert E. Lee, President (Date)

Transferor sign here: SHM, INC.  
(Corporate Seal)  
By: Robert E. Lee May 18, 1993  
Robert E. Lee, President (Date)

THIS MUST BE COMPLETED BY NOTARY PUBLIC  
AFFIDAVIT OF TRANSFEREE/APPLICANT (Natural Person)

COMMONWEALTH OF PENNSYLVANIA :  
: ss:  
\_\_\_\_\_ County :

\_\_\_\_\_, being duly sworn (affirmed) according to law, deposes and says that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects to be able to prove the same at the hearing hereof.

\_\_\_\_\_  
Signature of Affiant

Sworn and subscribed before me this \_\_\_\_\_  
day of \_\_\_\_\_ 19 \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Signature of Official Administering Oath

AFFIDAVIT OF TRANSFEREE/APPLICANT (Corporation)

COMMONWEALTH OF PENNSYLVANIA :  
: ss:  
ALLEGHENY \_\_\_\_\_ County :

Robert E. Lee, being duly sworn (affirmed) according to law, deposes and says that he is President of South Hills Movers, Inc.,  
(Office of Affiant) (Name of Corporation)

that he is authorized to and does make this affidavit for it; and that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and that he expects the said South Hills Movers, Inc. to be able to prove the same  
(Name of Corporation)

the same at the hearing hereof.

Robert E. Lee  
Signature of Affiant  
Robert E. Lee, President

Sworn and subscribed before me this 18  
day of May 19 93  
My Commission Expires \_\_\_\_\_

Notarial Seal  
Ida Mae Shelpmen, Notary Public  
Bethel Park Boro, Allegheny County  
My Commission Expires April 22, 1996  
Member, Pennsylvania Association of Notaries

Ida Mae Shelpmen  
Signature of Official Administering Oath

MUST BE COMPLETED BY NOTARY PUBLIC  
AFFIDAVIT OF TRANSFEROR/SELLER (Natural Person)

COMMONWEALTH OF PENNSYLVANIA :

ss:

\_\_\_\_\_ County :

\_\_\_\_\_, being duly sworn (affirmed) according to law,  
deposes and says that the facts above set forth are true and correct; or are true and correct  
to the best of his knowledge, information and belief and he expects to be able to prove the same  
at the hearing hereof.

\_\_\_\_\_  
Signature of Affiant

Sworn and subscribed before me this \_\_\_\_\_

day of \_\_\_\_\_ 19 \_\_\_\_

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Signature of Official Administering Oath

AFFIDAVIT OF TRANSFEROR/SELLER (Corporation)

COMMONWEALTH OF PENNSYLVANIA :

ss:

ALLEGHENY County :

Robert E. Lee, being duly sworn (affirmed) according to law,  
deposes and says that he is President of SHM, Inc.;  
(Office of Affiant) (Name of Corporation)

that he is authorized to and does make this affidavit for it; and that the facts above set forth  
are true and correct; or are true and correct to the best of his knowledge, information and belief  
and that he expects the said SHM, Inc. to be able to prove the  
(Name of Corporation)

same at the hearing hereof.

Robert E. Lee  
Signature of Affiant  
Robert E. Lee, President

Sworn and subscribed before me this 18

day of May 19 93

My Commission expires \_\_\_\_\_

Notary Seal  
Ida Mae Shepman, Notary Public  
Bethel Park Boro, Allegheny County  
My Commission Expires April 22, 1996  
Member, Pennsylvania Association of Notaries

Ida Mae Shepman  
Signature of Official Administering Oath

Application of  
SOUTH HILLS MOVERS, INC.

EXPLANATORY STATEMENT

By Order entered November 28, 1990, the Commission approved the transfer of all of the issued and outstanding authority of South Hills Movers, Inc. at Docket No. A-00099073 to a newly formed corporation of the same name. The application was filed to facilitate reorganization of the companies. However, the transferor in the prior proceeding had pending with the Commission at the time of that transfer application an application at Docket No. A-00099073, F. 2, Am-I, which was not eventually approved until after a Commonwealth Court appeal, which resulted in an Opinion and Order Upon Remand entered May 17, 1992 being issued. Subsequently, the Commission approved the name change of the certificate holder at Docket No. A-00099073 to SHM, Inc. by Order adopted March 25, 1993. This application has been filed to transfer the authority granted at Docket No. A-00099073, F. 2, Am-I to the same corporation that purchased the other authority at Docket No. A-00099073.

Appendix 12-1

AGREEMENT

BETWEEN

SHM, INC.,  
a Pennsylvania Corporation (SELLER)

AND

SOUTH HILLS MOVERS, INC.  
a Pennsylvania Corporation (BUYER)

DATED

May 18, 1993

William A. Gray, Esq.  
VUONO, LAVELLE & GRAY  
2310 Grant Building  
Pittsburgh, PA 15219  
(412) 471-1800

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## AGREEMENT

THIS AGREEMENT is made this 18th day of May, 1993 between SHM, INC. (SELLER), a Pennsylvania corporation having its principal office at 3132 Industrial Boulevard, Bethel Park, PA 15102, and SOUTH HILLS MOVERS, INC. (BUYER), a Pennsylvania corporation having its principal office at 3132 Industrial Boulevard, Bethel Park, PA 15102.

### I. PREMISES

A. SELLER is a motor common carrier of property and holds a certificate of public convenience issued by the Pennsylvania Public Utility Commission (PUC) at Docket No. A-00099073.

B. BUYER is a motor common carrier of property and holds a Certificate of Public Convenience issued by the PUC at Docket No. A-00109506.

C. SELLER has agreed to sell and BUYER has agreed to buy, free of all liens, encumbrances, security interests and other claims, SELLER's operating rights at Docket No. A-00099073, F. 2, Am-I, as more fully described in Appendix A (herein called "the operating rights").

D. This transaction will require the prior approval of the PUC. BUYER and SELLER will file and diligently prosecute an application with the PUC for approval of the transaction pursuant to 66 Pa. C.S.A. §1102 of the Pennsylvania Public Utility Code (herein called "the application").

## II. TERMS AND CONDITIONS

In consideration of the mutual covenants and promises herein contained, the parties, intending to be legally bound, agree, represent and warrant as follows:

1. Purchase Agreement. SELLER will sell to BUYER and BUYER will buy, free and clear of all liens, encumbrances, security interests and other claims, the Pennsylvania intrastate operating rights owned by SELLER at its Certificate of Public Convenience issued by the PUC at Application Docket No. A-00099073, F. 2, Am-I, as described in Appendix A attached hereto.

2. Price and Payment. BUYER will pay to SELLER, or SELLER's assignee, for the operating rights the total sum of Five Thousand (\$5,000) Dollars to be paid in cash or by certified or cashier's check on the closing date.

3. Application for Approval. The parties agree that this transaction requires the prior approval of the PUC and that the transaction may not be consummated until final approval is secured by the PUC.

Accordingly, within thirty (30) days after the execution of this agreement, the parties will jointly file with the PUC an application pursuant to 66 Pa. C.S.A. §1102 seeking approval of the purchase of the operating rights by BUYER from SELLER.

BUYER and SELLER will, with due diligence and in good faith, cooperate fully in the preparation, filing and prosecution of the applications and agree to join in and execute

any and all such applications and other documents, subject to the approval of counsel.

BUYER and SELLER will supply such information as may be required, attend hearings, present testimony and otherwise cooperate to the end that approval of this transaction may be secured.

BUYER will be responsible for the payment of the filing fee in connection with the application and the legal fees incurred by BUYER in connection with the transaction and PUC approval.

4. Warranties as to Operating Rights. SELLER warrants and guarantees that the operating rights have been duly issued by the PUC; the rights are in full force and effect; the rights will not be subject to any liens, encumbrances, security interests or claims of any kind on the final closing date; and that there are and on the date of consummation will be no actions at law or equity, nor any proceedings before any agency pending or threatened against SELLER to revoke, suspend or otherwise restrict the operating authority.

5. Denial of Application. If the PUC, by its final order, should deny approval of the application, this agreement shall terminate. In such event, the parties shall have no further rights or obligations under this agreement.

The terms and conditions of this paragraph shall be subject to the appeal provisions set forth in paragraph 7.

6. Approval of Application Subject to Restrictions. It is the intention of the parties that BUYER will purchase the operating rights of SELLER at Docket No. A-00099073, F. 2, Am-I, as set forth in Appendix A.

If the PUC, by its final order, approves the application, subject to conditions which materially restrict, delete, modify or cancel any of the operating rights or materially limit the use of the operating rights set forth on Appendix A or materially limit the use of the operating rights by BUYER in any way, BUYER shall have the option to declare this agreement null and void and forthwith terminate the agreement by giving SELLER written notice thereof within twenty (20) days after the service date of any such orders.

If the PUC, by its final order, approves the application, subject to conditions which materially restrict, delete or cancel any of the operating rights to be retained by SELLER or materially limit their use in any way, other than by attaching the modifications set forth on Appendix B, SELLER shall have the option to declare this agreement null and void and forthwith terminate the agreement by giving BUYER written notice thereof within twenty (20) days after the service date of any such orders.

In the absence of the exercise of either of the aforesaid options, any such restrictions shall be considered modifications hereto and this agreement, as modified, shall remain in full force and effect.

The terms and conditions of this paragraph shall be subject to the appeal provisions set forth in paragraph 7.

7. Appeals. In the event the PUC, by its final order, should deny the application or grant the application subject to conditions of the type set forth in paragraph 6, either party may seek judicial review of those orders to the extent available.

In the event that either party elects to seek judicial review, the termination provisions set forth in paragraphs 5 and 6 above shall not become effective until the exhaustion of such judicial remedies. In such event, if the final order of the PUC denying the application is sustained by the court, this agreement shall be terminated in accordance with paragraph 5. If the final order of the PUC approving the application, subject to conditions, is sustained by the court, BUYER may exercise the right to terminate as set forth in paragraph 6 within twenty (20) days after the service of the order or judgment of the last Court of Review.

If either party elects to seek judicial review, the party so electing shall pay all expenses incurred in connection with the appeal, excluding counsel fees of the other party.

For the purposes of this agreement, the term "final order" shall be defined as an order of the PUC finally determining the application, specifically (a) in the case of the denial of the application, upon the expiration of the

period permitted by the Rules of Practice and regulations of the PUC or by the PUC order, whichever time period is greater, within which petitions for rehearing, reargument or reconsideration may be filed, or upon a denial of any such petitions, if filed; and (b) in the case of approval of such applications, the effective date of the order of approval unless stayed by the ICC or by a court.

8. No Assumption of Liabilities. This agreement involves only the purchase of operating rights by BUYER from SELLER. Accordingly, BUYER does not assume any claim, debts, causes of action, judgments or other liabilities or obligations of SELLER by reason of this agreement.

9. SELLER's Representations and Warranties. SELLER represents and warrants as follows:

9.1 SELLER is a corporation duly organized, validly existing and in good standing under the laws of the State of Pennsylvania, and has full power and authority under its Articles of Incorporation or charter to engage in the business which it is now conducting.

9.2 SELLER is a motor carrier of property and is lawfully conducting operations under its certificate of public convenience. The Certificate of Public Convenience evidencing the operating rights is in good standing with the PUC and there are no citations, formal complaints, investigations or enforcement proceedings pending against SELLER by the PUC, the Department of Transportation or any other regulatory agency applicable to the operating rights.

9.3 The operating rights are not subject to any prior claims, options to purchase, agreements of sale or other contracts or obligations of purchase and SELLER will not enter into any such contractual arrangements prior to the final closing date.

9.4 The Board of Directors of SELLER and, if necessary, the shareholders of SELLER have, by proper resolution, duly authorized the execution and delivery of this agreement, the filing of the necessary applications with the PUC and the performance of such other actions as may be required to effectuate the purposes of this agreement. A certified copy of the aforesaid resolution of the Board of Directors of SELLER and any requisite resolution of the shareholders of SELLER shall be delivered to BUYER within ten (10) days after request is made therefor.

9.5 The execution and performance of this agreement by SELLER will not violate any provision of law or contravene any provision of the Articles of Incorporation or bylaws of SELLER.

In the event of any default by SELLER in the terms of this paragraph or any other provisions of this agreement, BUYER shall have the option either to declare this agreement null and void by giving SELLER written notice of termination or to exercise against SELLER all of BUYER's available remedies hereunder.

10. BUYER's Representations and Warranties. BUYER represents and warrants as follows:

10.1 BUYER is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, and has full power and authority under its Articles of Incorporation or charter to engage in the business which it is now conducting.

10.2 The Board of Directors of BUYER and, if necessary, the shareholders of BUYER have, by proper resolution, duly authorized the execution and delivery of this agreement, the filing of the necessary applications with the PUC and the performance of such other actions as may be required to effectuate the purposes of this agreement. A certified copy of the resolution of the Board of Directors of BUYER and any requisite resolution of the shareholders of BUYER shall be delivered to SELLER within ten (10) days after request is made therefor.

10.3 The execution and performance of this agreement by BUYER will not violate any provision of law or contravene any provision of the Articles of Incorporation or bylaws of BUYER.

In the event of any default by BUYER in the terms of this paragraph or any other provisions of this agreement, SELLER shall have the option either to declare this agreement null and void by giving BUYER written notice of termination or to exercise against BUYER all of SELLER's available remedies hereunder.

11. Employee Relations. It is agreed that this contract involves the sale of only operating rights, a partial asset only, and that the BUYER is not a successor employer to SELLER

and has no obligation to hire any employees or to assume any labor agreements or employee obligations of SELLER.

SELLER represents that it is not a party to any collective bargaining agreements or individual labor agreements and acknowledges that BUYER has no obligations with respect to any employees of SELLER to provide employment, fringe benefit payments, vacation pay or any other benefits of employment nor any liability for any claims, grievances, labor disputes, charges or causes of action on the part of or in behalf of any employees or former employees of SELLER which may arise from or be related to events which occurred on or prior to the temporary authority closing date.

12. No Broker's Fees or Commissions. BUYER and SELLER agree that to the best of their knowledge there are no claims for any finder's fees or broker's commission in connection with this transaction. Notwithstanding the foregoing, each of the parties agrees to indemnify the other against and hold it harmless from any and all liabilities (including reasonable attorney's fees and expenses incurred in defending such claims) for any finder's fees or broker's commission in connection with the transaction contemplated by this agreement, insofar as such claim shall be based on arrangements or agreements made or allegedly made by or on behalf of the indemnifying party.

13. PUC Assessments. SELLER warrants that all general assessments heretofore made or that may be made pursuant to 66 Pa. C.S.A. §510 of the Pennsylvania Public Utility Code applicable to any and all operating periods up to the temporary

authority closing date will be the obligation of SELLER. Any general assessments applicable to periods subsequent to the aforesaid dates shall be the obligation of BUYER. In the event the PUC requires the payment of any such assessments due from SELLER as a condition precedent to the consummation of the permanent application, SELLER agrees to promptly pay any such assessments. In the event any such assessments are not paid by SELLER, BUYER shall have the right to deduct from the consideration due SELLER on the final closing date, the total amount of any such assessments or other charges due the PUC and make payment of such amounts directly to the PUC and to pay any balance of the consideration to SELLER. BUYER shall not, under any circumstances, be liable for or have responsibility to satisfy any obligations of SELLER as the result of this transaction.

14. Survival of Representations and Warranties. All provisions in this agreement applicable to BUYER and SELLER shall be deemed to be representations and warranties and shall survive the consummation of the transaction. SELLER acknowledges that all warranties, representations and covenants made in this agreement are for the purpose and with the intent of inducing BUYER to purchase the operating rights. BUYER acknowledges that all warranties, representations and covenants made in this agreement are for the purpose and with the intent of inducing SELLER to sell the operating rights.

15. Arbitration. Any dispute under this agreement shall be determined by arbitration conducted in accordance with the procedures of the American Arbitration Association. Each party shall appoint one arbitrator and notify the other of such appointment within ten (10) days after written request for appointment of an arbitrator is received from the other party. If the party so requested fails to appoint an arbitrator, the party making the request shall be entitled to designate two arbitrators. The two arbitrators shall then select a third arbitrator.

The decision of a majority of the arbitrators shall be conclusive and binding upon the parties. The arbitrators shall have the right to determine how their decision may be implemented or enforced. There shall be no appeal from the decision of the arbitrators.

16. Closing Date. The closing date is the day selected by agreement of the parties within a period of thirty (30) days after the effective date of the final order of the PUC, approving the application or the thirtieth (30th) such day if no other day is selected. The transaction shall be consummated on the final closing date at the time of day and place mutually agreed upon by the parties.

17. Rights of Successors and Assigns. This agreement is binding upon and inures to the benefit of the parties hereto and their respective successors in interest, assigns and legal representatives. SELLER shall have the right to assign in whole or in part the consideration provided for herein.

18. Construction. This agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

19. Entire Agreement of Parties. This agreement cannot be changed orally and constitutes the entire contract between the parties hereto. It shall not be modified nor changed by any expressed or implied promises, warranties, guaranties, representations or other information unless expressly and specifically set forth in this agreement or an addendum thereto properly executed by the parties.

20. Paragraph Headings. The headings referring to the contents of paragraphs of this agreement are inserted for convenience and are not to be considered as part of this agreement nor a limitation on the scope of the particular paragraphs to which they refer.

III. EXECUTION

IN WITNESS WHEREOF, the parties intending to be legally bound, have executed this agreement the day and year first above stated.

SHM, INC.

By: Robert Lee  
Robert Lee, President

SOUTH HILLS MOVERS, INC.

By: Robert E. Lee  
Robert E. Lee, President

APPENDIX A

OPERATING AUTHORITY TO BE TRANSFERRED

To transport, as a Class D carrier, household goods in use between points in the county of Beaver, and from points in said county to other points in Pennsylvania, and vice versa.

Application of  
SOUTH HILLS MOVERS, INC.

Appendix 12-2  
EQUIPMENT LIST

24 Tractors  
35 Trailers  
20 Straight Trucks  
4 Packing Vans

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held May 7, 1992

Commissioners Present:

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

South Hills Movers, Inc., a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate, which grants the right, inter alia, to transport, by motor vehicle, household goods and office furniture, in use from points in the City of Uniontown, Fayette County, and within fifteen (15) miles by the usually traveled highways of the limits of said City to points in Pennsylvania, and vice versa: SO AS TO PERMIT the transportation of household goods in use between points in the County of Beaver, and from points in said County to other points in Pennsylvania, and vice versa; which is to be a transfer of part of the rights authorized under the certificate issued at A-00107772, F.2 to D. Pierce Transportation, Inc., a corporation of the Commonwealth of Pennsylvania, subject to the same limitations and conditions.

A-00099073  
F. 2  
Am-I

OPINION AND ORDER UPON REMAND

BY THE COMMISSION:

This matter is before the Commission on reversal and remand of our Order entered March 29, 1991, wherein we acted to reverse the October 2, 1990 Initial Decision ("I.D.") of Administrative Law Judge ("ALJ") Robert P. Meehan. See South Hill Movers, Inc. v. Pa. P.U.C., \_\_\_ Pa. Commonwealth Ct. \_\_\_, No. 955 C.D. 1991 (filed January 7, 1992).

By Order entered March 29, 1991 herein, we acted to reverse the I.D. of ALJ Meehan and to deny the above-captioned Application for the transfer of authority.

In the January 3, 1992 Opinion and Order of the Commonwealth Court (filed on January 7, 1992), it acted to reverse our Order and to remand this case, with the direction that we grant the application to transfer.

### Background

By this Application, South Hills Movers, Inc. ("South Hills") sought to amend its common carrier certificate so as to permit the transportation of household goods in use between points in the County of Beaver, and from points in said County to points in Pennsylvania, and authorized under the certificate issued to D. Pierce at Docket No. A-00107772, F.2. After publication of the Application, timely Protests were filed by Debo Moving and Storage, Inc., ("Protestant"), Quality Movers East, Inc., Quality Movers North, Inc., Quality Movers, Inc., and W. F. Ohnezeit. After conducting a hearing and receiving briefs, the ALJ issued an I.D. recommending that the Application be approved. On October 19, 1990, Protestant filed Exceptions.

As noted above, by the Order of March 29, 1991 we denied the application which Order was reversed with direction that this transfer Application be approved.

In arriving at his recommendation, the ALJ made the following Findings of Fact and Conclusions of Law.

### Findings of Fact

1. The Applicant is South Hills Movers, Inc. The Applicant's business address is 3132 Industrial Boulevard, Bethel Park, PA (Tr. 71).
2. The Applicant holds intrastate authority from the [Pennsylvania Public Utility] Commission at A-00099073, F. 2, and several amendments thereto (Tr. 71-72; App. Ex. 3).

3. The Applicant holds interstate authority from the ICC [Interstate Commerce Commission] at MC-72914, and several sub-numbers thereto (Tr. 72-73; App. Ex. 4).
4. The Applicant presently provides service pursuant to its intrastate and interstate operating authorities (Tr. 73-74).
5. The Applicant seeks to acquire a part of the rights of Pierce to permit the Applicant to transport household goods for Beaver county to points in Pennsylvania, and vice versa (Tr.74).
6. The consideration to be paid by the Applicant to Pierce for the transfer of this authority is \$5,000 (Tr. 74).
7. The Applicant's only facilities are in Bethel Park, PA (Tr. 74-75).
8. The Applicant has sufficient equipment to provide the proposed service (Tr. 75-77).
9. The Applicant will not require additional equipment or personnel in order to provide the proposed service (Tr. 77-79).
10. The Applicant has an established maintenance and safety program (Tr. 77-78).
11. The Applicant has no Commission complaints pending against it (Tr. 79).
12. The Applicant has been providing service to and from Beaver County under its existing intrastate and interstate authorities (Tr. 75, 79-80).
13. The Applicant has filed proof of insurance and a tariff with the Commission (Tr. 80).
14. The Applicant has the financial ability to provide the proposed service (Tr. 80-81; App. Ex. 5).
15. The transferor is D. Pierce Transportation, Inc. Its business address is P.O. Box 453, Murrysville, PA. The physical

location of its facilities is Route 22 in Delmont, PA (Tr. 4).

16. Pierce holds intrastate authority from the Commission at A-00107772, F. 2, and amendments thereto (Tr. 4-6; App. Ex. 1).
17. On September 14, 1989, the Commission approved Pierce's application for the acquisition, by transfer, of the rights of Milo Express, Inc. (Milo). The certificate was issued on December 6, 1989 (Tr. 5; App. Ex. 1).
18. Between September 14 and December 6, 1989, Pierce made the required insurance and tariff filings with the Commission (Tr. 5).
19. Pierce has provided service pursuant to its intrastate authority (Tr. 6-7).
20. Pierce has not provided any service under the authority proposed to be transferred to the Applicant because Pierce has not received any request to provide that service (Tr. 7).
21. If Pierce had received a request to provide such service, it would have leased the equipment necessary to provide the service. It is possible to lease equipment for the movement of household goods (Tr. 7-8; 174-176).
22. At the time that Pierce acquired its authority from Milo, it had no intention of reselling that authority. It later decided that it did not want to be a carrier of household goods (Tr. 9-10).
23. Pierce has proof of insurance and a tariff on file with the Commission. The tariff includes rates for the transportation of household goods (Tr. 9-14; App. Ex. 2).
24. Pierce also holds interstate authority from the ICC and provides service pursuant to that authority (Tr. 9, 41-42; QM Ex. 4).

25. Pierce is primarily a transporter of commodities other than household goods (Tr. 21, 41-42, 49-50).
26. Pierce has transferred another part of the rights it acquired from Milo to Lynn and Hall at A-00109123, entered February 14, 1990 (Tr. 33-37; QM Ex. 3).
27. Pierce has not made any attempt to solicit business for the authority proposed to be transferred to the Applicant. Pierce does not advertise in any telephone directory for the Beaver County or Beaver Valley area because it does not have a Pittsburgh telephone number (Tr. 21, 29-30; QM Exs. 1-2).
28. Pierce has an "800" number, which it advertises in Beaver County on its business cards (Tr. 63).
29. Pierce would have signed the agreement to sell a part of the rights it was acquiring from Milo to Lynn and Hall prior to the issuance of Pierce's certificate on December 6, 1989 (Tr. 63-64).
30. Debo Moving & Storage, Inc., is protesting this application. Debo's business address is 1508-B State Street West, Baden, PA 15005 (Tr. 99).
31. Debo was incorporated in August of 1985 (Tr. 99).
32. Debo holds intrastate authority from the Commission at A-00106548, and Folder 1 and amendments thereto. Debo obtained its operating rights by transfer from Robert F. Gruber (Gruber) and John J. Pollock, t/d/b/a A. B. Pollock Transfer and Storage (Pollock) (Tr. 101-102, 129-130; Debo Ex. 1).
33. Debo provides service under its intrastate authority, and is an agent for an interstate household goods carrier (Tr. 102-103).
34. In May of 1990, Debo performed 27 movements of household goods under its intrastate authority, 23 of which were

"local" movements and four (4) of which went out of Beaver County. Debo earned \$8,578.50 for these 27 movements. In June of 1990, Debo performed 22 such movements, 20 of which were "local" and two (2) of which went out of Beaver County. Debo earned \$6,016 for these 22 movements (Tr. 109-110).

35. Debo's total operating revenues in May of 1990 were \$33,682.44, and, for the first five (5) months of 1990, its total operating revenues were \$130,102.61. Debo operated at a slight loss for the first five (5) months of 1990, as well as for the month of May (Tr. 110-111).
36. Debo competes with eight (8) other carriers for business in Beaver County. However, of these eight (8) other carriers, only Scoumis Transfer acquired operating authority for Beaver County that had not been previously authorized by the Commission to another carrier (Tr. 111-112, 117-120, 135-136).
37. Debo is currently receiving more calls for service in 1990 than when it commenced doing business in 1985 (Tr. 124-125).
38. Debo's intrastate operating revenues in 1990 represent a smaller percentage of its total operating revenues than was the case in 1985. However, this is due to the growth in the business of the other services offered by Debo (Tr. 125-126).
39. Debo's total intrastate operating revenues have increased operating revenues in 1989 over 1988 is attributable to Debo's acquisition of authority from Pollock (Tr. 131-132).
40. Quality Movers East, Inc., is the parent corporation of Quality Movers North, Inc., and Quality Movers, Inc. It is also affiliated with W. F. Ohnezeit, Inc., through common ownership. All four of the QM companies are protesting this application (Tr. 139-140).

41. Each of the QM companies holds its own grant of intrastate authority from the Commission (Tr. 143-144; QM Ex. 5).
42. Applications are currently pending before the Commission to transfer the intrastate operating rights held by Quality North, Quality and Ohnezeit to Quality East (Tr. 140-141).
43. Each of the QM companies also holds its own grant of interstate authority from the ICC. Applications are currently pending before the ICC to transfer all of the interstate operating rights held by Quality East, Quality North and Quality to Ohnezeit (Tr.144-145).
44. Two of the QM companies are also agents for the same interstate household goods carrier (Tr. 145, 160-161).
45. The QM companies have facilities, employees and equipment in Jeannette, Westmoreland County, which is their main facilities, and in New Brighton, Beaver County. The equipment in Beaver County undergoes periodic maintenance at the Jeannette facilities of the QM companies. Emergency repairs for such equipment are performed in Beaver County (Tr. 145-158).
46. The QM companies advertise in the Yellow Pages for Beaver County, and solicit business from owners whose properties are for sale (Tr. 159-160, 162; QM Exs. 1-2).
47. The QM companies had total gross intrastate operating revenues in 1989 of approximately \$300,000, of which the amount earned by Ohnezeit was approximately \$50,000 (Tr. 163).

\* \* \*

#### Conclusion of Law

1. The parties to, and subject matter of, this motor carrier certificate transfer application proceeding are properly before the Commission.

2. The presumption of continuing necessity is applicable to this certificate transfer proceeding, and the Applicant is not required to satisfy the burden of proof under 52 Pa. Code §41.14(a).
3. The Applicant has satisfied the burden of proof under 52 Pa. Code §41.14(b) that it has the technical and financial ability to provide the proposed service.
4. The provisions of 52 Pa. Code §41.14(c) are not applicable to certificate transfer proceedings.
5. The application should be approved.
6. Upon approval of the application, the certificate authorized to Pierce, at A-00107772, F. 2, should be modified to include a restriction against the transportation of household goods in use.

I.D., pp. 7-14, 39-40.

#### Discussion

In its Exceptions, the Protestant contended:

1. The Administrative Law Judge erred in concluding that the transferor is not engaged in trafficking of operating rights, or profiteering.
2. The transferor's testimony relied upon by the Administrative Law Judge to support his conclusion that the transferor is not engaged in profiteering or trafficking, is clearly self-serving and is contradicted by other evidence of record which the Administrative Law Judge ignored.
3. The Administrative Law Judge's opinion that transferor is not engaged in trafficking or profiteering is not supported by any reasons nor any discussion of the pertinent facts or the applicable law.

Exc., p. 3.

By way of argument, the Protestant asserted, among other things:

Pierce acquired operating rights from Milo Express by certificate issued December 6, 1989 (see Pierce Exhibit 1), a portion of which are not the subject matter of the application sub judice. Mr. Pierce, the President of transferor, testified that at the time he purchased the rights of Milo (December 6, 1989), he had no intention at that time of selling the rights. This self-serving testimony was the only evidence cited by Judge Meehan to support his conclusion that no trafficking or profiteering was being engaged in by Pierce. However, the facts show that the transferor purchased the Milo rights for the purpose of resale for a profit.

Pierce executed an agreement to sell the rights to transferee on January 5, 1990. Pierce had already sold a portion of the operating rights it acquired from Milo to Lynn & Hall Company for \$700.00, which transaction was approved on February 14, 1990 (see QM Exhibit 3). Pierce purchased the Milo operating rights for \$1,000.00. He sold a portion of the rights to Lynn & Hall Company for \$700.00 and entered into an agreement with South Hills Movers to sell the household goods rights acquired from Milo for a consideration of \$5,000.00.

Pierce never had any intention of operating the household goods rights acquired from Milo, which is demonstrated by the following unrefuted facts:

- (1) Pierce never advertised or held itself out as a mover of household goods or any other commodities in Beaver County;
- (2) Pierce had no prior experience in transporting household goods and neither had nor acquired equipment or facilities for such transportation;

- (3) Pierce acquired the Milo authority under no actual or apparent plans to operate under the authority;
- (4) Pierce had no personnel capable of estimating, packing or transporting household goods, which the transferee indicated was essential in order to engage in the moving business;
- (5) almost immediately after the certificate was issued to Pierce, it entered into an agreement to sell the household goods authority to South Hills Movers for a substantial (500%) profit;
- (6) since the contract with South Hills movers was signed, Pierce made no effort whatsoever to engage in the transportation of household goods and, as of the time of the hearing in this matter, had made no such effort;
- (7) Pierce had no knowledge of the rates that would be charged for a household goods move, which clearly refutes the transferor's stated ability to estimate and accept household goods shipments;
- (8) Pierce admittedly handled no household goods moves at any time under the operating rights here involved and the fair inference from all the facts is that Pierce had no ability to handle a household goods shipment; and
- (9) Pierce intended to sell the household goods authority and never intended to operate under the subject matter rights.

Judge Meehan did not consider any of these facts and simply concluded, without any discussion or reasons:

In my opinion, the evidence in this record fails to establish that Pierce is engaged in the trafficking of operating rights. (See Initial Decision, p. 30).

The concept of trafficking in operating rights is one that is well recognized by this Commission. In Re: Calypso, Inc., 65 Pa. P.U.C. 105 (1981), the Commission stated:

The Commission's purpose for that one year prohibition from transferring authority after the issuance of a certificate is to prevent sales of operating rights for the sole purpose of financial gain (65 Pa. P.U.C. at 106).

In Re: W-H Corporation, 66 Pa. P.U.C. 159 (1988), the Commission recently held that operating rights may not be transferred within one year, the Commission recognizing that such transfers amount to trafficking or profiteering in operating authority.

The Interstate Commerce Commission has long recognized that trafficking or profiteering in operating rights is ground for denial of approval of a transfer. In Jones Truck Lines, Inc.--Purchase (Portion)--Deaton, Inc., 127 M.C.C. 428 (1978), the Commission held:

Trafficking arises when a holder of operating rights is primarily treating that right as if it were an appreciable security. The holder does not intend to provide transportation services. Rather, it seeks to speculate on the resale value of the certificate. Such dealing in certificates has been found to be inconsistent with the public interest. Silver Ball Transportation, Inc.--Lease--Spear Trucking Corp., 49 M.C.C. 249, 258 (1949); Youngblood Truck Lines, Inc.--Purchase--Birch Truck Lines, 101 M.C.C. 520, 529 (1966).

\* \* \*

Judge Meehan distinguished Calypso and W-H Corporation by stating that these cases involve transfers of call or demand certificates in cities of the first class and such certificates are governed by the provisions of Section 1103(c)(7) of the Public Utility Code, 66 Pa. C.S.A. §1103(c)(7), which vests the Commission with discretion to impose such conditions on the issuance and transfer of such certificates in cities of the first class as the Commission deems appropriate. Judge Meehan acknowledged that Calypso and W-H Corporation do not specifically state that the one year prohibition against the transfer of a certificate is limited to call or demand certificates. However, Judge Meehan concluded that, in his "opinion", they should be so limited. He noted that the policy enunciated in Calypso and W-H Corporation does not appear to have been applied with respect to the transfer of other types of motor carrier certificates and the Commission's regulations pertaining to the transfer of certificates, 52 Pa. Code §31.4, are silent as to a one year prohibition on the transfer of a certificate.

Debo submits that the rationale behind trafficking or profiteering in certificates should apply equally to motor carrier transfers as well as to transfers of call or demand certificates. The Commission's policy, stated in Calypso and W-H Corporation, is intended to prevent dealing in certificates as if they were a security or chattel that the holder can buy and sell without even intending to engage in the service which the certificate requires the holder to provide. The evidence in this case indicates that Pierce acquired the rights of Milo Express with no intention of providing any service and as soon as a buyer could be secured, Pierce promptly entered into an agreement to sell the rights at a substantial profit. No clearer case of profiteering or trafficking in operating rights could be presented. Judge Meehan did not pay any more than lip service to this issue and, in fact, his conclusion is without any stated reasons or discussion of the facts. Instead, Judge Meehan relied on the self-serving statement of Pierce that, at the time his company acquired the certificate (December 6, 1989),

he did not intend to sell the operating rights, which is clearly inconsistent with other evidence of record.

R.E., pp. 4-9

In response, the Applicant argued:

Protestant Debo again argues in its Exceptions that the Commission decisions in Re: Calypso, Inc., 65 Pa. P.U.C. 105 (1987) and Re: W-H Corporation, 66 Pa. P.U.C. 159 (1988) require that this application be denied since this application was filed within a one year period after the rights were granted to the transferor. These cases, however, do not support protestant Debo's position and do not require a denial of this application.

The Administrative Law Judge correctly determined that the Calypso and W-H Corporation cases both deal with the transfer of taxicab rights. In both cases, a one year prohibition against transfer was set forth in the rights granted to the party seeking to transfer the involved rights. Both of the cases involved petitions to waive the one year restriction. In both cases, the petitions were granted and the one year restriction was waived. These cases certainly do not stand for the proposition that carriers other than taxicab companies cannot transfer authority during a one year period. The certificates of carriers other than taxicab companies do not contain the one year restrictions set forth in taxicab rights. Stated simply, these cases deal only with the transfer of taxicab rights where the Commission has established a special policy of prohibiting the transfer of taxicab rights within one year after purchase except where the Commission grants a special waiver.

The Certificate issued to the transferor in this proceeding does not contain a restriction against the transfer of the authority within one year and there is no basis for imposing the policy involving taxicab rights in this application, which involves the transfer of property rights.

The fact that this one year restriction policy does not apply to transfers other

than of taxicab rights is reflected in the fact that the Commission permitted the transfer of authority from the transferor in this proceeding to Lynn & Hall Company, Inc. where the application was filed within one year after the transferor secured the authority which it transferred to Lynn & Hall Company, Inc. (Prot. QM Ex. 3).

Protestant Debo refers to several decisions of the Interstate Commerce Commission dealing with trafficking or profiteering in operating rights. The facts of those cases are not similar to the facts of this case and, in any event, this Commission is not bound by decisions of the Interstate Commerce Commission. Furthermore, as will be discussed below, the evidence in this case simply does not support the argument that the transferor was engaged in trafficking or profiteering in operating rights. Therefore, the Commission should give no consideration to the Interstate Commerce Commission cases referred to by protestant Debo.

The Administrative Law Judge correctly determined that the facts in this case indicate that the transferor did not purchase the involved rights with the intention of selling the rights. The witness for the transferor testified that he did not have any intention of selling the rights which are the subject of this application at the time that he purchased the rights. (Tr. 9) It was only after the transferor purchased the rights that it commenced negotiations to sell the rights. The transferor determined that the involved rights would probably not be very useful to it and this is the reason why it decided to sell the rights.

Protestant Debo attaches a great significance to the fact that the transferor earned a profit from this sale. The profit earned by the transferor is irrelevant to the issue of whether it engaged in trafficking of operating rights.

Protestant Debo argues beginning at page 4 of its Exceptions that the transferor never had any intention of operating the household goods rights that it acquired. This argument is simply not supported by the facts. The witness for the transferor testified that it

would have provided household goods service by leasing equipment if it had been requested to provide that service. The simple fact of the matter is that it had no requests to provide this service. (Tr. 8) The evidence in this case clearly establishes that the transferor had rates in its tariff involving household goods transportation and could have provided such transportation if it had been requested to provide the service. (Tr. 9, 11-14)

Protestant Debo also argues at page 5 of its Exceptions that the transferor never advertised or held itself out as a mover of household goods or any other commodities in Beaver County. While it is true that the transferor did not advertise in Beaver County prior to the hearing, the witness for the transferor testified that it did advertise in Westmoreland County and adjoining counties. (Tr. 29, 69) Obviously, the involved rights not only involve transportation from Beaver County but also involve transportation to Beaver County. Therefore, the advertisements of the transferor in Westmoreland County and adjoining counties could have led to requests for service in connection with movements to Beaver County.

The Administrative Law Judge correctly determined that the transferor did not acquire the rights that it seeks to transfer in this proceeding with no intention of providing any service under those rights with the express intention of selling those rights for a profit. Furthermore, the Administrative Law judge correctly determined that there is no bar to the sale of property rights within a one year period after those rights were purchased.

R.E., pp. 4-8.

In considering this matter, the ALJ stated:

Factual Analysis

52 Pa. Code §41.14(a)

Initially, the Protestants argue that the Commission prohibits the transfer of a certificate within one year of its acquisition by the transferor. This argument is based on the Commission's decision in Re Calypso, Inc., 65 PA PUC 105 (1987), and RE W-H Corporation, 66 PA PUC 159 (1988). In Calypso, the Commission stated, 65 PA PUC at 106, that:

The Commission's purpose for the one year prohibition from transferring authority after the issuance of a certificate is to prevent sales of operating rights for the sole purpose of financial gain.

Calypso was an application for the transfer of a call or demand certificate in the City of Philadelphia. The issuance and transfer of call or demand certificates in cities of the First Class are governed by the provisions of Section 1103(c)(7) of the Code, 66 Pa. C.S. §1103(c)(7). This Section vests the Commission with discretion to impose such conditions on the issuance and transfer of such certificates in cities of the First Class as the Commission deems appropriate. W-H Corporation was also a proceeding for the transfer of a call or demand certificate. Although the Commission's decision in those proceedings do not specifically state that the one-year prohibition against the transfer of a certificate is limited to call or demand certificates, it is my opinion that they should be so limited. In this regard, it must be noted that this policy does not appear to have been applied with respect to the transfer of any other type of motor carrier certificate. Further, the regulations of the Commission pertaining to the transfer of certificates, 52 Pa. Code §31.4, is silent as to a one-year prohibition on the transfer of a certificate. Accordingly, it is my opinion that the Commission does not

have a generally applicable policy prohibiting the transfer of a certificate within one year of the acquisition of the certificate.

In addition, Protestants QM companies argue that the application should be denied because Pierce is engaged in the "trafficking of operating rights". In this regard, these Protestants note that the certificate was issued to Pierce on December 6, 1989, and that Pierce paid Milo \$1,000 for all of the rights acquired by Pierce from Milo at A-00107772, F. 2. On December 12, 1989, an application was filed for the transfer of Paragraph (3) of the authority Pierce acquired from Milo to Lynn & Hall Company, Inc. The consideration for this transfer, which was approved by the Commission, at A-00109123 by Order entered February 14, 1990, was \$700. Lastly, on January 5 (sic), 1990, the instant application was filed with the Commission, with a stated consideration of \$5,000 for the rights to be transferred to the Applicant. (QM Companies Brief at 11-12). In light of these facts, the QM companies argue that, since Pierce will have received total consideration of \$5,700 for only a part of the rights which it had acquired for \$1,000, within eight months of Pierce's acquisition of those rights, approval of the instant application would serve to encourage trafficking in operating rights, and, therefore, should be denied as a matter of public policy.

With respect to its acquisition of authority from Milo and the subsequent agreement to sell a part of those rights to the Applicant, Mr. Pierce testified (Tr. 9-10), as follows:

Q. At the time you purchased the rights that are in your initial grant of authority under certificate dated December 6, 1989, did you at that time have any intention of reselling these rights?

A. No, I didn't.

Q. Did you subsequently decide after you purchased the rights to sell the rights that are in question in this proceeding?

A. Yes.

Q. Why did you decide to sell the rights that are in question in this proceeding?

A. Well, after looking into it, I just felt that I didn't want to do anything under household goods.

In my opinion, the evidence in this record fails to establish that Pierce is engaged in the trafficking of operating rights.

(I.D., pp. 27-30).

The discussion portion and the ordering paragraphs of our March 29, 1991 Order will be reproduced below:

We concur with the Applicant and ALJ to the extent that there is no positive indication in our regulations or past decisions that the one year restriction for resale of a taxi certificate also applies to other types of certificates. However, with regard to all certificates, we note that the length of time between the purchase of a certificate and the resale of all or part of the rights contained in the certificate is an important factor in considering whether or not the resale constitutes trafficking or profiteering. The record shows that the sales agreement was entered into so soon after the transferor obtained its certificate, and that the resale of part of the operating authority occurred within one year of the purchase. Both of these factors weigh heavily against the granting of the Application.

We are aware that, by the time this Application is acted upon, more than a year will have passed since the Application was filed. Accordingly, one might query as to whether this passage of time, during the regulatory review process, would guard against too rapid a turn over and work in favor of the Applicant. In our opinion, the answer is no, because the crucial element is the length of time from the receipt of the Certificate and

the entering into of a sales agreement, and the filing of an Application to transfer all or part of the authority contained in the Certificate. That period of time, considered together with the transferor's intention to operate and the amount of the selling price are our best indicators as to whether or not the Applicant is profiteering.

The second important factor in considering this issue is evidence of the seller's intent to operate the certificate. The Protestant points out, above, that the seller never advertised its household goods authority; has no equipment to perform this service; has no personnel capable of estimating; entered into the sales agreement with South Hills for a 400% profit almost immediately after receiving its certificate and has no knowledge of the rates that would be charged for a household goods move. The Applicant argues that the transferor could have leased equipment to provide service, had he received any requests, and that the transferor's tariff contains rates for the transportation of household goods. While there is considerable evidence on both sides of the issue, we conclude that, on balance, this evidence weighs in favor of granting the Application, since the transferor provided for such transportation in its tariff and would have been able to lease equipment.

The third factor which is perhaps the most important, is the issue of excessive profit. Contrary to the Applicant's assertion above, this matter is very relevant because it represents the primary motivation for trafficking or profiteering. In this case, the evidence of record shows that the Applicant will make a combined total of \$5,700 from the sale of parts of the rights for which the Applicant paid \$1,000. This is substantial evidence of an unreasonable profit. Furthermore, the Applicant presented no evidence to show that these earnings were reasonable in light of offsetting expenses. Accordingly, this also weighs heavily against the granting of the transfer.

We also note that the three factors discussed herein are by no means the only relevant matters which may be considered in cases such as these. Furthermore, it is the weighing of

the totality of the circumstances, as presented in the evidentiary record, which will guide us in arriving at our decision.

In considering these matters, we conclude that the evidence, on balance, requires that the Application be denied. To do otherwise would encourage trafficking and fractionalization of operating authorities. It would also encourage the acquisition of certificates by those who have little or no interest in providing service, and whose sole concern is financial gain. This would be detrimental to the public interest, and should not be permitted; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of Debo Moving and Storage, Inc., filed on October 19, 1990, to the Initial Decision of Administrative Law Judge Robert P. Meehan issued on October 2, 1990, be and hereby are granted, consistent with this Opinion and Order.

2. That the Application of South Hills Movers, Inc., filed on January 17, 1990 at Docket No. A-00099073, F. 2, Am-I for the transfer to it of a part of the rights authorized to D. Pierce Transportation, Inc., at Docket No. A-00107772, F. 2 is denied.

The crucial portion of the Commonwealth Court's January 7, 1992 Order is found on Slip. Op. pages 4-5. This portion will be quoted below:

Our review of the record confirms that South Hills met the PUC's published evidentiary criteria under 42 Pa. Code §41.14. Nevertheless, the PUC refused to approve the transfer to South Hills because the PUC determined that the transferor had engaged in trafficking or profiteering, a criterion which the PUC had not previously published with respect to motor carriers. Indeed, this case appears to be the first instance in which the PUC has stated that a transfer of motor carrier authority may be denied on such basis.

PUC asserts that it may impose other reasonable criteria upon an applicant for transfer including a requirement that the applicant prove that no trafficking or profiteering has taken place. The PUC relies on its holdings in the "taxicab cases," Re: Calypso, Inc., 65 Pa. P.U.C. 105 (1987), and Re: W-H Corp., 66 Pa. P.U.C. 159 (1988), that authorize the PUC's restriction on the transfer of authority. Both these cases involve petitions by holders of certificates of public convenience authorizing taxicab service in cities of the first class to waive the one year restriction on the transfer of taxicab operating rights. We easily distinguish these cases, because the one-year restriction on transfer was printed on the face of the certificates when issued by the PUC. The PUC does not print a similar legend on motor carrier certificates.

The PUC also relies on the Interstate Commerce Commission's policy that trafficking and profiteering are grounds for denial of approval of a transfer of rights. See Silver Ball Transportation, Inc. - Lease - Spear Trucking Corp., 49 MCC 249 (1949). The fact that the ICC has such policy does not entitle the PUC to adopt such policy without legislative enactment or without first publishing a regulation.

The PUC's ruling in this case retroactively imposes a new condition on the certificate of authority. Such conditions should be imposed at the time the certificate is granted. 66 Pa. C.S. §1103(a). Although the PUC may adopt general criteria governing the transfer of authority, fundamental fairness requires that such general criteria be promulgated as published regulations through the rule-making process, instead of being adopted in an ad hoc, retroactive, case-by-case fashion.

Because the PUC abused its discretion by imposing this new requirement in such a manner, we reverse and remand with a direction to grant the application for transfer.

Based on the conclusion of the Commonwealth Court that we abused our discretion by imposing a new requirement, we shall, hereby,

deny the Exceptions of Debo Moving and Storage, Inc. and adopt the recommendations of the I.D. of ALJ Meehan, issued on October 2, 1990; **THEREFORE;**

**IT IS ORDERED:**

1. That our Opinion and Order, entered on March 29, 1991 in the above-captioned case, be, and hereby is, rescinded.

2. That the Exceptions of Debo Moving and Storage, Inc., filed on October 19, 1990, to the Initial Decision of Administrative Law Judge Robert P. Meehan issued on October 2, 1990, be, and hereby are, denied.

3. That the application of South Hills Movers, Inc., at A-00099073, F.2, Am-I, for the transfer to it of a part of the rights authorized to D. Pierce Transportation, Inc. at A-00107772, F. 2, is approved, and the certificate of public convenience issued to the Applicant at A-00099073, F.2, as amended, be further amended to grant the Applicant the following additional rights:

To transport, as a Class D carrier, household goods in use between points in the county of Beaver, and from points in said county to other points in Pennsylvania, and vice versa.

subject to the following conditions:

1. That the approval given hereby 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 therefore, 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, \$5,000, being the amount of the consideration payable by it for the rights and going concern value attributable thereto.

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.

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

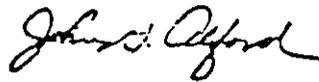
5. That the certificate holder shall not transfer, sell or in any way convey any of its outstanding capital stock to any individual, partnership, corporation or any entity, without the prior filing of an application and approval thereof by the Commission under 66 Pa. C.S. Section 1102(a)(3).

6. 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 a tariff establishing just and reasonable rates.

7. That in the event the applicant has not, on or before sixty (60) days from the date of service of the Commission's Order, complied with the requirements set forth above, the application shall be dismissed without further proceedings.

8. That upon compliance with the Commission's Order, the rights granted the transferor, D. Pierce Transportation, Inc., at A-00107772, F.2, be modified and amended to eliminate therefrom the rights granted herein to the transferee, and to restrict the remaining rights of the transferor to prohibit the transportation of household goods in use between points in the county of Beaver, and from points in said county to other points in Pennsylvania, and vice versa.

BY THE COMMISSION,



John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: May 7, 1992

ORDER ENTERED: May 13, 1992

Application of  
SOUTH HILLS MOVERS, INC.

APPENDIX 12-4  
FINANCIAL STATEMENTS  
(attached)

SHM, Inc. and SHM Holdings, Ltd. and Subsidiaries  
Consolidated and Combined Balance Sheets

	December 31	
	1992	1991
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 231,292	\$ 259,693
Receivables:		
Trade (net of allowance for doubtful accounts of \$14,314 in 1992)	646,622	615,134
Shareholder, including accrued interest based on prescribed IRS rates for short-term notes	243,377	200,310
Other	12,471	14,173
	902,470	829,617
Other current assets	164,047	152,611
Total current assets	1,297,809	1,241,921
Fixed assets, at cost:		
Land	288,588	288,588
Buildings	339,459	339,459
Leasehold improvements	1,132,290	1,128,330
Vehicles, equipment and furniture	3,268,814	2,879,910
Construction in progress	-	53,191
	5,029,151	4,689,478
Less accumulated depreciation and amortization	3,295,579	2,923,228
	1,733,572	1,766,250
Deferred income taxes	26,680	20,060
Other assets	213,689	217,542
	\$3,271,750	\$3,245,773
<b>Liabilities and shareholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 421,812	\$ 280,011
Accrued liabilities	207,158	285,905
Income taxes payable	6,237	24,900
Current portion of long-term debt	230,794	192,076
Total current liabilities	866,001	782,892
Long-term debt	334,246	369,628
Shareholders' equity:		
Capital stock	1,925,151	1,925,151
Capital surplus	213,958	213,958
Retained deficit	(67,606)	(45,856)
Total shareholders' equity	2,071,503	2,093,253
	\$3,271,750	\$3,245,773

SHM, Inc. and SHM Holdings, Ltd. and Subsidiaries

Consolidated and Combined Statements of Income and Retained Earnings (Deficit)

	Year ended December 31	
	1992	1991
Revenue, net of discounts	\$7,283,551	\$8,013,245
Operating expenses	<u>7,274,630</u>	<u>7,837,700</u>
Operating profit	8,921	175,545
Other income (expense):		
Interest income	12,551	11,851
Interest expense	(48,450)	(66,027)
Other	17,441	25,095
	<u>(18,458)</u>	<u>(29,081)</u>
(Loss) income before income taxes	(9,537)	146,464
Income tax expense (benefit):		
Current federal	10,982	29,974
Current state	8,331	20,491
	<u>19,313</u>	<u>50,465</u>
Deferred	(7,100)	1,840
	<u>12,213</u>	<u>52,305</u>
Net (loss) income	(21,750)	94,159
Retained (deficit) earnings at beginning of year	(45,856)	68,943
Retained earnings of LeeLease, Inc. contributed to SHM Holdings, Ltd.	-	(208,958)
Retained deficit at end of year	<u>\$ (67,606)</u>	<u>\$ (45,856)</u>

Application of  
SOUTH HILLS MOVERS, INC.

APPENDIX 12-5

STATEMENT OF UNPAID BUSINESS DEBTS OF TRANSFEROR  
AND HOW THEY WILL BE SATISFIED

Transferor will continue to be responsible for any present unpaid business debts and will pay those debts out of current funds.

Application of  
SOUTH HILLS MOVERS, INC.

APPENDIX 12-6

STATEMENT OF SAFETY PROGRAM

Applicant maintains a complete safety program which is conducted in accordance with the safety regulations of the Pennsylvania Department of Transportation, the Federal Department of Transportation and the Pennsylvania Public Utility Commission. Under this program all drivers are investigated and thoroughly examined prior to employment. Before a driver is assigned to a vehicle, he must successfully demonstrate his ability to operate such equipment safely. During the time of his employment, the driver is periodically given safety instructions that require him to meet certain high standards of operation. The program includes safety meetings where discussions are conducted concerning the safe operation of equipment.

Applicant has implemented a preventive maintenance program which requires the checking and servicing of equipment on a regular basis. No equipment is dispatched or utilized until known defects are corrected.

Application of  
SOUTH HILLS MOVERS, INC.

APPENDIX 12-7

STATEMENT OF TRANSFEREE'S EXPERIENCE

The management of Transferee has been involved in the transportation of household goods and office furniture and equipment in use for many years.

The management of Transferee is familiar with the safety regulations of the Pennsylvania Public Utility Commission and the Pennsylvania Department of Transportation. If this application is approved, Transferee will take such actions as may be necessary to assure that it is compliance with all of the Commission's regulations.

Microfilm Number \_\_\_\_\_

Filed with the Department of State on \_\_\_\_\_

Entry Number \_\_\_\_\_

Secretary of the Commonwealth

### ARTICLES OF INCORPORATION

Indicate type of domestic corporation (check one):

- Business-stock (15 Pa. C.S. § 1306)                      \_\_\_\_\_ Professional (15 Pa. C.S. § 2903)
- \_\_\_\_\_ Business-nonstock (15 Pa. C.S. § 2102)                      \_\_\_\_\_ Management (15 Pa. C.S. § 2701)
- \_\_\_\_\_ Business-statutory close (15 Pa. C.S. § 2304a is applicable)                      \_\_\_\_\_ Cooperative (15 Pa. C.S. § 7701)

1. The name of the corporation is: South Hills Movers, Inc.

This corporation is incorporated under the provisions of the Business Corporation Law of 1988.

2. The address of this corporation's initial (a) registered office in this Commonwealth or (b) commercial registered office provider and the county of venue is:

(a) 3132 Industrial Blvd. Bethel Park, PA 15102 Allegheny  
Number and Street                      City                      State                      Zip                      County

(b) \_\_\_\_\_  
Name of Commercial Registered Office Provider                      County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

3. The aggregate number of shares authorized is: 100,000 (other provisions, if any, attach 8 1/2 x 11 sheet)

4. The name and address, including street and number, if any, of each incorporator is:

Name	Address	Signature	Date
<u>Robert Lee</u>	<u>3132 Industrial Blvd. Bethel Park, PA 15102</u>	<u>Robert Lee</u>	<u>9-6-9</u>

5. The specified effective date, if any, is: \_\_\_\_\_  
month                      day                      year                      hour, if any

6. Any additional provisions of the articles, if any, attach an 8 1/2 x 11 sheet.

7. Statutory close corporation only: Neither the corporation nor any shareholder shall make an offering of any of its shares of any class that would constitute a "Public Offering" within the meaning of the Securities Act of 1933 (15U.S.C. § 77A et seq.).

8. Business cooperative corporations only: (Complete and strike out inapplicable term) The common bond of membership among its members/shareholders is: \_\_\_\_\_

64211 01 2306

SUPPLEMENT TO  
ARTICLES OF INCORPORATION  
OF  
South Hills Movers, Inc.

Standard of Care of Officers.

An officer shall perform his duties as an officer in good faith, in a manner he reasonably believes to be in the best interest of the Corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his duties, an officer shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

1. One or more directors or employees of the Corporation whom the officer reasonably believes to be reliable and competent in the matters presented.
2. Counsel, public accountants or other persons as to matters which the officer reasonably believes to be within the professional or expert competence of such person.
3. A committee of the board upon which he does not serve, duly designated in accordance with the law, as to matters in its designated authority, which committee the officer reasonably believes merit competence. An officer will not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted.

In discharging the duties of their respective positions, the officers, in considering the best interests of the Corporation, may consider the effects of any action upon employees, upon suppliers and customers of the Corporation and upon communities in which offices or other establishments of the Corporation are located, and all other pertinent factors. The consideration of those factors shall not constitute a violation of this subsection.

Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as an officer or any failure to take any action shall be presumed to be in the best interests of the Corporation.

67-2-111-01-126-05

If a bylaw adopted by the shareholders so provides, an officer shall not be personally liable, as such, for monetary damages for any action taken, or any failure to take any action, unless:

- (i) the officer has breached or failed to perform the duties of his office under this section; and
- (ii) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

The provisions of the prior paragraph shall not apply to:

- (i) the responsibility or reliability of an officer pursuant to any criminal statute; or
- (ii) the liability of an officer for the payment of taxes pursuant to local, state or federal law.

APPLICATION OF  
SOUTH HILLS MOVERS, INC.

APPENDIX 12-9

CORPORATE DATA

1. Names, Titles and Addresses of Corporate Officers:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Robert E. Lee	President/Treasurer	3132 Industrial Blvd. Bethel Park, PA 15102
Gary N. Lee	Vice President/ Secretary	3132 Industrial Blvd. Bethel Park, PA 15102

2. Names and Addresses of Corporate Directors:

<u>Name</u>	<u>Address</u>
Robert Lee	3132 Industrial Blvd. Bethel Park, PA 15102
Robert E. Lee	3132 Industrial Blvd. Bethel Park, PA 15102
Gary N. Lee	3132 Industrial Blvd. Bethel Park, PA 15102

3. Amount of Stock Authorized:

One Hundred Thousand (100,000) shares common stock  
having a par value of One (\$1.00) Dollar.

4. Amount of Stock Issued and Outstanding:

Fifty Thousand (50,000) shares common stock having a par value of One (\$1.00) Dollar.

5. Name, Address and Number of Shares Held by Each Shareholder:

<u>Name</u>	<u>Address</u>	<u>Number of Shares</u>
SHM Holdings, Ltd.	3132 Industrial Blvd. Pittsburgh, PA 15102	50,000

6. Corporate Purpose Clause:

To invest in, own, conduct, manage and operate the business of a common, contract, private or exempt carrier by motor vehicle transporting property and/or persons in interstate or foreign commerce or in intrastate commerce in any state of the United States, including between points in Pennsylvania pursuant to the regulations of the Pennsylvania Public Utility Commission, and business incidental and necessary to rendering such service, including owning, leasing and operating terminals, warehouses, platforms, garages and equipment.

To engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of Pennsylvania.

DATE: June 9, 1993

SUBJECT: Assessment Balance of Transferor

*CAROLAN BASS*  
TO: ~~Louis Miller~~, Assessment Specialist

FROM: David Ehrhart, Supervisor  
Application Section

We are in receipt of an application to transfer the authority held by:

Name SHM, Inc.

A# A-99073, F-2, Am-I

Utility Code 848140

Please review your records, indicate below the current assessment balance of this carrier and return this memo to me.

Balance \_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_

Thanks for your help and cooperation.

**COPY**

August 13, 1993

IN REPLY PLEASE  
REFER TO OUR FILE

■ WILLIAM A GRAY  
ATTORNEY AT LAW  
2310 GRANT BUILDING  
PITTSBURGH PA 15219

In re: A-00109506, F. 1, Am-B - Application of South Hills  
Movers, Inc.

Dear Sir:

Acknowledgement is made of an application filed by you on behalf of  
South Hills Movers, Inc. for the rights of SHM, Inc.

The application has been captioned as attached and will be submitted  
for review, provided no protests are filed on or before September 7, 1993. If  
protests are filed, you will be advised as to further procedure.

This application is accepted with the understanding that SHM, Inc.  
will continue to render the service covered by its certificate and comply with  
all the rules of the Commission, including the carrying of continuous insurance,  
until final disposition is made of the application by the Commission.

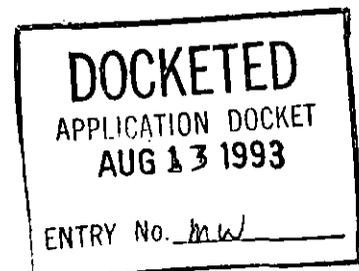
You are further advised that the above application will be published  
in the Pennsylvania Bulletin of August 14, 1993.

Very truly yours,

David Ehrhart  
Supervisor - Application Section  
Bureau of Transportation

DE:RP:rs

cc: Applicant  
3132 Industrial Boulevard  
Bethel Park, PA 15102



A-00109506, Folder 1, Am-B SOUTH HILLS MOVERS, INC. (3132 Industrial Boulevard, Bethel Park, Allegheny County, PA 15102), a corporation of the Commonwealth of Pennsylvania - household goods and office furnishings, in use, from points in the city of Erie, Erie County, and within twenty (20) miles by the usually traveled highways of the limits of said city to other points in Pennsylvania, and vice versa: SO AS TO PERMIT the transportation of household goods in use between points in the county of Beaver, and from points in said county to other points in Pennsylvania, and vice versa: which is to be a transfer of the rights authorized under the certificate issued at A-00099073, F. 2, to SHM, Inc., a corporation of the Commonwealth of Pennsylvania, subject to the same limitations and conditions. Attorney: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219.

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

SERVICE OF NOTICE OF MOTOR CARRIER APPLICATIONS

Published in Pennsylvania Bulletin \_\_\_\_\_

AUG 14 1993

BUREAU OF TRANSPORTATION  
COMMON CARRIER  
August 1993

A-00109506  
F. 1  
Am-B

Application of South Hills Movers, Inc., a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate, which grants the right, inter alia, to transport by motor vehicle, household goods and office furnishings, in use, from points in the city of Erie, Erie County, and within twenty (20) miles by the usually traveled highways of the limits of said city to other points in Pennsylvania, and vice versa: SO AS TO PERMIT the transportation of household goods in use between points in the county of Beaver, and from points in said county to other points in Pennsylvania, and vice versa: which is to be a transfer of the rights authorized under the certificate issued at A-00099073, F. 2, to SHM, Inc., a corporation of the Commonwealth of Pennsylvania, subject to the same limitations and conditions.

JG:kmb  
8/4/93

Application received: 6/1/93  
Application docketed: 8/2/93

DOCUMENT  
FOLDER

DOCKETED  
APPLICATION DOCKET  
AUG 13 1993  
ENTRY No. MW

NH

Protests due \_\_\_\_\_

SEP - 7 1993