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KUR

LAW OFFICES  
SABLE, MAKOROFF & GUSKY, P. C.

SEVENTH FLOOR

FRICK BUILDING

PITTSBURGH, PENNSYLVANIA 15219-0002

(412) 471-4000

FAX: (412) 281-2859

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SEP 21 1992

SECRETARY'S OFFICE  
Public Utility Commission

September 18, 1992

JEFFREY T. MORRIS  
MICHAEL MCGREAL  
ALAN B. GORDON  
MARK S. SEEWALD  
THERESA L. WASSER  
MICHAEL KAMINSKI  
K. BRADLEY MELLOR  
ROBERT G. BELLO  
THOMAS M. FERGOUSON

ROBERT G. SABLE  
STANLEY G. MAKOROFF  
HENRY GUSKY  
STEPHEN J. LAIDHOLD  
DAVID W. LAMPL  
GREGG M. ROSEN  
F. SCOTT GRAY  
ROBERT J. BLUMLING  
AMY S. CUNNINGHAM  
JEROME M. LIBENSON  
OF COUNSEL

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SEP 22 1992

Office of A. L. J.  
Public Utility Commission

John Alford, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 171-5-3265

Re: Bill Snoddy Construction Company Inc. Application  
for Extension of Motor Common Carrier Authority  
/A=00109698, Folder-1, AM-B

Dear Mr. Alford:

Enclosed for filing please find the Prehearing Statement and  
Disclosure of Information on Witnesses Pursuant to 66 Pa. C.S.A.  
§333(c) which is being filed on behalf of the applicants herein,  
Bill Snoddy Construction Company, Inc.

If you have any questions, or if any additional information  
is required, please contact the undersigned. Thank you for your  
assistance in this matter.

Very truly yours,



Gregg M. Rosen

GMR/crl

Enclosures

cc: Peter G. Loftus, Esquire  
S. Berne Smith, Esquire  
William R. Snoddy, Jr.

A:\SNODDY1.PRE  
DMT Misc. Disc.

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SEP 21 1992

SEP 22 1992

BEFORE THE SECRETARY'S OFFICE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Public Utility Commission  
Office of A. L. J.  
Public Utility Commission

IN RE:

DOCKET NO.

APPLICATION OF:

**DOCKETED**

A-00109698

BILL SNODDY CONSTRUCTION CO., INC. SEP 25 1992

FOLDER 1, Am-B

TO: THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT  
FOLDER

**PREHEARING STATEMENT AND DISCLOSURE OF INFORMATION ON WITNESSES  
PURSUANT TO 66 Pa. C.S.A. §333(c) FILED ON BEHALF OF  
APPLICANT BILL SNODDY CONSTRUCTION COMPANY, INC.**

**I. FACTS**

The Applicant, Bill Snoddy Construction Company, Inc. ("Applicant" or "Snoddy") seeks an amendment to its present common carrier Certificate of Authority which Certificate grants the right to transport coal for domestic consumption by motor vehicle. The amendment sought would extend the Applicant's authority as a common carrier to permit the transportation of other bulk products as is more fully described in the Applicant's Application For Motor Carrier Certificate ("Application"), which is attached hereto and incorporated herein by reference and marked as Exhibit "A".

In short, the authority sought, if granted, would permit the Applicant to haul, in addition to the coal which it is already permitted to haul, crushed and sized stone and aggregate in bulk in dump trucks, cement in bulk in tank vehicles or packaged in bags on flat bed trailers, sand and gravel in bulk in dump vehicles, and asphalt oils and kerosene in bulk in tank vehicles. The Applicant

seeks to provide these services for an extremely narrow and easily defined group of shippers concentrated in the very southwest portion of the Commonwealth of Pennsylvania. Those shippers for which the Applicant would primarily provide service are Coolspring Stone Supply, Inc., Marsh Asphalt, Inc., and Uniontown Builders Supply Company. Again a more precise description of the extension of authority sought can be found in the Application attached hereto. (See Response to Question 10 of the Application delineating the nature and character of authority sought by Applicant at Tab 1 of Exhibit "A").

At a public meeting of the Pennsylvania Public Utility Commission (the "Commission") held August 20, 1992, temporary authority to conduct the common carrier activity sought in this Application was granted, at least in part, by the Commission. In the August 20, 1992 Order issued by the Commission, the only portion of the Application for temporary authority which was denied was in relation to the services proposed to be provided for Uniontown Builders Supply Company due to the absence of a showing of an immediate need for such services. (A copy of that decision and order is attached hereto as Exhibit "B").

In response to the Notice of Application for the extension of the Applicant's existing authority, three motor common carriers located in the Commonwealth of Pennsylvania with existing authority to transport similar products filed protests with the Commission in opposition to the granting of the Applicant's request for the extension of authority. Those carriers are Schwerman Trucking

Company ("Schwerman"), Wayne W. Sell Corporation and Seaboard Tanklines, Inc. ("Seaboard").

Since the time of the Commission's grant of temporary authority, the Applicant has been able to reach an agreement with Protestant Wayne W. Sell Corporation by way of the incorporation of a Restrictive Amendment into the Application. The remaining two Protestants, however, Schwerman and Seaboard, continue to protest the grant of authority sought by the Applicant.

## II. APPLICANT'S STATEMENT OF POSITION

It is the Applicant's position that its Application demonstrates that it can satisfy all of the requirements necessary for the grant of authority requested therein. All of the evidentiary criteria as set forth in the Commission's policy statement at 52 Pa. Code §41.14 can be shown to exist in favor of the Applicant.

First, pursuant to Subsection (a) of §41.14, the Applicant can demonstrate a public demand and/or need for the services proposed to be provided under the extended grant of authority. That public demand can and will be demonstrated by and through the supporting statements of representatives of the shippers for whom the Applicant proposes to provide carrier service. More specifically, the testimony of Louis Agostini, Vice-President of Uniontown Builders Supply Company, will be offered as evidence at the hearing. Additionally, the testimony of William R. Snoddy, Sr., Vice-President of Marsh Asphalt, Inc. will be offered as evidence, as well as the testimony of William R. Snoddy, Sr. in his capacity

as President of Coolspring Stone Supply, Inc. The content of the testimony to be offered by these witnesses is set forth in their respective written statements which are attached to the Application, which is attached as Exhibit "A" hereto. These statements of shippers support will suffice to demonstrate the requisite public demand for the services sought to be provided by the Applicant. (See Tabs 5, 6 and 7 of Exhibit "A").

Furthermore, pursuant to Subsection (b) of §41.14, it is the Applicant's position that the requisite showing of technical and financial ability to provide the proposed service in a legal and safe manner has been sufficiently demonstrated. The technical ability to provide the proposed services is demonstrated by the list of equipment which is at the disposal of the Applicant for purposes of carrying on its operations under its existing authority. (See Tab 2 of Exhibit "A"). This equipment is more than sufficient to service the needs of the supporting shippers as demonstrated by the statements of these shippers contained in the Application.

The financial ability to conduct these operations in a safe and legal manner is also demonstrated in the Application, in part through the submission of the Applicant's audited financial statement which can be found at Tab 4 of Exhibit "A". Additionally, the Applicant has submitted its Uniform Motor Carrier Bodily Injury and Property Damage Liabilities Certificate Of Insurance issued by the Applicant's insurer, Aetna Casualty and

Surety Company as demonstrative evidence of its ability to operate legally and safely. (See Exhibit "C").

The Applicant has also demonstrated its propensity to operate safely in part through the implementation of a driver safety program, the fundamentals of which are outlined at Tab 3 of Exhibit "A".

Finally, it is the Applicant's position that, pursuant to Subsection 41.14(c), the entry of Snoddy into this particular niche of the common carrier market will not endanger or impair the operation of existing common carriers, particularly with respect to the operations of the Protestants. First, with the exception of Uniontown Builders Supply, Inc. there is no indication that the Protestants have served the shippers identified in the Application for whom the Applicant desires to provide service. The respective geographical locations and service routes of the Applicant and the two remaining Protestants, and the size and volume of business of the two Protestants, demonstrate that the possibility for the type of inimical competition prohibited by §41.14(c) is remote. The Applicant has delineated specific points, primarily in Southwestern Pennsylvania, in which it proposes to operate. The Protestants' operations, according to their Authority Certificates, appear to be most heavily concentrated in the Northeastern and Southeastern portions of Pennsylvania.

Further, it is the Applicant's position that even if the entry of Snoddy into this market would create additional competition in the field, that is an insufficient reason for denying the requested

authority. To the contrary, as demonstrated by current decisions and orders of the Commission, the development of healthy competition in the once protected monopolistic field of motor common carriers is the precise goal of the provisions found in §41.14. It is that competition which will serve the best interest of the public.

### III. STATEMENT OF LEGAL AUTHORITY

The Applicant bases its position on the statements of policy set forth by the Pennsylvania Public Utility Commission. This policy is codified at Title 52 of the Pennsylvania Code at §41.14 and is entitled "Evidentiary Criteria Used to Decide Motor Common Carrier Applications-Statement of Policy." Section 41.14 and the Commission's decisions and orders pursuant thereto support the grant of the Applicant's request for authority. The most recent interpretation of the criteria set forth in §41.14(a) can be found in the decision of the Commission in Re Blue Bird Coach Lines, Inc., 72 Pa. PUC 262 (1990) (a copy of which is attached hereto and marked as Exhibit "D") and Re Myers Chemical Transport Ltd., 73 Pa. PUC 24 (1990).

The pertinent language relied upon by the Applicant can be found in the Blue Bird decision at page 274 where the Commission held that "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 §41.14(a) by establishing that

approval of the application will serve a useful public purpose, responsive to a public demand or need." Blue Bird at 274. In Blue Bird, a further description of the supporting witnesses' statements which can be used to demonstrate that the demand and need for service exists is set forth at page 274 where the Commission stated that, "the witnesses supporting a motor common carrier applicant must be legally competent and credible, and their testimony must be probative and relevant to the application proceeding. Furthermore the supporting witnesses must articulate a demand/need for the type of service embodied in the application." Blue Bird at 274.

Significantly, with respect to the present case, the Blue Bird decision also maintains that, "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 authority." Blue Bird at 275.


As described earlier, §41.14(b) can also be satisfied by the Applicant. The technical ability is demonstrated by the list of equipment at the Applicant's disposal. The financial ability can be shown by the Applicant's financial statement and through the showing of adequate insurance coverage. All these factors combined demonstrate an ability to operate safely and legally as required under subsection (b).

The Applicant also relies upon a decision of the Commonwealth Court of Pennsylvania at Seaboard Tanklines, Inc. v. PA P.U.C., 93 Pa. Commw. 601, 502 A.2d 762 (1985). In that case, the instant Protestant Seaboard Tanklines, Inc., was denied relief. The Seaboard decision, as well as the Myers decision which was referred to earlier, make it clear that §41.14(c) emphasizes the advantages of healthy competition in the motor carrier industry and recognizes that, given the nature of the motor common carrier market in the Commonwealth, it is unnecessary to erect artificial barriers to the entry of new competitors into the motor carrier market. Furthermore it was held in Myers that only the threat of unrestrained and destructive competition which is inimical to the public interest precludes the grant of an application pursuant to § 41.14(c). It is the Applicant's position that the Protestants to the Application at issue herein are unable to demonstrate the requisite danger, as outlined in §41.14(c), to preclude the grant of the authority sought by the Applicant.

IV. CLOSING

Accordingly, the protests of Seaboard and Schwerman to Snoddy's Application for extension of authority to operate as a motor common carrier must be denied.

Respectfully submitted,

  
\_\_\_\_\_  
Gregg M. Rosen, Esquire  
PA I.D. #28718  
SABLE, MAKOROFF & GUSKY, P.C.  
Firm # 363  
Seventh Floor, Frick Building  
Pittsburgh, Pennsylvania 1521  
(412) 471-4996  
Attorneys for Applicant  
Bill Snoddy  
Construction, Co., Inc.

LIST OF WITNESSES

The following witnesses will be called to testify on behalf of the Applicant:

William R. Snoddy, Jr., Presidents of Bill Snoddy Construction Company, Inc.

Louis Agostini, Vice-President of Uniontown Builders Supply Company;

William R. Snoddy, Sr., Vice-President of Marsh Asphalt, Inc.; and in his capacity as President of Coolspring Stone Supply, Inc.

The nature of the testimony of these witnesses is more fully set forth by their respective written statements which are attached to the Application and can be found in Exhibit "A", tabs 5, 6 and 7 respectively.

### LIST OF EXHIBITS

The following Exhibits will be used by the Applicant at the Hearing:


1. Motor Common Carrier Application for Certificate of Authority, (see Exhibit "A");
2. List of Equipment in hands of the Applicant, (see Exhibit "A", Tab 2);
3. Decision and Order of the Commission Approving, in part, Applicant's Request For Temporary Authority, (see Exhibit "B"); and
4. Certificate of Motor Carrier Insurance Coverage, (see Exhibit "C").

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PREHEARING STATEMENT AND DISCLOSURE OF INFORMATION ON WITNESSES PURSUANT TO 66 PA C.S.A. §333(c) FILED ON BEHALF OF APPLICANT BILL SNODDY CONSTRUCTION COMPANY, INC. has been served this 18th day of September, 1992 to the following by Federal Express.

Peter G. Loftus, Esquire  
Suite 724, Bank Towers  
321 Spruce Street  
Scranton, PA 18503-1447

S. Berne Smith, Esquire  
McNees, Wallace & Nurick  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166

  
\_\_\_\_\_  
Constance R. Luce



BEFORE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION FOR MOTOR CARRIER CERTIFICATE OR PERMIT

(SEE INSTRUCTIONS BEFORE PREPARING APPLICATION)

In re: Application of

APPLICATION DOCKET  
No.  
Folder No.

for a certificate of public convenience or a permit  
evidencing the Commission's approval of the right and  
privilege of operating motor vehicles as a motor  
carrier for the transportation of **PROPERTY**.

TO PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. Bill Snoddy Construction Company, Inc.  
(Full and correct name of applicant)

2. N/A  
(Trade name, if any)

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

Commonwealth on N/A (attach copy of stamped registration form).  
(date)

3. Old Route 119 North P.O. Box 945  
(Business Street Address) (P.O. Box, if any)  
Uniontown, Fayette, Pennsylvania 15401 (412) 437-6495  
(City) (County) (State) (Zip) (Telephone)

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

Gregg M. Rosen, Esquire 7th Fl., Frick Building (412) 281-5577  
(Name) Pittsburgh, PA 15219 (Telephone)

5. Any notice, process or order of the PUC should be served upon:

Gregg M. Rosen, Esq., 7th Fl. Frick Building, Pgh., PA 15219  
(Name) (Address)

6. Applicant does hold Pa. PUC authority under Docket No. A-00109698  
(does or does not)

and operates as a common carrier.  
(common or contract)

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

at Docket No. N/A

8. Applicant is (check one):

Individual.

Partnership. Attach copy of partnership agreement 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 August 4, 1988 (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.

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

A  Partnership Agreement.

B  Trade Name registration certificate.

C  Certificate of Incorporation or Authority.

D  \* Statement of corporate charter purpose.

E  List of corporate officers and stockholders. (See attached).

\*This document is not required from currently certified/permitted PUC Carriers.

10. That the nature and character of the service to be rendered by applicant is the transportation of property as a  Common  Contract carrier by means of motor vehicles as follows:

(See attached)

11. Applicant is not now engaged in any intrastate transportation of property for compensation in Pennsylvania (except as authorized by the certificates of public convenience or permits specified in Paragraph 6) and will not engage in the transportation for which approval is herein sought unless and until authorization for such transportation shall be received.

**CORPORATE SEAL**

Bill Snoddy Construction Company, Inc.  
(Print Name of Corporation, Partnership, Trade-Name  
or Individual)\*

By:

  
\_\_\_\_\_  
William R. Snoddy, Jr., President

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\*If a partnership, each partner must sign; if a corporation, at least one officer must sign, and corporate seal affixed.

- 10.(a) Permanent authority to transport, as a Common Carrier for Coolspring Stone Supply, Inc. of Uniontown, Fayette County, Pennsylvania, crushed and sized stone and/or aggregate in bulk in dump trucks within a 100 air mile radius of the stone quarry located at Coolspring, Fayette County, Pennsylvania.
- (b) Permanent authority to transport, as a Common Carrier for Marsh Asphalt, Inc. of Uniontown, Fayette County, Pennsylvania, crushed and sized stone and/or aggregate in bulk in dump trucks from any asphalt plant owned or operated by Marsh Asphalt, Inc. in Belle Vernon, Pennsylvania, Coolspring, Pennsylvania, Dravosburg, Pennsylvania, Carmichaels, Pennsylvania, North Versailles, Pennsylvania or Washington, Pennsylvania to any point within a 100 air mile radius of the aforementioned plants.
- (c) Permanent authority to transport, as a Common Carrier, asphalt oils and kerosene in bulk in tank vehicles for Coolspring Stone Supply, Inc. and Marsh Asphalt, Inc. from points in Fleurof, Pennsylvania, Dravosburg, Pennsylvania, Mercer, Pennsylvania, North Charleroi, Pennsylvania, to points in Belle Vernon, Pennsylvania, Coolspring, Pennsylvania, Dravosburg, Pennsylvania, Carmicheals, Pennsylvania, North Versailles, Pennsylvania, and Washington, Pennsylvania where Marsh Asphalt, Inc. and/or Coolspring Stone Supply, Inc. own and/or operate asphalt plants.
- (d) Permanent authority to transport, as a Common Carrier, cement, in bulk in tank vehicles or packaged in bags on flatbed trailers, from points in Pittsburgh, Pennsylvania, Wampum, Pennsylvania, Leetsdale, Pennsylvania, and Bessemer, Pennsylvania to the Uniontown Builders Supply Company plant located in either Uniontown, Pennsylvania or Washington Pennsylvania.
- (e) Permanent authority to transport, as a Common Carrier, sand or gravel, in bulk in dump trucks to the Uniontown Builders Supply Company facility at either Uniontown, Fayette County, Pennsylvania or to their facility at Washington, Washington County, Pennsylvania, from any point within a 100 air mile radius of either of the aforementioned facilities.
- (f) Permanent authority to transport, as a Common Carrier for Marsh Asphalt, Inc. crushed or sized stone and/or aggregate to any plant owned or operated by Marsh Asphalt, Inc. at Belle Vernon, Coolspring, Dravosburg, Carmichaels, North Versailles or Washington, Pennsylvania from any point within a 100 air mile radius of any of the aforementioned plant locations.

NOTE: Pursuant to oral authorization by the PUC, this page has been amended to reflect a request for permanent authority as opposed to the erroneous request for temporary authority on this page of the application.

Commonwealth of Pennsylvania  
Department of State

8857



CERTIFICATE OF INCORPORATION

Office of the Secretary of the Commonwealth  
To All to Whom These Presents Shall Come, Greeting

Whereas, Under the provisions of the Laws of the Commonwealth, the Secretary of the Commonwealth is authorized and required to issue a "Certificate of Incorporation" evidencing the incorporation of an entity

Whereas, The stipulations and conditions of the Law have been fully complied with by

BILL SNODDY CONSTRUCTION COMPANY, INC.

Therefore, Know Ye, That subject to the Constitution of this Commonwealth, and under the authority of the Laws thereof, I do by these presents, which I have caused to be sealed with the Great Seal of the Commonwealth, declare and certify the creation, erection and incorporation of the above in deed and in law by the name chosen hereinbefore specified.

Such corporation shall have and enjoy and shall be subject to all the powers, duties, requirements, and restrictions, specified and enjoined in and by the applicable laws of this Commonwealth.



Given under my Hand and the Great Seal of the Commonwealth  
at the City of Harrisburg, this 4th  
of August in the year of  
Lord one thousand nine hundred and eighty-e  
and of the Commonwealth the two hundred thirte

*James J. Hoyt*  
Secretary of the Commonwealth

BILL SNODDY CONSTRUCTION CO., INC.

List of Corporate Officers and Stockholders

Officers and Stockholders

President - William R. Snoddy, Jr.

Stockholders - William R. Snoddy, Jr.

please sign and Notarize

Y PUBLIC

Person)

COMMONWEALTH OF

William R. Snoddy  
deposes and says that t  
to the best of his know  
same at the hearing here

(affirmed) according to l  
rrect; or are true and corr  
pects to be able to prove

Signature of Affiant

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

Signature of Official Administering O

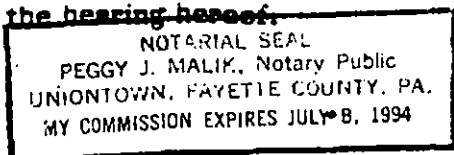
AFFIDAVIT OF APPLICANT (Corporation)

COMMONWEALTH OF PENNSYLVANIA :  
Fayette County : ss:

William R. Snoddy, Jr., being duly sworn (affirmed) according  
law, deposes and says that he is President of Bill Snoddy Construc  
(Office of Affiant) Co., Inc.

\_\_\_\_\_ : that he is authorized to and does make :  
(Name of Corporation)  
affidavit for it; and that the facts above set forth are true and correct; or are true and corr  
to the best of his knowledge, information and belief and that he expects the s  
Construction Company, Inc. \_\_\_\_\_ to be able to prove the sa  
(Name of Corporation)

at the hearing hereof.



William R. Snoddy, Jr.

Sworn and subscribed before me this 28th.  
day of April 19 92  
My Commission Expires July 8, 1994

VERIFIED STATEMENT OF THE APPLICANT

1. Domicile of Applicant:

Bill Snoddy Construction Company, Inc.  
Old Route 119 North  
Fayette County, P.O. Box 945  
Uniontown, PA 15401

2. Identity and qualifications of person making statement for applicant:

James P. Kanar  
Accountant for Bill Snoddy Construction Company, Inc. since 1988 when company was formed.

3. Is the applicant affiliated with other carriers?

The applicant is not affiliated with other carriers.

4. Authority sought.

(see attached)

5. General scope of currently authorized operations.

Current authorized operations are rights granted under Certificate No. A00109698 which are as follows:

- (a) To transport, as a Class D carrier, coal for domestic consumption between points in the county of Fayette, provided no haul shall exceed a distance of fifteen (15) miles from point of origin to point of destination.
- (b) To transport, as a Class D carrier, coal and coke from mines and ovens in the county of Fayette, to docks, ramps and railroad sidings in said county, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of delivery.
- (c) To transport, as a Class D carrier, building construction materials and building supplies, such as are usually transported in dump trucks, between points in the county of Fayette, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of delivery.
- (d) To transport, as a Class D carrier, coal from mines in the counties of Fayette, Somerset, Greene, Westmoreland and Washington, to Hoover Works, Nos. 1 and 2 in German Township, Fayette County, provided no haul shall exceed a distance of seventy-five (75) miles from point of origin to point of destination.

- (e) To transport, as a Class D carrier, coal from mines in the county of Fayette to the Duquesne Light Company Plant in the village of Elrama, Union Township, Washington County.
- (f) To transport, as a Class D carrier, coal from Mon-West Enterprises of Uniontown, Pennsylvania between points in the counties of Beaver, Fayette, Greene, Lawrence, Westmoreland, Allegheny and Washington and from points in said counties to points in the counties of Indiana and Cambria.

A copy of the Orders granting these rights are attached hereto.

- 6. Duplicating authority which will result from grant of authority.

We believe that no duplicating authority or overlapping will result from the grant of authority herein.

- 7. Dual operations resulting from grant of authority.

No dual operations will result from the grant of authority herein.

- 8. Pertinent terminal facilities and communications network.

The Applicant's terminal facilities are located at a five (5) acre tract of land on Old Route 119 North in Uniontown Pennsylvania. The carrier property is stored in a yard surrounded by a fence. The facilities include a garage building where all equipment is maintained and repaired and complete mechanical service is available at the garage. A public telephone system is used for communications. Personnel are qualified and licenced to operate the vehicles in service by the Applicant.

- 9. Pertinent equipment (make, model, year, owned or leased, and if leased, name of lessor).

The Applicant intends to use tri-axle end dump trucks to haul stone, aggregate, sand and gravel and will use five 5200 gallon Freuhauf asphalt tankers to haul the asphalt oil and kerosene. In addition, Applicant will use a 40 foot 1976 Freuhauf tandem-axle flat bed trailer and a 985 cubic yard 1978 Freuhauf cement bulk tanker to haul cement. A complete list of the Applicant's equipment is attached to this Applicant's statement as Exhibit 1.

- 10. Safety program.

A copy of the company's safety program is attached hereto.

11. Type of service currently provided to the supporting witnesses. (How witness currently receives services.)

The applicant currently provides limited service within the restrictions of its existing operating authority. The service consists of the hauling of cement, asphalt oil, kerosene and stone.

12. Type of service to be offered.

The type of service to be offered is the hauling of cement, asphalt oil and kerosene and stone which is not within the scope of the present authority granted by PUC.

13. Financial data. (Current balance sheet and income statement for corporations and partnerships; statement of assets and liabilities for individuals).

Financial data is attached hereto.

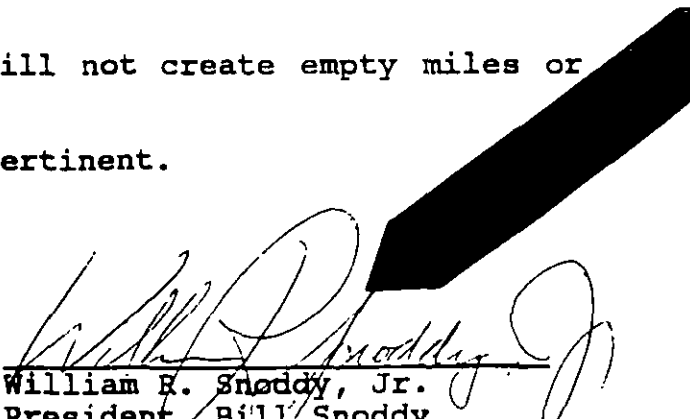
14. Whether service provided will create empty miles or backhauls.

The services to be provided will not create empty miles or backhauls.

15. Any other information deemed pertinent.

None.

(Seal)



William E. Snoddy, Jr.  
President, Bill Snoddy  
Construction Company, Inc.

- 4.(a) Permanent authority to transport, as a Common Carrier for Coolspring Stone Supply, Inc. of Uniontown, Fayette County, Pennsylvania, crushed and sized stone and/or aggregate in bulk in dump trucks within a 100 air mile radius of the stone quarry located at Coolspring, Fayette County, Pennsylvania.
- (b) Permanent authority to transport, as a Common Carrier for Marsh Asphalt, Inc. of Uniontown, Fayette County, Pennsylvania, crushed and sized stone and/or aggregate in bulk in dump trucks from any asphalt plant owned or operated by Marsh Asphalt, Inc. in Belle Vernon, Pennsylvania, Coolspring, Pennsylvania, Dravosburg, Pennsylvania, Carmichaels, Pennsylvania, North Versailles, Pennsylvania or Washington, Pennsylvania to any point within a 100 air mile radius of the aforementioned plants.
- (c) Permanent authority to transport, as a Common Carrier, asphalt oils and kerosene in bulk in tank vehicles for Coolspring Stone Supply, Inc. and Marsh Asphalt, Inc. from points in Fleurof, Pennsylvania, Dravosburg, Pennsylvania, Mercer, Pennsylvania, North Charleroi, Pennsylvania, to points in Belle Vernon, Pennsylvania, Coolspring, Pennsylvania, Dravosburg, Pennsylvania, Carmicheals, Pennsylvania, North Versailles, Pennsylvania, and Washington, Pennsylvania where Marsh Asphalt, Inc. and/or Coolspring Stone Supply, Inc. own and/or operate asphalt plants.
- (d) Permanent authority to transport, as a Common Carrier, cement, in bulk in tank vehicles or packaged in bags on flatbed trailers, from points in Pittsburgh, Pennsylvania, Wampum, Pennsylvania, Leetsdale, Pennsylvania, and Bessemer, Pennsylvania to the Uniontown Builders Supply Company plant located in either Uniontown, Pennsylvania or Washington Pennsylvania.
- (e) Permanent authority to transport, as a Common Carrier, sand or gravel, in bulk in dump trucks to the Uniontown Builders Supply Company facility at either Uniontown, Fayette County, Pennsylvania or to their facility at Washington, Washington County, Pennsylvania, from any point within a 100 air mile radius of either of the aforementioned facilities.
- (f) Permanent authority to transport, as a Common Carrier for Marsh Asphalt, Inc. crushed or sized stone and/or aggregate to any plant owned or operated by Marsh Asphalt, Inc. at Belle Vernon, Coolspring, Dravosburg, Carmichaels, North Versailles or Washington, Pennsylvania from any point within a 100 air mile radius of any of the aforementioned plant locations.

NOTE: Pursuant to oral authorization by the PUC, this page has been amended to reflect a request for permanent authority as opposed to the erroneous request for temporary authority on this page of the application.

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120

Public Meeting held April 25, 1991

Commissioners Present:

William E. Smith, Chairman  
Joseph Rhodes, Jr., Vice-Chairman  
Frank Fischl, Commissioner

David W. Rolka, Commissioner

Application of Bill Snoddy Construction Co.,  
Inc., a corporation of the Commonwealth of  
Pennsylvania, for the transfer of all of  
the operating rights of Curtis P. Bixler  
under the certificate issued at A-00061456  
subject to the same limitations and  
conditions.

A-00109698

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed March 14, 1991. Public notice of the application was given in the Pennsylvania Bulletin of March 30, 1991. The unopposed application is certified to the Commission for its decision without oral hearing.

Bill Snoddy Construction Co., Inc., seeks to initiate common carrier service in Pennsylvania through acquisition of all of the common carrier rights held by Curtis P. Bixler. The applicant is a Pennsylvania corporation domicile at Old Route 119 North in Uniontown, Fayette County. It's sole shareholder and office is William R. Snoddy, Jr. It has a fleet of dump vehicles with which to provide service. It has experience in the transportation industry through lease of tri-axle dump trucks and tractor dump trailer units to a currently certificated carrier.

As evidence of its financial capacity to initiate service, the applicant provided a balance sheet dated December 31, 1990, reporting total assets of \$603,526.28 with total liabilities of \$516,579.34.

The total consideration for the rights is \$3,500. No tangible assets are involved. The sales agreement requires the consideration to be paid as follows: \$100.00 was paid upon the execution of the sales agreement dated March 12, 1991. The balance of \$3,400 will be paid within three days after approval of the transfer application by the Commission.

A review of the record before us indicates that the applicant possesses the requisite experience, equipment and financial capacity to provide the proposed service.

The authority to be transferred has been operated by the transferor. Therefore, it is presumed that there is a continuing public need, which may be overcome only by evidence to the contrary; In re: Everly, 440 Pa. 521 (1970); Hosstetter v. Pa. P.U.C., 160 Super. Ct. 94 (1947). Since the record is void of any such evidence, this presumption of continuing public need applies in this transfer proceeding.

To find:

1. The applicant is fit, willing and able to provide the service proposed.
2. Transfer of the authority is in the public interest and is necessary for the continued accommodation and convenience of the public; THEREFORE.

IT IS ORDERED: That the transfer application be and is hereby approved and that a certificate be issued granting the following rights:

1. To transport, as a Class D carrier, coal for domestic consumption between points in the county of Fayette, provided no haul shall exceed a distance of fifteen (15) miles from point of origin to point of destination.
2. To transport, as a Class D carrier, coal and coke from mines and ovens in the county of Fayette, to docks, ramps and railroad sidings in said county, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of delivery.
3. To transport, as a Class D carrier, building construction materials and building supplies, such as are usually transported in dump trucks, between points in the county of Fayette, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of delivery.
4. To transport, as a Class D carrier, coal from mines in the counties of Fayette, Somerset, Greene, Westmoreland and Washington, to Hoover Works, Nos. 1 and 2, in German Township, Fayette County, provided no haul shall exceed a distance of seventy-five (75) miles from point of origin to point of destination.

5. To ~~transport~~, as a Class D carrier, coal from mines in the county of Fayette to the Duquesne Light Company Plant in the village of Elrama, Union Township, Washington County.

subject to the following general conditions:

1. That the approval hereby given is not to be understood as committing the Commission; in any proceedings that may be brought before it for any purpose, to fix a valuation on the property and rights to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by applicant, or to approve or prescribe rates sufficient to yield a return thereon.
2. That applicant shall not record in its utility accounts any amount representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.
3. That the applicant charge to Account 1550, Other Intangible Property, \$3,500, being the amount of the consideration payable by it for the rights and going concern value attributable thereto; less any amount recorded under condition 2 above; and subject to further adjustment due to any normal interim transactions to the date of actual transfer.
4. That the accounts of the transferee shall reflect the same book values as the records of the transferor at the effective date of the transfer; any previously recorded appreciation having been deleted therefrom; provided that the applicant shall not record in its utility accounts any amounts representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.
5. That the operating authority granted herein, or now held or subsequently granted to the applicant to the extent that it is duplicative shall not be construed as conferring more than one operating right.

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

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it has complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing and acceptance of evidence of insurance and a tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That issuance of the certificate be withheld pending receipt of the 1990 Annual Report of the transferor.

IT IS FURTHER ORDERED: That upon compliance with the requirements above set forth, a certificate issue evidencing the Commission's approval of the right to operate as above-determined.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with this order, the rights granted the transferor Curtis P. Bixler, at A-00061456 be cancelled and the record be marked closed.

BY THE COMMISSION,



Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: April 25, 1991

ORDER ENTERED: April 25, 1991

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held November 7, 1991

Commissioners Present:

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

Application of Bill Snoddy Construction Co., 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, coal from mines in the county of  
Fayette to the Duquesne Light Company plant in the  
village of Elrama, Union Township, Washington  
County: SO AS TO PERMIT the transportation of  
coal, for Mon West Enterprises, between points in  
the counties of Beaver, Fayette, Greene, Lawrence,  
Westmoreland, Allegheny and Washington, and from  
points in said counties to points in the counties  
of Indiana and Cambria.

A-00109698  
F. 1  
Am-A

---

Sable, Makoroff, Sherman & Gusky, P.C. by Gregg M. Rosen for the  
applicant.

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O R D E R

BY THE COMMISSION:

This matter comes before the Commission on applications for  
temporary and permanent authority filed July 29, 1991. Public notice of the  
applications was given in the Pennsylvania Bulletin of August 24, 1991  
(Permanent) and September 14, 1991 (Temporary). No protests were filed.

The applications are now certified to the Commission for its  
decision without an oral hearing. The record consists of verified statements  
submitted by the applicant and by Mon West Enterprises.

DISCUSSION AND FINDINGS

3. That approval of the application is necessary for the accommodation and convenience of the public; THEREFORE,

IT IS ORDERED: That the application be and is hereby approved, and that the certificate issued to the applicant on May 24, 1991, be amended to include the following right:

To transport, as a Class D carrier, coal, for Mon West Enterprises, between points in the counties of Beaver, Fayette, Greene, Lawrence, Westmoreland, Allegheny and Washington, and from points in said counties to points in the counties of Indiana and Cambria.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it shall have complied with the requirements of the 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.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the carrier, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That the application for temporary authority docketed at A-00109698, F. 1, Am-A, be and is hereby dismissed.

BY THE COMMISSION,



Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: November 7, 1991

ORDER ENTERED: November 7, 1991

BILL SNODDY CONSTRUCTION CO., INC.

Common Carrier Property

Tri-Axle Dump Trucks

<u>Description</u>	<u>Serial No.</u>	<u>Owned/Leased</u>
1986 Mack	1M2P141CIGA004618	Owned
1989 Mack	2M2P141CXXC007850	Owned
1990 Mack	1M2AY83COLM004902	Owned
1991 Mack	1M2P270C5MM010044	Owned

Tractors

<u>Description</u>	<u>Serial No.</u>	<u>Owned/Leased</u>
1980 Mack	1M2N178Y2BA069108	Owned
1989 Kenworth	MW900BSIXKWDB9X3KM528S10	Owned
1987 Peterbilt	1XP5DB9X7HN2S0600	Owned
1987 Mack	1M2N277Y5SHA004289	Owned

Dump Trailers

<u>Description</u>	<u>Serial No.</u>	<u>Owned/Leased</u>
1982 East	SIETDIS389CRJ05179	Owned
1984 East	131DIR281CRF05771	Owned
1988 Cobra	1C9DS30B6J1133950	Owned
1988 Cobra	1C9DS35BXJ1133961	Owned

Cement Tankers

<u>Description</u>	<u>Serial No.</u>	<u>Owned/Leased</u>
1978 Fruehauf	UNZ604415	Owned

Asphalt Tankers

<u>Description</u>	<u>Serial No.</u>	<u>Owned/Leased</u>
1975 Fruehauf	UNF231402	Leased
1975 Etnyre	K1738K195	Leased
1976 Etnyre	K2472K9046	Leased
1979 Etnyre	H139633258	Leased
1976 Etnyre	K1965K8464	Leased

BILL SNODDY CONSTRUCTION CO., INC.

Safety Program

1. Each driver is required to have a Class 2 or Class 3 PA Driver's License and must have a physical examination every two (2) years.
2. Every driver shall come to work dressed in safe and suitable wearing apparel.
3. Except in the case of an emergency, all work shall stop for a half-hour lunch period. The company shall set the time as close to noon as possible, or unless ordered by the Superintendent, depending upon the type of work being performed.
4. The duties of a truck driver include responsibility for the care of the truck while it is assigned to him. He shall examine it frequently and report any mechanical problem to his shop manager. The driver of each truck is required to fill out a Driver's Vehicle Condition Report at the end of each day if repairs are needed to be made. Every working day before leaving the terminal, each driver shall check the oil, water, lights and tires with a gauge. Drivers must keep wheels tight, and are not to run on a flat tire.

Each driver is responsible for the general interior and exterior appearance of his truck. Special attention shall be directed to mirrors and all glass including reflectors, headlights, taillights and license plates.

All loads shall be tarped. Tailgates must be latched after every dump.

5. Once a month, each truck will be totally inspected by the maintenance department to insure that the truck is in good mechanical condition.
6. Any driver who is caught drinking alcoholic beverages or using drugs will be immediately discharged. If an employee has a problem of this nature, the company will help provide assistance for rehabilitation. Every driver is expected to conduct himself on and off the job in a manner which reflect favorably on the company. All dealings with members of the general public, whether or not they are customers, shall be conducted with courtesy and tact. Drivers are expected to obey all traffic rules and drive in a safe and courteous manner. No driver should hesitate to assist any person in trouble.

■ ■ ■ ■ ■ ■ ■ ■

FINANCIAL STATEMENTS

*BILL SNODDY CONSTRUCTION COMPANY, INC.*

December 31, 1991 and 1990

■ ■ ■ ■ ■ ■ ■ ■

C O N T E N T S

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WILLIAM P. McCURRY

CERTIFIED PUBLIC ACCOUNTANT

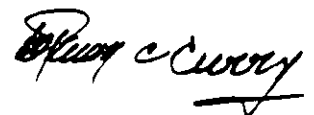
21301 POWERLINE ROAD  
SUITE 204  
BOCA RATON, FLORIDA 33433  
(407) 482-8400

Board of Directors and Stockholder  
Bill Snoddy Construction Company, Inc.  
P.O. Box 945  
Uniontown, PA 15401

I have reviewed the accompanying balance sheets of Bill Snoddy Construction Company, Inc. as of December 31, 1991 and 1990 and the related statements of income and retained earnings, and cash flows for the years then ended, in accordance with standards established by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Bill Snoddy Construction Company, Inc.

A review consists principally of inquiries of Company personnel and analytical procedures applied to financial data. It is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, I do not express such an opinion.

Based on my review, I am not aware of any material modifications that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles.



Boca Raton, FL  
February 6, 1991

BALANCE  
(SEE ACCOUNTANT'S)

**BILL SNODDY CONSTRUCTION**

DECEMBER 31

ASSETS

	1991 -----	1990 -----
<u>CURRENT ASSETS</u>		
Cash	\$ 19,814	\$ 9,594
Accounts receivable:		
Trade	225,258	102,018
Officer	62,467	29,768
Prepaid insurance and income taxes	13,611	106
Current maturities of loans receivable	49,255	--
	-----	-----
TOTAL CURRENT ASSETS	370,405	141,486
<u>FIXED ASSETS</u>		
Trucks and automobiles	738,896	498,605
Less accumulated depreciation	163,942	84,174
	-----	-----
NET FIXED ASSETS	574,954	414,431
<u>OTHER ASSETS</u>		
Long-term loans receivable	45,833	45,000
Intangible asset	3,500	--
	-----	-----
	\$ 994,692	\$ 600,917
	-----	-----

The accompanying notes are an integral part of these financial statements.

SHEETS  
REVIEW REPORT)

COMPANY, INC.

1991 and 1990

LIABILITIES AND STOCKHOLDER'S EQUITY

	1991 ----	1990 ----
<u>CURRENT LIABILITIES</u>		
Notes payable - bank	\$ 31,200	\$ --
Accounts payable - trade	65,801	39,812
Payroll taxes withheld and accrued	4,110	218
Accrued income taxes		10,133
Current maturities of long-term debt	156,352	102,638
Deferred income taxes	22,000	--
	-----	-----
TOTAL CURRENT LIABILITIES	279,463	152,801
<u>OTHER LIABILITIES</u>		
Long-term debt	330,460	268,147
Deferred income taxes	123,000	57,000
	-----	-----
TOTAL LIABILITIES	732,923	477,948
	-----	-----
<u>STOCKHOLDER'S EQUITY</u>		
Common stock, \$10.00 par value, 1000 shares authorized, 100 shares issued and outstanding	1,000	1,000
Retained earnings	260,769	121,969
	-----	-----
TOTAL STOCKHOLDER'S EQUITY	261,769	122,969
	-----	-----
	\$ 994,692	\$ 600,917
	-----	-----

part of these financial statements.

STATEMENTS OF INCOME AND RETAINED EARNINGS  
(SEE ACCOUNTANT'S REVIEW REPORT)

*BILL SNOODY CONSTRUCTION COMPANY, INC.*

For the years ended December 31, 1991 and 1990

	1991 ----	1990 ----
<u>GROSS PROFIT</u>		
Hauling sales	\$1,323,594	\$ 536,363
Cost of sales:		
Contract labor	3,566	3,840
Depreciation	67,754	47,845
Employee benefits	12,236	--
Fuel and oil	128,567	114,754
Hauling	464,954	--
Insurance	34,326	23,897
Licenses, fees and use taxes	19,441	13,804
Parts and repairs	29,796	9,182
Payroll and related taxes	211,160	141,636
	-----	-----
	971,800	354,958
	-----	-----
GROSS PROFIT	351,794	181,405
<u>SELLING, GENERAL AND ADMINISTRATIVE EXPENSES</u>		
Advertising	1,004	831
Depreciation	14,014	5,039
Donations	1,595	185
Entertainment and promotion	5,432	18,584
Office	6,706	4,852
Officers compensation	56,112	20,412
Professional fees	3,262	1,124
Travel	5,203	2,259
	-----	-----
	93,328	53,286
	-----	-----
INCOME FROM OPERATIONS	258,466	128,119

The accompanying notes are an integral part of these financial statements.

STATEMENTS OF INCOME AND RETAINED EARNINGS (CONTINUED)  
(SEE ACCOUNTANT'S REVIEW REPORT)

*BILL SNODDY CONSTRUCTION COMPANY, INC.*

For the years ended December 31, 1991 and 1990

	1991 ----	1990 ----
<u>OTHER INCOME (EXPENSE)</u>		
Interest income	\$ 8,020	\$ --
Gain on sale of fixed assets	12,600	--
Interest expense	(47,886)	(27,016)
	-----	-----
	(27,266)	(27,016)
	-----	-----
INCOME BEFORE PROVISION FOR INCOME TAXES	231,200	101,103
<u>PROVISION FOR INCOME TAXES</u>	92,400	45,176
	-----	-----
NET INCOME	138,800	55,927
Retained earnings, beginning of year	121,969	66,042
	-----	-----
RETAINED EARNINGS, END OF YEAR	\$ 260,769	\$ 121,969
	-----	-----

The accompanying notes are an integral part of these financial statements.

STATEMENTS OF CASH FLOWS  
(SEE ACCOUNTANT'S REVIEW REPORT)

*BILL SNODDY CONSTRUCTION COMPANY, INC.*

For the years ended December 31, 1991 and 1990

	1991 ----	1990 ----
<u>CASH FLOWS FROM OPERATING ACTIVITIES</u>		
Net income	\$ 138,800	\$ 55,927
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	81,768	52,884
Gain on sale of fixed assets	(12,600)	--
Deferred income taxes	88,000	35,000
(Increase) decrease in assets:		
Accounts receivable - trade	(123,240)	(55,701)
Accounts receivable - officer	(32,699)	(27,425)
Prepaid insurance and income taxes	(13,505)	(106)
Increase (decrease) in liabilities:		
Accounts payable - trade	25,989	38,288
Payroll taxes withheld and accrued	3,892	218
Accrued income taxes	(10,133)	6,250
	-----	-----
NET CASH PROVIDED BY OPERATING ACTIVITIES	146,272	105,335
<u>CASH FLOWS FROM INVESTING ACTIVITIES</u>		
Capital expenditures	(260,291)	(298,655)
Proceeds from sale of fixed assets	30,600	--
Purchase of intangible asset	(3,500)	--
	-----	-----
NET CASH USED IN INVESTING ACTIVITIES	(233,191)	(298,655)

The accompanying notes are an integral part of these financial statements.

STATEMENTS OF CASH FLOWS (CONTINUED)  
(SEE ACCOUNTANT'S REVIEW REPORT)

*BILL SNODDY CONSTRUCTION COMPANY, INC.*

For the years ended December 31, 1991 and 1990

	<u>1991</u> ----	<u>1990</u> ----
<u>CASH FLOWS FROM FINANCING</u>		
<u>ACTIVITIES</u>		
Borrowings on long-term debt	\$ 298,501	\$ 392,541
Repayments of long-term debt	(182,474)	(146,005)
Advances on line of credit	58,200	--
Repayments of line of credit	(27,000)	--
Loan receivable advances	(67,383)	(45,000)
Loan receivable collections	17,295	--
	-----	-----
NET CASH PROVIDED BY FINANCING ACTIVITIES	97,139	201,536
	-----	-----
NET INCREASE IN CASH	10,220	8,216
Cash, beginning of year	9,594	1,378
	-----	-----
CASH, END OF YEAR	\$ 19,814	\$ 9,594
	-----	-----
<u>SUPPLEMENTAL DISCLOSURES OF</u>		
<u>CASH FLOW INFORMATION</u>		
Cash paid during the year for:		
Interest	\$ 56,028	\$ 27,016
	-----	-----
Income taxes	\$ 11,961	\$ 16,321
	-----	-----

The accompanying notes are an integral part of these financial statements.

NOTES TO FINANCIAL STATEMENTS  
(SEE ACCOUNTANT'S REVIEW REPORT)

**BILL SNODDY CONSTRUCTION COMPANY, INC.**

December 31, 1991 and 1990

NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Fixed Assets - Fixed assets are recorded at cost. Expenditures which substantially increase the productive lives of existing assets are capitalized. Maintenance and repair costs are expensed as incurred. Depreciation is provided on the straight-line method at rates intended to distribute the cost of the assets over their estimated useful lives, which range from four to six years for automobiles and ten years for trucks.

When an asset is disposed of, its cost and related accumulated depreciation are removed from the accounts. The difference between the undepreciated cost and proceeds from disposition is recorded as gain or loss.

Income Taxes - Deferred federal and state income taxes are provided for differences in timing in reporting income and expenses for financial statement and tax purposes. Income and expenses are recorded on the cash method for tax reporting purposes and on the accrual method for financial reporting purposes. Accelerated depreciation over a prescribed recovery period is used for tax reporting, and straight-line depreciation over the estimated useful life of the asset is used for financial statement reporting.

Intangible Asset - Public Utility Commission (PUC) rights are recorded at cost and are not being amortized to expense given their indefinite economic life.

NOTE B - ACCOUNTS RECEIVABLE

Accounts receivable - trade at December 31, 1991 and 1990 include \$145,245 and \$102,018 respectively, of amounts due from a related party. Hauling sales to this related party for 1991 and 1990 amounted to \$704,837 and \$509,282 respectively.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)  
(SEE ACCOUNTANT'S REVIEW REPORT)

**BILL SNODDY CONSTRUCTION COMPANY, INC.**

December 31, 1991 and 1990

NOTE C - LONG-TERM LOANS RECEIVABLE

Loans receivable consists of the following:

	<u>1991</u>	<u>1990</u>
	-----	-----
Note receivable - officer, unsecured, bearing interest at 9.00%, with no current repayment arrangement through December 31, 1991, then due in monthly installments of \$621, including interest, maturing in December, 2001	\$49,000	\$45,000
Loan receivable - related party, unsecured, non-interest bearing, due in 1992	46,088	--
	-----	-----
	95,088	45,000
Less: current maturities	49,255	--
	-----	-----
	\$45,833	\$45,000
	-----	-----

Principal payments due on long-term loans receivable for each of the five years succeeding December 31, 1991 are as follows:

<u>Year ending</u> <u>December 31,</u>	<u>Amount</u>
1992	\$49,255
1993	3,464
1994	3,789
1995	4,533
thereafter	29,902
	-----
	\$95,088
	-----

NOTES TO FINANCIAL STATEMENTS (CONTINUED)  
(SEE ACCOUNTANT'S REVIEW REPORT)

**BILL SNOODY CONSTRUCTION COMPANY, INC.**

December 31, 1991 and 1990

NOTE D - NOTES PAYABLE - BANK

On February 21, 1991, the Company executed a \$50,000 line of credit loan agreement with the bank. The loan is due upon demand and interest is payable monthly at a rate of 1.00% above the bank's prime rate which amounted to 8.50% at December 31, 1991. The loan is personally guaranteed by the Company's sole stockholder.

NOTE E - ACCOUNTS PAYABLE

Accounts payable - trade at December 31, 1991 and 1990 include \$7,913 and \$39,812 respectively, of amounts due to related parties. These balances arise from charges for expenses such as parts and repairs, fuel, oil, and insurance.

NOTE F - LONG-TERM DEBT

Long-term debt consists of the following:

	1991	1990
	----	----
Notes payable, secured by trucks and automobiles, payable in monthly installments of \$19,778 and \$14,639 at December 31, 1991 and 1990 respectively, including interest at rates from 10.00% to 14.00%, maturing at various dates through July, 1995	\$426,812	\$340,785

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

**BILL SNODDY CONSTRUCTION COMPANY INC.**  
 (SEE ACCOUNTANT'S REVIEW REPORT)

December 31, 1991 and 1990

NOTE F - LONG-TERM DEBT (CONTINUED)

Note payable - related party,  
 unsecured, bearing interest at the  
 prime rate plus 1.00%, with no  
 current repayment obligation at  
 December 31, 1991 and 1990

	60,000	30,000
	-----	-----
	486,812	370,785
Less: current maturities	156,352	102,638
	-----	-----
	\$330,460	\$268,147
	-----	-----

Certain amounts above in addition to being secured by trucks and automobiles, are personally guaranteed by the Company's sole stockholder.

Principal payments due on long-term debt for each of the five years succeeding December 31, 1991 are as follows:

<u>Year ending</u> <u>December 31,</u>	<u>Amount</u>
1992	\$156,352
1993	147,663
1994	108,278
1995	14,519
1996	--
thereafter	60,000
	-----
	\$486,812
	-----

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

**BILL SNODDY CONSTRUCTION COMPANY INC.**  
**(SEE ACCOUNTANT'S REVIEW REPORT)**

December 31, 1991 and 1990

NOTE G - PROVISION FOR INCOME TAXES

The components of the provision for income taxes consist of the following:

	1991 -----	1990 -----
Currently payable:		
Federal	\$ 2,000	\$ 6,456
State	2,400	3,720
	-----	-----
	4,400	10,176
Deferred:		
Federal	62,000	30,500
State	26,000	4,500
	-----	-----
	88,000	35,000
	-----	-----
Total provision for income taxes	\$ 92,400 -----	\$ 45,176 -----

VERIFIED STATEMENT OF UNIONTOWN BUILDERS SUPPLY COMPANY  
IN SUPPORT OF THE APPLICATION

1. Legal name and domicile of supporting party or firm. (Give the actual location - city, township or borough - and the county. Do not give the mailing address).

Supporting witness - Louis Agostini, Vice President of Uniontown Builders Supply Company, 144 East Main Street, Fayette County, Uniontown, PA 15401.

2. Identity and qualifications of person making statement for supporting party or firm.

Louis Agostini, Vice President of Uniontown Builders Supply Company.

3. General description of supporting party, organization or operations. (If property application, include the type of commodities to be transported).

Uniontown Builders Supply Company ("Uniontown Builders") is a cement and construction supply firm. Incident to our business, we require shipment and delivery of cement in bulk in tank vehicles or packaged in bags which are hauled on flatbed trailers from points in Allegheny County, Beaver County and Lawrence County to our existing plant located in Uniontown, Pennsylvania or to the site of our proposed new facility in Washington, Pennsylvania. Our existing business at Uniontown, Pennsylvania, requires a shipment of between 180 and 225 loads per year. When we open our Washington, Pennsylvania facility, we expect our business to grow to a comparable level. Additionally, our business includes the sale of 5,000 to 10,000 tons of sand or gravel per year from our existing Uniontown, Pennsylvania facility. This commodity must be delivered to us in bulk in dump trucks. When we open our Washington facility, we expect that our business will grow to require a similar level of shipment and delivery of sand and/or gravel.

4. Volume and frequency of intended use.

As stated above, we require shipment and delivery of between 180 and 225 loads of cement per year. A load consists of either a bulk cement tank or a flatbed trailer fully loaded with bags of cement. The 180 to 225 loads, per facility (either Uniontown, Pennsylvania or Washington, Pennsylvania) are evenly distributed over the course of a construction season, which runs from approximately April 1 through the end of October.

The frequency of movement involves shipment by tri-axle and/or trailer truck five days per week and requires between 1 to 2 trucks per hauling day.

5. Specific or representative origins and destinations or both.

As indicated above, points of origin include our cement suppliers who are located in either Wampum, Pennsylvania, Leetsdale, Pennsylvania, Pittsburgh, Pennsylvania or Bessemer, Pennsylvania to our existing Uniontown, Pennsylvania facility or to our planned facility in Washington, Pennsylvania. All cement is delivered either in bulk in fully loaded tank trucks or in bags on fully loaded flatbed trailers. Sand and gravel are delivered in tri-axle end dump trucks.

6. Type of service required. Describe. (Property - bulk, less than truck load, multiple delivery, and the like).

See answer to Number 3.

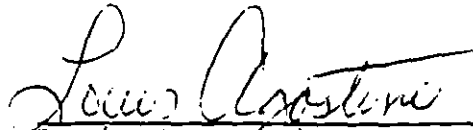
7. Similar applications supported (pertinent docket numbers).

None.

8. Any other information deemed pertinent.

See attached letter.

(Seal)

  
\_\_\_\_\_  
Louis Agostini  
Vice President  
Uniontown Builders Supply Company

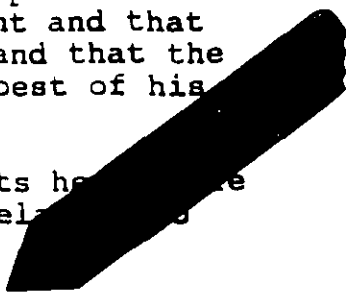
VERIFICATION OF STATEMENT

The undersigned deposes and says that he is the person who signed the Statement for the above-captioned applicant and that he is authorized to and does make this verification and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

The undersigned understands that false statements he has made subject to the penalties of 18 C.S. Sec. 4904 relating to unsworn falsification to authorities.

Dated

4/27/92



*Louis Agostini*

Louis Agostini, Vice President  
Uniontown Builders  
Supply Company

UNIONTOWN BUILDERS SUPPLY COMPANY  
144 EAST MAIN STREET  
UNIONTOWN, PENNSYLVANIA 15401

April 23, 1992

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17120

Re: Supporting witness for carrier authority for cement for  
Bill Snoddy Construction Company, Inc.

To whom it may concern:

This letter is written by Uniontown Builders Supply Company, ("Uniontown Builders") 144 East Main Street, Uniontown, Pennsylvania 15401.

Uniontown Builders Supply Company is a cement and construction supply firm having its principal place of business at 144 East Main Street, Uniontown, Pennsylvania 15401. I, Louis Agostini, am the Vice President of Uniontown Builders. Uniontown Builders requires the transportation of cement by truck on a routine and daily basis.

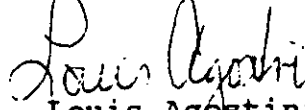
Our needs are such that we do in fact require the services of Bill Snoddy Construction Company, Inc. for movements of cement in bulk in tank vehicles or packaged in bags on flatbed trailers from points in Allegheny County, Beaver County and Lawrence County, to the Uniontown Builders plant located in Uniontown, Pennsylvania. As stated, these movements would occur on a daily and routine basis, totalling in excess of 180 to 225 loads per year, as we now project our needs. Additionally, our business includes the sale of 5,000 to 10,000 tons of sand or gravel per year from our existing Uniontown, Pennsylvania facility. This commodity must be delivered to us in bulk in dump trucks. When we open our Washington facility, we expect that our business will grow to require a similar level of shipment and delivery of sand and/or gravel.

We have inspected the Company's terminal and equipment, and we have extensively interviewed its management. We at Uniontown Builders have concluded that the Company has the facilities, equipment, management and dedication necessary to service our own expanding needs.

It is our sincere desire that Bill Snoddy Construction Company, Inc. provide competitive trucking service to and from

the Pennsylvania areas outlined above. Bill Snoddy Construction Company offers the flexibility to provide excellent service for the constantly changing demands of Uniontown Builders' business.

Sincerely,



*Louis Agostini*

Louis Agostini  
Vice President  
Uniontown Builders Supply  
Company

VERIFIED STATEMENT OF MARSH ASPHALT, INC.  
IN SUPPORT OF THE APPLICATION

1. Legal name and domicile of supporting party or firm. (Give the actual location - city, township or borough - and the county. Do not give the mailing address).

Marsh Asphalt, Inc., Old Route 119, Gallatin Avenue  
Extension, Uniontown, Fayette County, Pennsylvania  
15401.

2. Identity and qualifications of person making statement for supporting party or firm.

William R. Snoddy, Sr., President of Marsh Asphalt,  
Inc.

3. General description of supporting party, organization or operations. (If property application, include the type of commodities to be transported).

Marsh Asphalt, Inc. owns and operates asphalt manufacturing plants at Belle Vernon, Pennsylvania, Coolspring, Pennsylvania, Dravosburg, Pennsylvania, Carmichaels, Pennsylvania, and it owns land and intends to erect and operate asphalt plants in the near future at North Versailles, Pennsylvania and Washington, Pennsylvania. Incident to operation of these asphalt plants, Marsh Asphalt requires delivery and transportation of asphalt oil and/or kerosene as a raw material for its plant. Additionally, Marsh Asphalt requires transportation and delivery of approximately 500,000 tons of stone or aggregate as a raw material used in the manufacture of asphalt. Finally, Marsh Asphalt purchases for resale approximately 25,000 tons of stone and/or aggregate which it resells from any or all of its asphalt plants.

4. Volume and frequency of intended use.

Marsh Asphalt requires approximately nine hundred 5200 gallon loads of asphalt oil and/or kerosene per year evenly distributed throughout the construction season from approximately April 1 through October 31. Additionally, it requires transportation and delivery of approximately 500,000 tons of stone which is delivered daily from various quarries to the site of all of its plants in tri-axle end dump trucks. Finally, it sells and delivers approximately 25,000 tons of stone or aggregate on an intermittent basis from a combination of all of its asphalt plants throughout the construction season.

5. Specific or representative origins and destinations or both.

Asphalt and/or kerosene is purchased from points of origination in Fleurof, Pennsylvania, Dravosburg, Pennsylvania, Mercer, Pennsylvania or North Charleroi, Pennsylvania which is then delivered to any of its asphalt plants located in either Belle Vernon, Pennsylvania, Coolspring, Pennsylvania, Dravosburg, Pennsylvania, Carmichaels, Pennsylvania, or its prospective plants at North Versailles or Washington, Pennsylvania. Marsh Asphalt also purchases stone for its asphalt manufacturing from quarries located in Coolspring, Pennsylvania, Connelsville, Pennsylvania, Belle Vernon, Pennsylvania, the various terminals located along the Monongahela River in South West Pennsylvania, or from the site of a potential quarry in Mount Pleasant, Pennsylvania. Depending on market conditions, Marsh Asphalt can transport and order delivery of this stone or aggregate from any point within up to a 100 air mile radius of any of its aforementioned plants or locations. Additionally, Marsh Asphalt resells stone and/or aggregate from any of its aforementioned plants or locations to any point within a air mile radius of approximately 100 miles.

6. Type of service required. Describe. (Property - bulk, less than truck load, multiple delivery, and the like).

For asphalt oils and/or kerosene, those commodities are transported in bulk in tanker cars. For transportation and delivery of stone either to any of the asphalt plants or for resale from any of the asphalt plants, those commodities are transported in fully loaded tri-axle end dump trucks.

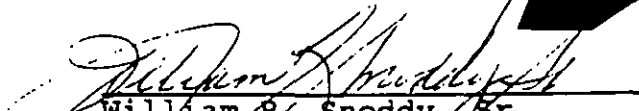
7. Similar applications supported (pertinent docket numbers).

No.

8. Any other information deemed pertinent.

None.

(Seal)



William R. Snoddy, Sr.  
President, Coolspring Stone  
Supply Inc.

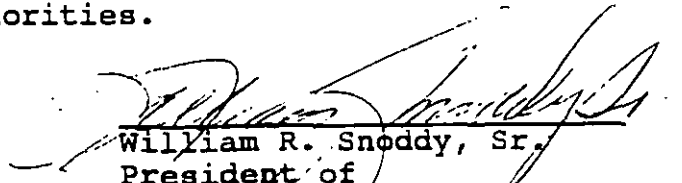
VERIFICATION OF STATEMENT

The undersigned deposes and says that he is the person who signed the Statement for the above-captioned applicant and that he is authorized to and does make this verification and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

The undersigned understands that false statements herein are made subject to the penalties of 18 C.S. Sec. 4904 relating to unsworn falsification to authorities.

Dated

Aug 7, 92

  
\_\_\_\_\_  
William R. Snoddy, Sr.  
President of  
Marsh Asphalt, Inc. and  
Coolspring Stone Supply, Inc.

MARSH ASPHALT, INC.  
OLD ROUTE 119, GALLATIN AVENUE EXTENSION  
UNIONTOWN, PENNSYLVANIA 15401

April 23, 1992

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17120

Re: Supporting Witness for Carrier Authority for asphalt  
oil, kerosene, and crushed and sized stone and  
aggregate.

To whom it may concern:

This letter is written by Marsh Asphalt, Inc. ("Marsh"), Old  
Rout 119, Gallatin Avenue Extension, Uniontown, Pennsylvania  
15401.

Marsh owns and operates asphalt manufacturing plants at  
Belle Vernon, Pennsylvania, Coolspring, Pennsylvania, Dravosburg,  
Pennsylvania, Carmichaels, Pennsylvania, and owns land and  
intends to erect and operate asphalt plants in the near future at  
North Versailles, Pennsylvania and Washington, Pennsylvania. I  
William R. Snoddy, Sr., am the Vice President of Marsh. Marsh  
requires the transportation of asphalt oil and/or kerosene and  
stone and/or aggregate on a routine and daily basis.

Our needs are such that we do in fact require the services  
of Bill Snoddy, Construction Company, Inc. for movements of  
asphalt oil and/or kerosene and stone and/or aggregate. Marsh  
currently requires the shipping of asphalt oils and kerosene in  
the amount of approximately nine hundred 5200 gallon loads per  
year through the shipment by five 5200 gallon Freuhauf asphalt  
tankers five days per week, and requiring between 3 and 4 tankers  
per hauling day. Asphalt and/or kerosene is purchased from  
points of origination in Fleurof, Pennsylvania, Dravosburg,  
Pennsylvania, Mercer, Pennsylvania or North Charleroi,  
Pennsylvania which is then delivered to any of its asphalt plants  
located in either Belle Vernon, Pennsylvania, Coolspring,  
Pennsylvania, Dravosburg, Pennsylvania, Carmichaels,  
Pennsylvania, or its prospective plants at North Versailles or  
Washington, Pennsylvania. Marsh Asphalt also purchases stone for  
its asphalt manufacturing from quarries located in Coolspring,  
Pennsylvania, Connelville, Pennsylvania, Belle Vernon,  
Pennsylvania, the various terminals located along the Monongahela  
River in South West Pennsylvania, or from the site of a potential  
quarry in Mount Pleasant, Pennsylvania. Depending on market  
conditions, Marsh Asphalt can transport and order delivery of  
this stone or aggregate from any point within up to a 100 air

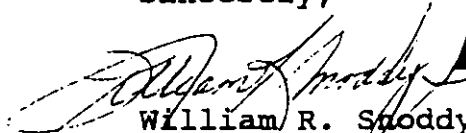
mile radius of any of its aforementioned plants or locations. Additionally, Marsh Asphalt resells stone and/or aggregate from any of its aforementioned plants or locations to any point within a air mile radius of approximately 100 miles.

In addition, Marsh also requires approximately 500,000 tons of stone per year for its purposes, and expects to substantially increase its needs by at least 20%. The frequency and movement involves shipment by tri-axle and/or trailer truck five days per week and requires between 5 to 15 trucks per hauling day. Marsh Asphalt also sells and ships to third party customers approximately 25,000 tons of stone and/or aggregate per year. The frequency of these shipments change with demand.

We have inspected the Company's terminal and equipment, and we have extensively interviewed its management. We at Marsh have concluded that the Company has the facilities, equipment, management and dedication necessary to service our own expanding needs.

It is our sincere desire that Bill Snoddy Construction Company, Inc. provide competitive trucking service to and from the Pennsylvania areas outlined above. Bill Snoddy Construction Company offers the flexibility to provide excellent service for the constantly changing demands of Marsh's business.

Sincerely,

A handwritten signature in cursive script, appearing to read "William R. Snoddy, Sr.", is written over a large black rectangular redaction mark.

William R. Snoddy, Sr.  
Vice President  
Marsh Asphalt, Inc.

VERIFIED STATEMENT OF COOLSPRING STONE SUPPLY, INC.  
IN SUPPORT OF THE APPLICATION

1. Legal name and domicile of supporting party or firm. (Give the actual location - city, township or borough - and the county. Do not give the mailing address).

Coolspring Stone Supply, Inc., Old Route 119, Gallatin Avenue Extension, Uniontown, Fayette County, Pennsylvania 15401.

2. Identity and qualifications of person making statement for supporting party or firm.

William R. Snoddy, Sr., President of Coolspring Stone Supply, Inc.

3. General description of supporting party, organization or operations. (If property application, include the type of commodities to be transported).

Coolspring Stone Supply, Inc. ("Coolspring") operates a stone quarry in Coolspring, Fayette County, Pennsylvania which manufacturers, crushes and sizes stone and aggregate for resale. Coolspring also owns and operates an asphalt plant at the same site where it manufactures asphalt for sale. See attached statements.

4. Volume and frequency of intended use.

Coolspring expects to ship, between approximately April 1 and October 31 of each year, in excess of one million tons of stone and/or aggregate in approximately 22 ton loads hauled by tri-axle end dump trucks and/or tractor-trailer trucks. These shipments are made uniformly, generally from Monday through Friday, throughout the course of the season. Additionally, Coolspring must have shipped and delivered to it for its asphalt manufacturing plant approximately five (5) 5200 gallon Freuhauf and/or Etnyre asphalt tankers five days per week and requires between 3 to 4 tankers per hauling day. This volume is needed throughout the construction season, from April through October of each year. Coolspring will deliver the stone and/or aggregate which it manufacturers, crushes and sizes to any point up to a 100 air mile radius from the quarry which it operates in Coolspring, Fayette County, Pennsylvania. Coolspring purchases and therefore requires delivery to its asphalt plant located in Coolspring, Fayette County, Pennsylvania asphalt oil and/or kerosene from points including Dravosburg, Pennsylvania, Fleurof, Pennsylvania or Mercer, Pennsylvania.

5. Specific or representative origins and destinations or both.

See answer to Number 4.

6. Type of service required. Describe. (Property - bulk, less than truck load, multiple delivery, and the like).

All stone or aggregate is shipped in bulk in tri-axle end dump trucks. Asphalt or kerosene is ordered and delivered by tanker truck, usually containing approximately 5200 gallons.


7. Similar applications supported (pertinent docket numbers).

No.

8. Any other information deemed pertinent.

None.

(Seal)



William R. Snoddy, Sr.  
President, Coolspring Stone  
Supply Inc.

COOLSPRING STONE SUPPLY, INC,  
OLD ROUTE 119, GALLATIN AVENUE EXTENSION  
UNIONTOWN, PENNSYLVANIA 15401

April 23, 1992

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17120

Re: Supporting Witness for Carrier Authority for asphalt  
oil, kerosene, and crushed and sized stone and  
aggregate.

To whom it may concern:

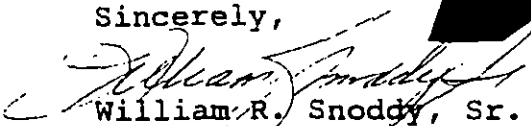
This letter is written by Coolspring Stone Supply, Inc. ("Coolspring") Old Route 119, Gallatin Avenue Extension, Uniontown, Pennsylvania. Coolspring operates a stone quarry in Coolspring, Fayette County, Pennsylvania which manufactures, crushes and sizes stone and aggregate for resale. Coolspring also owns and operates an asphalt plant at the same site where it manufactures asphalt for sale. I, William R. Snoddy, Sr., am the President of Coolspring Stone Supply, Inc.

Our needs are such that we do in fact require the services of Bill Snoddy Construction Company, Inc. for the shipment of in excess of 1,000,000 tons of stone and/or aggregate in approximately 22 ton loads hauled by tri-axle end dump trucks. Coolspring also requires a shipment of approximately one 5200 gallon truck of asphalt and/or kerosene per day for its asphalt manufacturing plant. Coolspring's business needs require the delivery of stone and/or aggregate which Coolspring manufactures, crushes and sizes to any point up to a 100 air mile radius from the quarry which it operates in Coolspring, Fayette County, Pennsylvania. In addition, in the course of its business, Coolspring purchases and thus requires delivery to its asphalt plant located in Coolspring, Fayette County, Pennsylvania asphalt oil and/or kerosene in points including Dravosburg, Pennsylvania, Fleurof, Pennsylvania or Mercer, Pennsylvania. As stated, these movements would occur on a daily and routine basis, totalling in excess of 1,000,000 tons of stone and/or aggregate and five 5200 gallon Freuhauf tankers per week, with three to four tankers per hauling day.

We have inspected the Company's terminal and equipment and we have extensively interviewed its management. We at Coolspring have concluded that the Company has the facilities, equipment, management and dedication necessary to service our own expanding needs.

It is our sincere desire that Bill Snoddy Construction Company, Inc. provide competitive trucking services to and from the Pennsylvania areas outlined above. Bill Snoddy Construction Company, Inc. offers the flexibility to provide excellent services for the constantly changing demands of Coolspring business.

Sincerely,



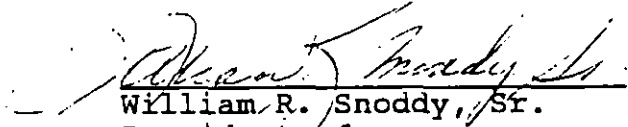
William R. Snoddy, Sr.  
President, Coolspring  
Stone Supply, Inc.

VERIFICATION OF STATEMENT

The undersigned deposes and says that he is the person who signed the Statement for the above-captioned applicant and that he is authorized to and does make this verification and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

The undersigned understands that false statements herein are made subject to the penalties of 18 C.S. Sec. 4904 relating to unsworn falsification to authorities.

Dated 4-27-92

  
\_\_\_\_\_  
William R. Snoddy, Sr.  
President of  
Marsh Asphalt, Inc. and  
Coolspring Stone Supply, Inc.

KJR

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held August 20, 1992

Commissioners Present:

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

Application of Bill Snoddy Construction Co., 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, coal for domestic consumption between points in the county of Fayette, provided no haul shall exceed a distance of fifteen (15) miles from point of origin to point of destination: SO AS TO PERMIT the transportation of crushed and sized stone and aggregate, in bulk in dump trucks, for Coolspring Stone Supply, Inc. from the township of North Union, Fayette County, to points in Pennsylvania within an airline distance of one hundred (100) statute miles of the limits of said township; crushed and sized stone and aggregate, in bulk in dump trucks, for Marsh Asphalt, Inc. from the borough of Belle Vernon and the township of North Union, Fayette County, the borough of Carmichaels, Greene County, the borough of Dravosburg, and the township of North Versailles, Allegheny County, and the city of Washington, Washington County, to points in Pennsylvania within an airline distance of one hundred (100) statute miles of the limits of said townships, boroughs and city; asphalt oils and kerosene, in bulk in tank vehicles, for Coolspring Stone Supply, Inc. and Marsh Asphalt, Inc., from points in the boroughs of West Elizabeth and Dravosburg, Allegheny County, the borough of Mercer, Mercer County, and the borough of North Charleroi, Washington County, to points in the borough of Belle Vernon and the township of North Union, Fayette County, the borough of Dravosburg, and the township of North Versailles, Allegheny County, the borough

A-00109698  
F. 1  
Am-B

**EXTRA COPY**

of Carmichaels, Greene County, and the city of Washington, Washington County; cement, in bulk in tank vehicles or packaged in bags on flatbed trailers from points in the counties of Allegheny, Beaver and Lawrence, to the facilities of Uniontown Builders Supply Company located in the city of Uniontown, Fayette County and the city of Washington, Washington County; sand and gravel, in bulk in dump vehicles, from points in Pennsylvania within an airline distance of one hundred (100) statute miles of the limits of the cities of Uniontown, Fayette County and Washington, Washington County to the facilities of Uniontown Builders Supply Company located in said cities; and crushed and sized stone and aggregates for Marsh Asphalt, Inc. from points in Pennsylvania located within an airline distance of one hundred (100) statute miles of the limits of the borough of Belle Vernon and the township of North Union, Fayette County, the borough of Dravosburg and the township of North Versailles, Allegheny County, the borough of Carmichaels, Greene County, and the city of Washington, Washington County, to its facilities located in said townships, boroughs and city.

**APPLICATION FOR TEMPORARY AUTHORITY HAS BEEN FILED AT A-00109698, F. 1, AM-B, SEEKING THE RIGHTS CITED ABOVE.**

Greg M. Rosen for the applicant.  
S. Berne Smith for the protestant, Schwerman Trucking Company.  
John A. Pillar for the protestant, Wayne W. Sall Corporation.  
Peter G. Loftus for the protestant, Seaboard Tank Lines, Inc.

#### TENTATIVE DECISION

#### BY THE COMMISSION:

This application for temporary authority filed May 4, 1992, is before the Commission for its decision without oral hearing. Application for permanent authority was also filed. The record consists of statements entered by the applicant and three supporting shippers.

Bill Snoddy Construction Co., Inc. (Snoddy or applicant) is a Pennsylvania corporation domiciled at Old Route 119 North, Uniontown, Fayette County. William R. Snoddy, Jr., president submitted a verified statement

along with James P. Kanar, accountant for the firm. Snoddy obtained a certificate of public convenience effective May 24, 1991 from this Commission and operates as a common carrier. Applicant's terminal facilities are located on a five acre tract at the above address. These facilities include a garage for equipment maintenance and repair. Communications with shippers and drivers is by commercial telephone system. Applicant operates four tri-axle dump trucks, four tractors, four dump trailers, one cement tanker and five asphalt tankers. The applicant submitted an unaudited financial statement which shows total assets of \$994,692 with total liabilities of \$732,923 leaving stockholders' equity of \$261,769.

Louis Agostini, vice president of Uniontown Builders Supply Company (Uniontown) entered a statement in support of the application. Uniontown is a building supply firm dealing mainly in cement and construction supplies. Delivery of cement, in bulk in tank vehicles and in bags, on flatbed trailers is required from points in Allegheny, Beaver and Lawrence Counties to its plant in Uniontown and to a proposed site in Washington County. Sand and gravel is also received at Uniontown.

William R. Snoddy, Sr., president of Marsh Asphalt, Inc. (Marsh) submitted a statement in support of the application. Marsh has asphalt plants in the borough of Belle Vernon and North Union Township, Fayette County, the borough of Carmichaels, Greene County, the borough of Dravosburg, Allegheny County and owns land and intends to build plants at North Versailles, Allegheny County and Washington, Washington County. Marsh requires transportation of asphalt oil, kerosene and stone or aggregate as raw materials for its plants. Asphalt and kerosene is purchased from West Elizabeth and Dravosburg, Allegheny County, Mercer, Mercer County and North Charleroi, Washington County which is then delivered to any of its plants. Stone is purchased from quarries in Coolspring, Connellsville and Belle Vernon, Fayette County and from terminals located along the Monongahela River. Stone and aggregate is also resold and distributed from any of its plant sites.

William R. Snoddy, Sr., president of Coolspring Stone Supply, Inc. (Coolspring) submitted a verified statement in support of the application. Coolspring operates a stone quarry and an asphalt plant in Coolspring, Fayette County. Coolspring ships stone and aggregate from this facility to points within 100 miles from the quarry site. Coolspring also requires the delivery to its facilities of three to four tankers per day of asphalt oil and kerosene from points such as West Elizabeth and Dravosburg, Allegheny County and Mercer, Mercer County.

#### DISCUSSION AND FINDINGS

There were two protests to the temporary authority; by Schwerman Trucking Company, and by Wayne W. Sell Corporation, both of which attest to an ability to serve Uniontown Builders Supply Company. Both carriers state that they have ample equipment with which to serve the shipper for the transportation of cement. The shipper did not show a need for transportation of sand or gravel other than to state that it receives shipments of these materials at its Uniontown facility.

The Public Utility Code at 52 Pa. Code §3.384(2) sets forth that a grant of TA will be made where it is established that there is or soon will be an immediate transportation need. A showing of immediate need may involve . . . . failures of existing carriers to provide service or comparable situations which require new carrier service before an application for permanent authority can be processed. An immediate need will not normally be found to exist where there are other carriers capable of rendering service (Emphasis added) unless it is determined there is substantial benefit to be derived from initiation of competitive service.

The applicant has failed to prove that such an immediate need exists to provide transportation to Uniontown Builders Supply Company and this portion of the application will be denied.

There was a third protest to the application by Seaboard Tank Lines, Inc. Seaboard alleges that the request for "property" authority would have adverse impacts on it, Seaboard. The instant application does not request authority for property, but for named materials. Commission regulations require that protests shall contain "a statement of any adverse impact which approval of the application can be expected to have on the protestant," 52 Pa. Code §3.381(c)(1)(iv). Seaboard has given no details as to how it will be adversely affected by approval of this application. We shall not restrict the remaining authority requested based on this weak and incorrect protest. Therefore the temporary authority requested for Coolspring Stone Supply, Inc. and Marsh Asphalt, Inc. is supported by evidence submitted and it is our determination that the applicant has provided sufficient evidence to warrant a grant of temporary authority; THEREFORE,

IT IS ORDERED: That the application for temporary authority be and is hereby approved granting the following right:

1. To transport, as a Class D carrier crushed and sized stone and aggregate, in bulk in dump trucks, for Coolspring Stone Supply, Inc. from the township of North Union, Fayette County, to points in Pennsylvania within an airline distance of one hundred (100) statute miles of the limits of said township;
2. To transport, as a Class D carrier crushed and sized stone and aggregate, in bulk in dump trucks, for Marsh Asphalt, Inc., from the borough of Belle Vernon and the township of North Union, Fayette County, the borough of Carmichaels, Greene County, the borough of Dravosburg, and the township of North Versailles, Allegheny County, and the city of Washington, Washington County, to points in Pennsylvania within an airline distance of one hundred (100) statute miles of the limits of said townships, boroughs and city;

3. To transport, as a Class D carrier asphalt oils and kerosene, in bulk in tank vehicles, for Coolspring Stone Supply, Inc. and Marsh Asphalt, Inc., from points in the boroughs of West Elizabeth and Dravosburg, Allegheny County, the borough of Mercer, Mercer County, and the borough of North Charleroi, Washington County, to points in the borough of Belle Vernon and the township of North Union, Fayette County, the borough of Dravosburg, and the township of North Versailles, Allegheny County, the borough of Carmichaels, Greene County, and the city of Washington, Washington County;
4. To transport, as a Class D carrier crushed and sized stone and aggregates for Marsh Asphalt, Inc. from points in Pennsylvania located within an airline distance of one hundred (100) statute miles of the limits of the borough of Belle Vernon and the township of North Union, Fayette County, the borough of Dravosburg and the township of North Versailles, Allegheny County, the borough of Carmichaels, Greene County, and the city of Washington, Washington County, to its facilities located in said townships, boroughs and city.

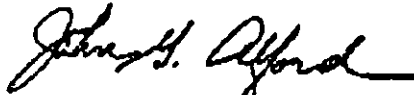
IT IS FURTHER ORDERED: That the application be denied in all other respects.

IT IS FURTHER ORDERED: That a tariff of rates and charges be filed within ten (10) days of the date of this order.

IT IS FURTHER ORDERED: That unless exceptions are filed within twenty (20) days from the date of service, this order shall become final.

IT IS FURTHER ORDERED: That the action taken on this application for temporary authority shall have no bearing on our decision in the application for permanent authority.

BY THE COMMISSION,



John G. Aford  
Secretary

(SEAL)

ORDER ADOPTED: August 20, 1992

ORDER ENTERED: AUG 21 1992

04/22/92

15:48

ETNA PITTSBURGH

001

**Form B**  
**UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY**  
**DAMAGE LIABILITY CERTIFICATE OF INSURANCE**  
*(Executed in Triplicate)*

PA 109698

Filed with Public Utility Commission of PA (hereinafter called Commission)  
 (Name of Commission)

This is to certify, that the Aetna Casualty & Surety Co.  
 (Name of Company)

(hereinafter called Company) of Hartford, Conn.  
 (Home Office Address of Company)

has issued to Bill Snoddy Construction Co., Inc. of P.O. Box 945, Uniontown, PA 15401  
 (Name of Motor Carrier) (Address of Motor Carrier)

a policy or policies of insurance effective from 5-18-81 12:01 A.M. standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the State Commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at 1700 Two Chatham Center, Pittsburgh, PA 15219  
 (Street Address) (City) (State) (Zip Code)

this 17th day of April 19 82

Insurance Company File No. 003 FJ 975680 CCA  
 (Policy Number)

FE K...  
 Authorized Company Representative

contains a correct statement of the law, the record evidence does not support a finding of *reasonable necessity* for the proposed service. (Protestant's Reply Brief, pp. 2-3)

<sup>8</sup>Applicant's Exhibit No. 1 shows two buildings, apparently relating to the business, that have a combined value of \$91,500.00.

<sup>9</sup>We scaled the distances used to evaluate the Applicant's understanding of relevant distances from a Pennsylvania map, bearing the name, Rand McNally, where one inch equaled "approximately" five miles.

<sup>10</sup>*Brinks, Inc. v. Pa. P.U.C.*, 500 Pa. 367, 456 A.2d 1342, 1344 (1983). See, also, the discussion (pp. 35-38) in the Initial Decision in *Application of Larry G. Miller*, Docket No. A-00091073, F. 2, Am-C, dated June 10, 1987; by Order of the Commission entered August 4, 1987, the decision became final without further Commission action.

<sup>11</sup>Protestant's Main Brief, pp. 10-11; and Protestant's Reply Brief, p. 5.

## Re Blue Bird Coach Lines, Inc.

A-00088807  
F.2, Am-K

Pennsylvania Public Utility Commission  
March 15, 1990; entered April 27, 1990

ORDER granting reconsideration of prior order and authorizing motor common carrier applicant to expand existing authority allowing transportation of persons in charter party service. The decision of *Re Richard L. Kinard, Inc.*, 58 Pa PUC 548 (1984), which allowed use of alternatives to inadequacy for meeting the burden of proof under 52 Pa. Code § 41.14(a), is overruled.

1. PROCEDURE, § 32 — Rehearings and reopenings — Issues properly raised — Commission discretion

[PA.] A petition for reconsideration may properly raise any matters designed to convince the commission that it should exercise its

discretion to rescind or amend, wholly or partially, a prior commission order, and to succeed, a petition for reconsideration must present new and novel arguments, not previously heard, or considerations that appear to have been overlooked or not addressed by the commission; additionally, the commission may, on its own motion, rescind or amend any order made by it after providing interested parties with notice and an opportunity to be heard.  
p. 268.

2. PROCEDURE, § 42 — Stay — When justified — Preservation of status quo.

[PA.] The temporary staying of an order may be used to maintain the status quo pending the entry of a subsequent order, and, generally, the grant of a stay is justified if (1) the petitioner for a stay makes a strong showing of a likelihood to prevail on the merits, (2) the petitioner has shown that, without the requested relief of the stay, the petitioner will suffer irreparable injury, (3) the issuance of the stay will not substantially harm other interested parties, and (4) the issuance of the stay will not adversely affect the public interest.  
p. 269.

3. CERTIFICATES, § 11 — Commission authority — To grant utility status — Discretion — Revocation.

[PA.] The granting of authority to operate a public utility is a discretionary act by the commission bounded by the requirements that the commission's decision be supported by substantial evidence of record, not be premised on a violation of constitutional rights, and not contain an error of law; a certificate of public convenience is neither a contract nor a property right, so the revocation of a certificate for due cause does not deprive the certificate holder of a protected right.  
p. 270.

4. CERTIFICATES, § 11 — Commission authority — Grant or refusal.

[PA.] Pursuant to 66 Pa. Code § 1103(a), 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; this legislative directive to the commission has been interpreted consistently by Pennsylvania appellate courts as a mandate to protect the public interest by preventing unrestrained and destructive competition among motor carriers in order to assure the availability of transportation commensurate with the demonstrated public need for transportation.  
p. 270.

5. CERTIFICATES, § 106 — Grant or refusal — Motor carrier — Criteria for application evaluation.

[PA.] Over the years, the commission has adopted certain criteria for evaluating whether approval of an application for motor common carrier authority is necessary or proper for the service, accommodation, convenience, or safety of the public, which are that the applicant has the burden of proving (1) a public need for the proposed service, (2) the inadequacy of the existing service available to the public; and (3) the applicant's fitness and capacity to render the proposed service.  
p. 271.

6. CERTIFICATES, § 106 — Burden of proof — Motor carrier — Public demand or need — Technical and financial fitness.

[PA.] Pursuant to new criteria at 52 Pa. Code § 41.14, a motor common carrier applicant now has a bipartite *prima facie* burden of proof, in that § 41.14(a) places upon an applicant the burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need, while § 41.14(b) places upon an applicant the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, along with the caveat that operating authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.  
p. 271.

7. CERTIFICATES, § 106 — Burden of proof

— Motor carrier — Inadequacy of current service.

[PA.] By eliminating the motor common carrier applicant's traditional burden of proving inadequacy of current service, the commission has redirected its focus from fostering monopolistic protection for extant carriers to encouraging increased, legitimate competition among carriers consonant with the demonstrated public demand or need for transportation.  
p. 272.

8. CERTIFICATES, § 78 — Grant or refusal — Burden of proof — By existing motor carriers — Entry of new carriers.

[PA.] Due to the legislative mandate to safeguard public access to satisfactory transportation by regulating competition among carriers in order to prevent unfettered and harmful competition, the commission has placed upon existing carriers the burden of showing that approval of an application would contravene the public interest, and that standard is stated at 52 Pa. Code § 41.14(c), whereby the commission will grant motor common 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 an extent that, on balance, the granting of the authority would be contrary to the public interest.  
p. 272.

9. CERTIFICATES, § 106 — Grant or refusal — Motor carriers — Prerequisites.

[PA.] Due to the use of the disjunctive word "or" in 52 Pa. Code § 41.14(a), the commission treated the words "demand" and "need" as interchangeable terms in *Re Richard L. Kinard, Inc.*, 58 Pa PUC 548 (1984), and the commission continues to treat those words as synonyms in conformance with the statutory language of 66 Pa. Code § 1103(a), which requires a commission determination that the granting of a motor common carrier certificate meets one of the following prerequisites: that the certificate is necessary or proper for the ser-

vice, accommodation, convenience, or safety of the public.  
p. 272.

10. CERTIFICATES, § 106 — Motor carriers — Alternatives to inadequacy — Appropriate proof — Public demand or need.

[PA.] During the intervening years since the decision in *Re Richard L. Kinard, Inc.*, 58 Pa PUC 548 (1984), the commission has had many opportunities to confront difficulties in construing 52 Pa. Code § 41.14(a) vis-a-vis *Re Richard L. Kinard, Inc.*, and chief among the interpretation problems has been a tendency among motor carriers, legal counsel representing motor carriers, and occasionally staff in various capacities throughout the commission to substitute proof of one of the nine "alternatives to inadequacy" for proof of a supporting witness's actual need for transportation between identified points in Pennsylvania that are within the scope of the applicant's proposed operating territory; the commission unequivocally rejects that attempted substitution and affirms that, without proof in the record of a public demand or need for an applicant's proposed service between specified, intrastate points, an application for motor common carrier authority cannot be validly approved pursuant to 66 Pa. Code § 1103(a), and hence cannot be validly approved pursuant to the policy statement at 52 Pa. Code § 41.14.  
p. 273.

11. CERTIFICATES, § 106 — Motor carriers — Alternatives to inadequacy — Appropriate proof — Public demand or need.

[PA.] The commission's reliance on "alternatives to inadequacy" in *Re Richard L. Kinard, Inc.*, 58 Pa PUC 548 (1984) has generated much confusion and proven inadvertently misleading, because the commission's clear intent in promulgating the evidentiary criteria at 52 Pa. Code § 41.14 was to remove the motor common carrier applicant's burden of establishing the inadequacy of present transportation, but the applicant's burden of proving such so-called alternatives to inadequacy as the difference between the applicant's proposed service and existing transportation service or the

satisfactoriness of the applicant's proposed service as a backup to existing transportation service, has, in effect, accorded to the applicant the burden of demonstrating the inadequacy of extant service albeit under another descriptive label, namely, the burden of proving alternatives to inadequacy; therefore, the use of alternatives to inadequacy as defined in *Re Richard L. Kinard, Inc.* does not comport with the commission's delineated regulatory policy at 52 Pa. Code § 41.14.  
p. 273.

12. CERTIFICATES, § 106 — Motor carriers — Alternatives to inadequacy — Appropriate proof — Shipper support — Public demand or need.

[PA.] The commission's declaration in *Re Richard L. Kinard, Inc.*, 58 Pa PUC 548 (1984), that mere shipper support testimony would not fulfill an applicant's burden of proof under 52 Pa. Code § 41.14(a), has been misunderstood to suggest that evidence other than that provided by shipper witnesses, in the case of property carrier applications, and that provided by rider witnesses in the case of passenger carrier applications, is required to sustain an applicant's burden of proving that the granting of its application will serve a useful public purpose, responsive to a public demand or need; that was not the interpretation intended by the commission, and so the decision in *Re Richard L. Kinard, Inc.* is overruled.  
p. 273.

13. CERTIFICATES, § 106 — Motor carriers — Alternatives to inadequacy — Appropriate proof — Burden of proof — Public demand or need.

[PA.] Having overruled its decision in *Re Richard L. Kinard, Inc.*, 58 Pa PUC 548 (1984), the commission offered the following simplified interpretation of its policy statement at 52 Pa. Code § 41.14(a): when, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the motor common carrier applicant's proposed service will satisfy the supporting witnesses' asserted transportation demand or need, the applicant has sustained its burden of

proof under § 41.14(a) by establishing that approval of the application will serve a useful public purpose, responsive to a public demand or need.  
p. 273.

14. CERTIFICATES, § 88 — Grant or refusal — Public demand or need — Witness testimony — Motor common carrier.

[PA.] Appellate court decisions as well as commission orders have confirmed that, in the context of 66 Pa. Code § 1103(a), a public demand or need for an applicant's proposed transportation service may be proven through witnesses comprising a representative sampling of the public that will use the applicant's proposed service within the territory encompassed by the application, and the witnesses supporting a motor common carrier application must (1) be legally competent and credible, (2) give testimony that is probative and relevant to the application proceeding, (3) must articulate a demand or need for the type of service embodied in the application, and (4) 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.  
p. 274.

15. CERTIFICATES, § 168 — Evidence — Of public demand or need — Number of witnesses — Circumstances.

[PA.] The particular circumstances of a case determine what constitutes sufficient evidence of a public demand or need for a motor common carrier applicant's proposed service, so the number of witnesses that will comprise a cross-section of the public on the issue of the public demand or need for an applicant's proposed service will necessarily vary with the circumstances of the case, based on such factors 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.  
p. 274.

16. CERTIFICATES, § 88 — Grant or refusal — Public demand or need — Motor common

carrier — Burden of proof.

[PA.] An applicant for motor common carrier authority is not required to establish a public demand or need for the proposed transportation in each and every point within the requested operating territory, and typically, the applicant may sustain its burden of proof by establishing a public demand or need for the applicant's proposed service generally throughout the territory encompassed by the application.  
p. 276.

17. CERTIFICATES, § 114 — Grant or refusal — Motor carrier — Charter service — Witness testimony — Public demand or need.

[PA.] Where a motor carrier applicant had only requested authority to provide charter service for a county with a population of 128,299, it was found that the applicant had demonstrated, through its witnesses comprising a cross-section of the county's citizens, a public demand or need for the proposed transportation service from points in the county to points outside of the county, but the applicant did not show a public demand or need for its proposed transportation between points within the county.  
p. 277.

18. CERTIFICATES, § 114 — Grant or refusal — Motor carrier — Charter service — Witness testimony — Public demand or need.

[PA.] In light of a motor common carrier applicant's request for limited operating authority in the form of charter service in a county with a small population of 88,869, the commission concluded that the applicant had demonstrated, through its witnesses constituting a cross section of the county's public, a public demand or need for the proposed service from points in the county to points in Pennsylvania outside of the county; however, the applicant had not shown a public demand or need for the transportation from points in the county to points in the county.  
p. 278.

19. CERTIFICATES, § 114 — Grant or refusal — Motor carrier — Charter service — Witness testimony — Public demand or need.

[PA.] In light of a motor common carrier applicant's request for limited operating authority in the form of charter service in a county with a small population of 64,444, the commission concluded that the applicant had demonstrated, through its witnesses constituting a cross section of the county's public, a public demand or need for the proposed service from points in the county to points in Pennsylvania outside of the county; however, the applicant had not shown a public demand or need for the transportation from points in the county to points in the county.

p. 279.

20. CERTIFICATES, § 114 — Grant or refusal — Motor carrier — Charter service — Witness testimony — Public demand or need.

[PA.] In light of a motor common carrier applicant's request for limited operating authority in the form of charter service in a county with a comparatively small population of 147,912, the commission concluded that the applicant had demonstrated, through its witnesses constituting a cross section of the county's public, a public demand or need for the proposed service from points in the county to points in Pennsylvania outside of the county; however, the applicant had not shown a public demand or need for the transportation from points in the county to points in the county.

p. 281.

21. CERTIFICATES, § 114 — Grant or refusal — Motor carrier — Charter service — Witness testimony — Public demand or need.

[PA.] Even though a motor common carrier's application for charter service authority was made for a county with a population of only 107,150, the commission could not conclude that a single witness constituted a cross-section of the county public on the issue of the demand or need for the proposed service; therefore, charter service authority service was granted only from one point in the county to points in Pennsylvania outside of the county.

p. 281.

22. CERTIFICATES, § 114 — Grant or refusal — Motor carrier — Charter service — Witness

testimony — Public demand or need.

[PA.] In light of a motor common carrier applicant's request for operating authority, confined to charter service in a county with a population of only 43,362, it was found that the applicant had presented witnesses representative of a public demand or need for the applicant's proposed services from two boroughs in the county to points outside of the county in Pennsylvania.

p. 282.

23. CERTIFICATES, § 114 — Grant or refusal — Motor carrier — Charter service — Witness testimony — Public demand or need.

[PA.] Because a motor common carrier applicant demonstrated, through witnesses forming a cross-section of the public in six named counties, a public demand or need for a carrier that can make, among six other named counties, inter-county pickups of an organization's members for the combined transportation of the organization's members in one vehicle to a common destination point, the applicant was granted authority to provide charter service by picking up members of that organization from one point in a county, then proceeding to pick up members of the same organization at another point in another county, for transportation of the organization members jointly in one vehicle to a common Pennsylvania destination point outside the first two counties.

p. 283.

24. CERTIFICATES, § 127 — Operation — Prohibition against duplicative rights — Motor common carrier — Merged rights.

[PA.] A basic precept in Pennsylvania motor carrier law is that a motor carrier cannot hold grants of duplicative or overlapping operating authority, and when a carrier acquires operating authority that coincides with other grants of a carrier's authority, the coextensive portions of the acquired and the existing authority merge into one, indivisible right; a merged right cannot be severed into two distinct, duplicative operating rights either to allow the carrier to retain one right and sell the other, or to allow the carrier to sell or operate the two rights

separately.  
p. 283.

25. CERTIFICATES, § 114 — Motor common carrier — Type of vehicles — Witnesses.

[PA.] The commission refused to limit a motor common carrier applicant's charter service authority to transportation by vans or minibuses, because although many supporting witnesses stated a desire to have service made available to them in vans or minibuses, the witnesses maintained that their general intent was to obtain enough reservations to fill a standard sized coach bus for their groups' planned trips.

p. 285.

26. CERTIFICATES, § 114 — Grant or refusal — Motor common carrier — Expanded authority — Technical and financial fitness.

[PA.] Where a motor common carrier applicant already possesses a certificate of public convenience issued by the commission and is seeking merely to expend its certificated authority, the applicant is presumed to be technically and financially fit, but that presumption of continuing fitness is rebuttable by appropriate evidence of record; therefore, a motor carrier applicant was found to be technically and financially fit to provide the proposed additional charter transportation service because the record was devoid of any evidence challenging such fitness, nor did the record suggest the applicant lacked a propensity to operate safely and legally.

p. 285.

27. CERTIFICATES, § 11 — Commission authority — Amount of competition — Public demand

[PA.] The amount of intrastate competition that will benefit the public interest is a matter legislatively entrusted to the commission's sound judgment and discretion, and it is for the commission to determine whether the available equipment and facilities are sufficient to meet the public demand.

p. 286.

Commissioners Present:

Bill Shane, Chairman  
William H. Smith, Vice Chairman,  
Dissenting  
Joseph Rhodes, Jr., Commissioner  
Frank Fischl, Commissioner  
David W. Rolka, Commissioner,  
Dissenting

By the COMMISSION:

ORDER

By an order adopted October 19, 1989 and entered October 20, 1989, the Commission granted reconsideration of its August 30, 1989 order at A-00088807, F.2, Am-K, but the Commission postponed a discussion of the merits of the case pending its reexamination of the lengthy record in this matter and all the pertinent case law. This order comprises the postponed analysis of the merits of the case on reconsideration.

#### 1. Procedural History

On June 18, 1986, Blue Bird Coach Lines, Inc. (Blue Bird) filed an application to amend its certificate of public convenience to provide for the transportation of persons, in group and party service, between points in the counties of Mercer, Crawford, Venango, Forest, Lawrence, Beaver, Butler, Armstrong, and Clarion, and from points in said counties and the county of Allegheny, to points in Pennsylvania and vice versa. Timely protests to Blue Bird's application were filed, *inter alia*, by Bortner Bus and Tour Company (Bortner Bus); O.D. Anderson, Inc. (Anderson); Country Trails Bus Co., Inc. (Country Trails); Grove City Bus Lines, Inc. (Grove City), and Butler Motor Transit, Inc. (Butler Motor).

All parties to the application proceeding were represented by counsel. During a period from April 14, 1987 to August 10, 1988, nine days of evidentiary hearings were held. The transcript of evidentiary hearings consists of 1,522 typewritten pages. Blue Bird presented 24 witnesses and admitted 10 exhibits into the

record. The protestants presented 11 witnesses and admitted 38 exhibits. The intervenor presented one witness and admitted 12 exhibits into the record.

All parties to the application proceeding filed main briefs and reply briefs. By an Initial Decision issued March 31, 1989 and served April 7, 1989, Commission Administrative Law Judge (ALJ) Robert P. Meehan approved, in part, Blue Bird's application. Exceptions to the Initial Decision were filed by Blue Bird, Butler Motor, and jointly by Anderson, Bortner Bus and Grove City.

By an order adopted August 3, 1989 and entered August 30, 1989, the Commission ruled upon the parties' exceptions. The Commission denied all the exceptions filed by Butler Motor, Anderson, Bortner Bus, and Grove City. However, the Commission granted in part and denied in part Blue Bird's exceptions. Several petitions for relief were filed from the Commission's August 30, 1989 order. Bortner Bus filed a petition for Commission reconsideration. Butler Motor, Anderson, Bortner Bus, Country Trails, and Grove City filed petitions for appellate court review and for supersedeas/stay of the August 30 order.

By an order adopted October 19, 1989 and entered October 20, 1989, the Commission granted reconsideration of its August 30, 1989 order conditioned upon the withdrawal of all petitions for appellate review which had been filed in the Commonwealth Court of Pennsylvania. See Pa. R.A.P. 1701 and the accompanying Note (explains the interrelationship between grants of reconsideration by lower tribunal and petitions for appellate review).<sup>2</sup> Given the complexity of the law in the case and the length of the record, the Commission postponed a discussion of the merits of the case on reconsideration pending withdrawal of the petitions for appellate review of the Commission's August 30 order and pending the Commission's reexamination of the record and the pertinent case law. By its October 20 order, the Commission also granted supersedeas/stay of its August 30, 1989 order pending the entry of the Commission's order discussing the merits of the case on reconsideration.

Butler Motor's petition for appellate

review of the Commission's August 30 order was docketed in the Commonwealth Court at No. 1883 C.D. 1989. The separate petition for appellate review of the August 30 order jointly filed by Anderson, Bortner Bus, Country Trails and Grove City was docketed in the Commonwealth Court at No. 2031 C.D. 1989. Both petitions for review of the Commission's August 30, 1989 order were withdrawn from the Commonwealth Court by the respective appellate petitioners. On November 8, 1989, the Commonwealth Court issued notices of discontinuance of the petitions for review docketed at No. 1883 C.D. 1989 and No. 2031 C.D. 1989.

Consequently, the Commission now has jurisdiction to reconsider its August 30, 1989 order and presents the following analysis of the merits of the case on reconsideration.

## II. Grant of Reconsideration

On September 25, 1989, Bortner Bus filed a petition for reconsideration of the Commission's August 30, 1989 order granting in part and denying in part Blue Bird's exceptions to ALJ Meehan's Initial Decision which had approved, in part, Blue Bird's application for expanded operating authority. Service of the reconsideration petition was made upon all parties of record in the application proceeding. With the assistance of its counsel, Blue Bird filed an answer in opposition to the reconsideration petition.

[1] A petition for reconsideration may properly raise any matters designed to convince the Commission that it should exercise its discretion to rescind or amend, wholly or partially, a prior Commission order. *Pennsylvania Public Utility Commission v. General Telephone Co. of Pennsylvania*, 57 Pa PUC 765 (1983); 66 Pa. C.S. §703(g). To succeed, a petition for reconsideration must present "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Quick v. Pennsylvania Gas and Water Co.*, 56 Pa PUC 553, 559, 51 PUR4th 284 (1982).

Additionally, the Commission may, on its own motion, rescind or amend any order made by it after providing interested parties with

notice and an opportunity to be heard. *Scott Paper Co. v. Pennsylvania Public Utility Commission*, — Pa.Cmwlt. —, 558 A.2d 914 (1989); *Tranter v. Pennsylvania Public Utility Commission*, 4 Pa.Cmwlt. 585, 288 A.2d 837 (1972); *Paradise v. Pennsylvania Public Utility Commission*, 184 Pa.Super.Ct. 8, 19 PUR3d 394, 132 A.2d 754 (1957); 66 Pa. C.S. §703(g).

In its petition for reconsideration, Bortner Bus argued primarily that the Commission misconstrued the evidence presented by Blue Bird to satisfy the Commission's policy statement at 52 Pa. Code §41.14(a) which requires an applicant seeking motor common carrier authority to demonstrate that approval of its application will serve a useful public purpose, responsive to a public demand or need. In particular, Bortner Bus suggested that no useful public purpose would be served by granting Blue Bird's application inasmuch as six bus companies already serve the territory in which Blue Bird has requested operating authority.

We perceive that the discussion in our August 30, 1989 order of the transportation regulatory policy statement at 52 Pa. Code §41.14(a) has generated some confusion and concern among the parties to Blue Bird's application proceeding. We note that the two petitions for appellate review docketed in the Commonwealth Court at No. 1883 C.D. 1989 and No. 2031 C.D. 1989 were largely based, as stated in the parties' respective petitions for review, upon the appellate petitioners' disagreement with the Commission's explanation of the criterion at 52 Pa. Code §41.14(a) and the interpretation of that criterion vis-a-vis the evidence of record adduced in Blue Bird's application proceeding.

Therefore, we have elected to grant reconsideration in order to qualify our interpretation of the policy statement at 52 Pa. Code §41.14(a) regarding whether approval of an application for motor common carrier authority will serve a useful public purpose, responsive to a public demand or need. Furthermore, we shall again review the evidence of record in Blue Bird's application proceeding in order to highlight our interpretation of 52 Pa. Code §41.14(a).

## III. Grant of Supersedeas/Stay

In our October 20, 1989 order, we also granted the petitions of Butler Motor, Anderson, Bortner Bus, Country Trails, and Grove City for supersedeas/stay of our August 30, 1989 order and thereby stayed the effectiveness of the August 30 order pending the entry of the present order discussing the merits of this case on reconsideration.<sup>3</sup> We now detail our reasons for granting supersedeas/stay of our August 30 order.

[2] The temporary staying of an order may be used to maintain the status quo pending the entry of a subsequent order. See, e.g., *Reynolds Metals Co. v. Berger*, 423 Pa. 360, 223 A.2d 855 (1966); *Keasbey's Trust Estate*, 342 Pa. 439, 20 A.2d 281 (1941); Pa. R.A.P. 1701(b)(1). Generally, the grant of a stay is justified if (1) the petitioner for a stay makes a strong showing of a likelihood to prevail on the merits; (2) the petitioner has shown that, without the requested relief of the stay, the petitioner will suffer irreparable injury; (3) the issuance of the stay will not substantially harm other interested parties, and (4) the issuance of the stay will not adversely affect the public interest. *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983).

Butler Motor, Anderson, Bortner Bus, Country Trails and Grove City presented in their petitions for supersedeas/stay strong arguments debating the manner in which the Commission described and evaluated 52 Pa. Code §41.14(a) in light of the evidence of record presented in Blue Bird's application proceeding. Given our decision to grant reconsideration in order to clarify our analysis of subsection 41.14(a) in the context of Blue Bird's application proceeding, we opine that the petitioners established their likelihood of prevailing on the merits.

The petitioners testified on their own behalf in the course of Blue Bird's application hearings that they regarded a grant of additional operating authority to Blue Bird as a substantial threat to their survival. Grove City indicated that it was on the verge of bankruptcy. Bortner Bus and Country Trails argued that the smallness of their operations in comparison to the pervasiveness of Blue Bird's operations made Blue Bird a competitive threat which could

possibly drive them out of business. Anderson complained that Blue Bird's application for expanded authority would allow Blue Bird to duplicate to a great extent Anderson's authority and divert a large portion of traffic to Anderson's severe financial detriment. Therefore, each of these petitioners demonstrated that, without a stay, it would suffer irreparable injury, i.e., a financial harm not compensable by money damages. *Re Incremental Gas Pricing Tariffs*, 56 Pa PUC 728 (1983); see *Process Gas Consumers Group*.

[3] The staying of the Commission's August 30 order would not produce a substantial adverse impact on Blue Bird. The granting of authority to operate a public utility is a discretionary act by the Commission bounded by the requirements that the Commission's decision be supported by substantial evidence of record, not be premised on a violation of constitutional rights, and not contain an error of law. *E.g., Koway Enterprises Inc. v. Pennsylvania Public Utility Commission*, 85 Pa.Cmwlth. 1, 480 A.2d 1317 (1984); 66 Pa. C.S. §§332(b) and 1103(a). A certificate of public convenience is neither a contract nor a property right; hence, the revocation of a certificate of public convenience for due cause does not deprive the certificate holder of a protected right. *Paradise*. Accordingly, Blue Bird does not have an automatic right to the granting of its application for additional authority. Nor does Blue Bird have a right not to have a grant of operating authority rescinded by the Commission for due cause. *Paradise*; 66 Pa. C.S. §501.

Moreover, the staying of the Commission's August 30 order will not deprive Blue Bird of operating revenues in an amount which will threaten Blue Bird's existence as a carrier. In requesting additional operating authority from the Commission, Blue Bird presented evidence of its current financial soundness as required by the Commission's policy statement at 52 Pa. Code §41.14(b).

The issuance of the stay would not adversely affect the public interest in having adequate transportation. At the moment, the public has access to transportation services, *inter alia*, from Butler Motor, Bortner Bus,

Anderson, Country Trails, and Grove City. The granting of the stay would merely delay the public's ability additionally to engage the services of Blue Bird. Furthermore, if we were to determine on reconsideration that our August 30 order had erroneously approved the application of Blue Bird, the staying of the August 30 order would prevent the public from having contracted with Blue Bird for services that Blue Bird would be later unable to perform, and the stay would therefore prevent hardship to the public.

For these reasons, we entered the October 20, 1989 order staying the effectiveness of our August 30, 1989 order pending our discussion of the merits of this case on reconsideration.

#### IV. Motor Common Carrier Application Criteria

[4] Subsection 1103(a) of the Public Utility Code, 66 Pa. C.S. §1103(a), expressly directs the Commission to grant a certificate of public convenience only if the Commission has determined that the issuance of a certificate "is necessary or proper for the service, accommodation, convenience, or safety of the public." *Accord* 66 Pa. C.S. §1101. This legislative directive to the Commission has been consistently interpreted by Pennsylvania appellate courts as a "mandate to protect the public interest by preventing unrestrained and destructive competition" among motor carriers in order to assure the availability of transportation commensurate with the demonstrated public need for transportation. *Seaboard Tank Lines, Inc. v. Pennsylvania Public Utility Commission*, 93 Pa.Cmwlth. 601, 611, 502 A.2d 762, 766 (1985) (footnote deleted); *Pennsylvania Public Utility Commission v. Purolator Courier Corp. (Purolator Courier Corp. I)*, 24 Pa.Cmwlth. 301, 355 A.2d 850 (1976); *McNaughton Bros., Inc. v. Pennsylvania Public Utility Commission*, 2 Pa.Cmwlth. 319, 278 A.2d 186 (1971); *Zucher v. Pennsylvania Public Utility Commission*, 173 Pa.Super.Ct. 143, 98 A.2d 218 (1953); *Re Ben Franklin Carriages, Inc.*, 54 Pa PUC 74 (1980).<sup>4</sup>

However, the General Assembly has "provided no definition of specifically what the

criteria [are] to be in determining the propriety of granting a certificate, leaving the formulation of such criteria to the [Commission]." *Seaboard Tank Lines, Inc.*, 93 Pa.Cmwlth. at 606-07, 502 A.2d at 764-65; Commission's Proposed Rulemaking at 52 Pa. Code §41.14, 12 Pa.B. 2697 (1982). Consequently, the method of implementing the statutory mandate at subsection 1103(a) has been left to the judgment and discretion of the Commission as the administrative agency legislatively empowered, and entrusted with the duty, to regulate public utilities operating within Pennsylvania. *Yellow Cab Co. of Pittsburgh v. Pennsylvania Public Utility Commission*, 105 Pa.Cmwlth. 513, 524 A.2d 1069 (1987); *Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission (Morgan Drive Away, Inc. I)*, 99 Pa.Cmwlth. 420, 512 A.2d 1359 (1986); *Seaboard Tank Lines, Inc.; see also Carol Lines, Inc. v. Pennsylvania Public Utility Commission*, 83 Pa.Cmwlth. 393, 477 A.2d 601 (1984) (administrative agency's interpretation of statute it administers and executes is accorded great deference and should be upheld unless clearly erroneous); *Harkins v. Department of Public Welfare*, 75 Pa.Cmwlth. 454, 462 A.2d 894 (1983) (administrative agency's interpretation of its own regulation is entitled to great weight if consistent with statute under which regulation was promulgated).

[5] In fulfilling our legislative mandate, we have adopted, over the years, certain criteria for evaluating whether approval of an application for motor common carrier operating authority "is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. §1103(a). Traditionally, we accorded to motor common carrier applicants the burden of proving (1) a public need for the service proposed by the applicant; (2) the inadequacy of the existing service available to the public, and (3) the applicant's fitness and capacity to render the proposed service. *E.g., Byerly v. Pennsylvania Public Utility Commission*, 440 Pa. 521, 270 A.2d 186 (1970); *Samuel J. Lansberry v. Pennsylvania Public Utility Commission*, 66 Pa.Cmwlth. 381, 444 A.2d 832 (1982); *Application of L.P. Transportation, Inc.*, 25 Pa.Cmwlth. 412, 359 A.2d 848 (1976).

As we have perceived changes in the motor carrier industry, we have re-evaluated the standards to be utilized in deciding whether approval of a motor common carrier application is, under 66 Pa. C.S. §1103(a), "necessary or proper for the service, accommodation, convenience, or safety of the public." *See, e.g., Samuel J. Lansberry* (applicant relieved of traditional burden of showing inadequacy of present service if applicant's proposed service differed from service presently available to public.)

In 1982, we abandoned the applicant's traditional, tripartite burden of proof and promulgated the motor carrier evidentiary criteria contained in our current transportation regulatory policy statement at 52 Pa. Code §41.14. *E.g., Morgan Drive Away, Inc. I*. We explained that the traditional standards had become antiquated and were being discarded because they "derived from the 'monopoly' theory of regulation" and were "overly protective for a mature and fundamentally health[y] industry and tend[ed] to restrain healthy competition, reduce the industry's operational and marketing flexibility, misallocate economic resources, and discourage innovation." Commission's Adoption of Transportation Regulatory Policy Statement at 52 Pa. Code §41.14, 12 Pa.B. 4282, 4282 (1982). Our ability to effectuate this change in our regulatory policy through the new application criteria at 52 Pa. Code §41.14 was endorsed by appellate court decisions which recognized that our change of regulatory policy was a valid exercise of our judgment and discretion in implementing subsection 1103(a) and that the criteria at 52 Pa. Code §41.14 were consistent with the statutory mandate at subsection 1103(a). *Yellow Cab Co. of Pittsburgh; Morgan Drive Away, Inc. I; Seaboard Tank Lines, Inc.*

[6] Under the new criteria at section 41.14, a motor common carrier applicant now has a bipartite burden of proof. Subsection 41.14(a) places upon an applicant the "burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need." Subsection 41.14(b) places upon an applicant the "burden of demonstrating that it possesses the technical and financial ability to provide the proposed service."

Subsection 41.14(b) also contains the caveat that operating "authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally." Together, the evidentiary criteria at subsection 41.14(a) and 41.14(b) constitutes an applicant's prima facie burden of proof in an application proceeding to acquire motor common carrier authority.

[7] By eliminating the applicant's traditional burden of proving the inadequacy of current service, we have redirected our focus from fostering monopolistic protection for extant carriers to encouraging increased, legitimate competition among carriers consonant with the demonstrated public demand or need for transportation. *Seaboard Tank Lines, Inc.*; Commission's Adoption of Transportation Regulatory Policy Statement at 52 Pa. Code §41.14.

[8] Nevertheless, mindful of our legislative mandate to safeguard public access to satisfactory transportation by regulating competition among carriers in order to prevent unfettered and harmful competition, we have placed upon existing carriers the burden of showing that approval of an application would contravene the public interest. *Morgan Drive Away, Inc.*; *Seaboard Tank Lines, Inc.* Subsection 41.14(c) states the standard by which existing carriers' protests to an application will be assessed, i.e.,

[t]he Commission will grant motor common 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 an extent that, on balance, the granting of authority would be contrary to the public interest.

#### A. Useful Public Purpose Responsive to Public Demand or Need

Our motor common carrier application criteria at 52 Pa. Code §41.14 were interpreted by us for the first time in *Re Richard L. Kinard, Inc.*, 58 Pa PUC 548 (1984). Principally, our discussion in *Re Richard L. Kinard, Inc.* was devoted to an analysis of subsection 41.14(a), the applicant's "burden of demonstrating that

approval of the application will serve a useful public purpose, responsive to a public demand or need."

[9] Due to the use of the disjunctive word "or" in subsection 41.14(a), we treated the words "demand" and "need" as interchangeable terms in *Re Richard L. Kinard, Inc.* We continue to construe these words as synonyms and conclude that such an interpretation conforms not only to the regulatory language of subsection 41.14(a) but also to the statutory language of subsection 1103(a) which requires a Commission determination that the granting of a certificate meets one of the following prerequisites: that the certificate is "necessary or proper for the service, accommodation, convenience, or safety of the public." (Emphasis added.)

However, in *Re Richard L. Kinard, Inc.*, we distinguished the subsection 41.14(a) phrase "useful public purpose" from the subsection 41.14(a) phrase "public demand or need" by declaring that "[w]hile granting the application may respond to 'public demand or need,' it would not necessarily 'serve a useful public purpose . . .'" *Id.* at 552. We then explained that a useful public purpose could be shown by evidence establishing that the applicant will be offering the public a different service, greater efficiency, lower rates, satisfaction of future transportation needs, backup service, reestablishment of the applicant's authority, or more economical operations through the combination of the applicant's interstate and intrastate authorities. Additionally, we stated that a useful public purpose could be proven by evidence that shipper competition required an increase in the number of carriers available to serve the shippers or by evidence that certain benefits would accrue to the applicant, and concomitantly would pass to the public; if the application were granted. These nine suggested methods of demonstrating a useful public purpose were collectively referred to in *Re Richard L. Kinard, Inc.* as "alternatives to inadequacy." *Id.* at 551.

Finally, we stated in *Re Richard L. Kinard, Inc.* that "[t]he mere introduction of shipper support testimony would not be enough to satisfy solely on this basis the section 41.14(a) burden." *Id.*, at 552.

[10] During the intervening years since our decision in *Re Richard L. Kinard, Inc.*, we have had many opportunities to confront difficulties in construing subsection 41.14(a) vis-a-vis *Re Richard L. Kinard, Inc.* Chief among the interpretation problems has been a tendency among motor carriers, legal counsel representing motor carriers, and occasionally staff in various capacities throughout the Commission to substitute proof of one of the nine "alternatives to inadequacy" for proof of a supporting witness's actual need for transportation between identified points in Pennsylvania that are within the scope of the applicant's proposed operating territory. We unequivocally reject that attempted substitution and affirm that, without proof in the record of a public demand/need for an applicant's proposed service between specified, intrastate points, an application for motor common carrier authority cannot be validly approved pursuant to subsection 1103(a) of the Public Utility Code, and hence cannot be validly approved pursuant to our policy statement at 52 Pa. Code §41.14. See also 66 Pa. C.S. §1101.

[11] Furthermore, our reliance on "alternatives to inadequacy" in *Re Richard L. Kinard, Inc.* has generated much confusion and proven inadvertently misleading. Our clear intent in promulgating the evidentiary criteria at 52 Pa. Code §41.14 was to remove the applicant's burden of establishing the inadequacy of present transportation. E.g., *Seaboard Tank Lines, Inc.*; *Re Richard L. Kinard, Inc.* However, the applicant's burden of proving such so-called "alternatives to inadequacy" as the difference between the applicant's proposed service and existing transportation service or the satisfactoriness of the applicant's proposed service as a backup to existing transportation service has, in effect, accorded to the applicant the burden of demonstrating the inadequacy of extant service albeit under another descriptive label, namely, the burden of proving "alternatives to inadequacy." Consequently, the use of "alternatives to inadequacy" as defined in *Re Richard L. Kinard, Inc.* does not comport with our delineated regulatory policy at 52 Pa. Code §41.14.

[12] Also, our declaration in *Re Richard L. Kinard, Inc.* that mere shipper support

testimony would not fulfill an applicant's burden of proof under subsection 41.14(a) has been misunderstood to suggest that evidence other than that provided by shipper witnesses, in the case of property carrier applications, and that provided by rider witnesses, in the case of passenger carrier applications, is required to sustain an applicant's burden of proving that the granting of its application will serve a useful public purpose, responsive to a public demand/need. This was not the interpretation we intended.

As explained in the Initial Decision of Commission ALJ John H. Corbett, Jr., in the *Application of Pleasant Trucking, Inc.*, A-00108637 (Initial Decision issued December 5, 1989; final order entered January 8, 1990), "[e]vidence tending to establish a public demand for the proposed service is usually in the form of an expressed and defined desire on the part of some portion of the public for the proposed service." *Id.* at 22. Public demand/need for an applicant's proposed service has customarily been demonstrated by witnesses' testimony detailing requests for service. E.g., *Byerly; Deutschland Tours, Inc. v. Pennsylvania Public Utility Commission*, 19 Pa. Cmwlth. 1, 337 A.2d 922 (1975); 52 Pa. Code §3.382(a). "[T]he relevant inquiry is what are the public's needs, and that may be proven by the testimony of shippers or others with knowledge of that subject." *Byerly*, 440 Pa. at 527, 270 A.2d at 189.

For these reasons, we are overruling our decision in *Re Richard L. Kinard, Inc.*, and we are clarifying our interpretation of our transportation regulatory policy statement at 52 Pa. Code §41.14(a).

#### 1. Definition of Useful Public Purpose, Responsive to Public Demand or Need

[13] As stated previously in this order, our purpose in promulgating the regulatory policy statement at 52 Pa. Code §41.14 was to execute the legislative directive at subsection 1103(a) of the Public Utility Code. E.g., *Seaboard Tank Lines, Inc.* Consequently while our interpretation of subsection 41.14(a) must comport with the statutory mandate at subsection 1103(a), e.g., *Harkins*, we are not compelled to cling to

the explanation of subsection 41.14(a) that we attempted in *Re Richard L. Kinard, Inc.* See, e.g., *Yellow Cab Co. of Pittsburgh*; *Morgan Drive Away, Inc. I*; *Seaboard Tank Lines, Inc.* Having overruled *Re Richard L. Kinard, Inc.*, we now offer the following simplified interpretation of our policy statement at subsection 41.14(a).<sup>6</sup>

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."<sup>7</sup> E.g., *Seaboard Tank Lines, Inc.*, 93 Pa.Cmwlth. at 613, 502 A.2d at 768; *Re Lenzner Coach Lines, Inc.*, 63 Pa PUC 217 (1987); see also *Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission (Morgan Drive Away, Inc. II)*, 16 Pa.Cmwlth. 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 §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.

More importantly, this interpretation conforms to the indisputable and long-standing benchmark in motor common carrier cases, namely, that a certificate of public convenience will be issued to an applicant only if the applicant has proven that its intended service is "reasonably necessary for the accommodation or convenience of the public." *D.F. Bast, Inc. v. Pennsylvania Public Utility Commission*, 397 Pa. 246, 250, 31 PUR3d 473, 154 A.2d 505, 508 (1959); *Purolator Courier Corp. I*; *Dutchland Tours, Inc.*; *McNaughton Bros., Inc., Zürcher*; *Re Mobilfone of Northeastern Pennsylvania, Inc.*, 54 Pa PUC 521 (1980).

[14] Both appellate court decisions and Commission orders have confirmed that, in the context of subsection 1103(a), a public

demand/need for an applicant's proposed transportation service may be proven through witnesses comprising a representative sampling of the public that will use the applicant's proposed service within the territory encompassed by the application. *Purolator Courier Corp. v. Pennsylvania Public Utility Commission (Purolator Courier Corp. II)*, 51 Pa.Cmwlth. 377, 414 A.2d 450 (1980); *Purolator Courier Corp. I*; *Application of Van Trans, Inc.*, A-00101053, F.5 (64 Pa PUC 207) (order adopted June 25, 1987, entered July 8, 1987); *Re Eagle Courier and Limousine Service, Inc. (Re Eagle Courier)*, 57 Pa PUC 404 (1983).

The witnesses supporting a motor common carrier application must be legally competent and credible, e.g., *D.F. Bast, Inc.*; *Mertz White Way Tours v. Pennsylvania Public Utility Commission*, 204 Pa.Super.Ct. 43, 54 PUR3d 554, 201 A.2d 446 (1964), and their testimony must be probative and relevant to the application proceeding. E.g., *Purolator Courier Corp. I*; *Dutchland Tours, Inc.*; *Morgan Drive Away, Inc. II*; 66 Pa. C.S. §332(b). The supporting witnesses must articulate a demand/need for the type of service embodied in the application. E.g., *Purolator Courier Corp. I*; *Re Lenzner Coach Lines, Inc.*; *Re Mobilfone of Northeastern Pennsylvania, Inc.*; *Re James A. Means*, 53 Pa PUC 216 (1979); *Re Hesser Bros., Inc.*, 52 Pa PUC 69 (1978). 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 PUC 411 (1987); *Re Purolator Courier Corp.*, 50 Pa PUC 308 (1976).

[15] 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.Super.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 (68 Pa PUC 400) (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.

## 2. Blue Bird's Evidence of Public Demand/Need

On June 18, 1986, Blue Bird filed an application at Docket No. A-00088807, F.2, Am-K to expand its Commission-approved common carrier operating authority. At the April 14, 1987 initial hearing on its application, Blue Bird restrictively amended its application, see 52 Pa. Code §5.235, to request operating authority:

To transport persons, in group and party service, between points in the counties of Mercer, Crawford, Venango, Forest, Lawrence, Butler, and Clarion, and from points in said counties to points in Pennsylvania, and return.

Accordingly, in the case of Blue Bird's application, the evidence of record must be reviewed in the context of two circumstances specifically affecting Blue Bird's application: (1) Blue Bird's request for operating authority is of a limited nature, i.e., group and party service restricted to charter service and (2) Blue Bird's request for operating authority encompasses six named rural counties with comparatively small

populations.

### (a) Proof of Public Demand/Need for Classes of Group And Party Service

Because Blue Bird's application is formulated as a request to provide group and party service, Blue Bird has the burden of showing a public demand/need for each class of group and party service which Blue Bird wishes to offer to the public. The classes of group and party service are enumerated in the Commission's regulation at 52 Pa. Code § 29.322 which states in pertinent part:

(1) A group and party carrier may provide the services listed in this paragraph in the area authorized by its certificate except where limited by specific restrictions in its certificate:

(i) *Charter service.* This service shall be limited to the transportation of groups and parties of persons the charge for which is based upon the transportation of a group and not upon the number of persons carried and for which payment is made by a single individual or organization and not by the passengers as individuals. --

(ii) *Tour or sightseeing service.* This service shall include tours and sightseeing trips on which the general public is invited: limited to trips which originate and terminate at the same point, on which advertised stops are made for sightseeing or recreational purposes, and for which each passenger pays the rate contained in the filed tariff. The charge for the trip may be for transportation alone or may include meals, hotel expenses and admission charges to points of interest.

(iii) *Special excursions.* This service shall be limited to advertised trips to a definite destination on which trips the general public is invited and for which transportation a passenger pays the rate contained in the filed tariff.

In regard to the classes of group and party service to be offered to the public, Blue Bird introduced the testimony of witnesses who

spoke solely of their demand/need for charter service. Blue Bird did not adduce any evidence of a public demand/need for group and party service as described in 52 Pa. Code §29.322(1)(i). Implicitly conceding this restriction, Blue Bird did not file any exceptions to the Initial Decision concerning the limitation of its operating authority to charter service. Our August 30, 1989 order adopted the position of ALJ Meehan in restricting Blue Bird to charter service. Blue Bird has not petitioned for reconsideration of the August 30, 1989 order imposing the charter service restriction on its operating authority. By its inaction, Blue Bird has waived any objections to the charter service limitation.

(b) *Proof of Public Demand/Need for Proposed Operating Territory*

[16] An applicant is not required to establish a public demand/need for the proposed transportation in each and every point within the requested operating territory. *Morgan Drive Away, Inc. I; Purolator Courier Corp. II; Purolator Courier Corp. I; Re Eagle Courier*. Typically, the applicant may sustain its burden of proof by establishing a public demand/need for the applicant's proposed service generally throughout the territory encompassed by the application. *Morgan Drive Away, Inc. I; Purolator Courier Corp. II; Re Eagle Courier*.

We now consider the evidence of public demand/need which Blue Bird presented on the issue of the scope of its intended operating territory. See 66 Pa. C.S. §1101.

The plain meaning of Blue Bird's application language is that Blue Bird wishes to provide the transportation of persons (1) between points in each of the individually named counties (e.g., from one point in Mercer County to another point in Mercer County; from one point in Crawford County to another point in

Crawford County), (2) from a point in a named county to a point in another named county (e.g., from a point in Mercer County to a point in Crawford County), and (3) from a point in a named county to a point in Pennsylvania which is not in a named county and return (e.g., from a point in Mercer County to a point in Philadelphia County and return). To clarify our analysis, we shall examine the evidence of public demand/need for service offered by Blue Bird's supporting witnesses in each of the counties where Blue Bird proposes to provide transportation.

Preliminarily, we note that, in his Initial Decision, ALJ Meehan determined that Blue Bird had failed to present any evidence of public demand/need for its proposed transportation services in Forest County. Blue Bird did not file an exception to the Initial Decision in order to contest ALJ Meehan's exclusion of Forest County from the grant of operating authority to Blue Bird. Our August 30, 1989 order adopted ALJ Meehan's elimination of Forest County from the grant of operating authority to Blue Bird. Blue Bird has not sought reconsideration of our exclusion of Forest County. Consequently, Blue Bird has waived any issues regarding our withholding of operating authority to provide group and party service in Forest County.

We accept the following evidence of record as credible, substantial, competent and relevant support for Blue Bird's application on the issue of a public demand/need for Blue Bird's proposed transportation service. *Norfolk and Western Railway Co. v. Pennsylvania Public Utility Commission*, 489 Pa. 109, 413 A.2d 1037 (1980); 66 Pa. C.S. §332(b).

*Proof of public Demand/Need regarding Mercer County:*

Dennis Burnham, director of group operations for McMullin Tours, Inc., testified that McMullin Tours, Inc. is a travel agency that holds a Commission-issued broker's license to operate in Grove City and within a 50-mile radius of Grove City. (Tr. 137-38). McMullin Tours, Inc. has arranged trips from the Grove City area (Tr. 138-39) to Hershey, Lancaster,

Philadelphia, and Pittsburgh. (Tr. 140-41).

Joan Fry, director of public relations for the Christian Action Council (Tr. 290-91), testified that the Council regularly participates in pro-life marches in Pittsburgh (Tr. 292-93) and is contemplating a trip to Harrisburg. (Tr. 295) For a chartered bus trip to Washington, D.C., the Council had a group of its members picked up by bus in Sharon and then taken to Grove City where an additional group of its members was picked up for transportation jointly to Washington. (Tr. 291)

Nicholas Sicilian, head of the committee that arranges transportation for the 1600-member Mercer Moose Lodge (Tr. 315-16), testified that the Mercer Moose Lodge arranges outings for its members to Pittsburgh, Erie, and Harrisburg. (Tr. 318-21) The Mercer Moose Lodge would like to arrange 10-15 trips per year for its membership. (Tr. 321, 324)

Leah D. Lapevic, executive director of the Grove City Chamber of Commerce, testified that her duties with the Chamber of Commerce include promoting the business and economic development of the Grove City area and providing public relations for the community of Grove City. (Tr. 354) The Chamber of Commerce dispenses information about the services accessible to the public in the community of Grove City, including information about available transportation services.<sup>10</sup> The Chamber of Commerce has received inquiries about the availability of public transportation by vans and minibuses. (Tr. 359)

Catherine S. Fillhart, women's activity chairman for the Life Member Club of the Frontier Council of the Telephone Workers, testified that she needs to arrange transportation for her club members from Sharon or Greenville in Mercer County (Tr. 585, 588) to Pittsburgh. (Tr. 587)

Mary Elizabeth Ziegler, secretary of the Pennsylvania Oil Region Antique Automobile Club, testified that her duties include chartering buses and arranging trips for the club. (Tr. 715) Ziegler stated that, when she arranges transportation for the club, she arranges multiple pickup points, including Greenville and Sharon in Mercer County (Tr. 717) so that the club members can be picked up in the areas where they live.

(Tr. 717-18) The club wants to arrange charter trips to Hershey, Carlisle, and the Pittsburgh area. (Tr. 718-19) In the past, the club has also taken trips to the Altoona area (Tr. 728), Erie, and Clearfield. (Tr. 731) The club would like to charter trips for its members to visit antique vehicle museums throughout Pennsylvania. (Tr. 768)

[17] Given that Blue Bird's request for operating authority is limited to charter service<sup>11</sup> for a county with a population of only 128,299,<sup>12</sup> we conclude that Blue Bird has demonstrated, through its witnesses comprising a cross section of the Mercer County public, a public demand/need for its proposed transportation service from points in Mercer County to points in Pennsylvania outside Mercer County.<sup>13</sup> Nevertheless, we are compelled to conclude that Blue Bird has not shown a public demand/need for its proposed transportation between points in Mercer County, i.e., from a point in Mercer County to a point in Mercer County. None of Blue Bird's witnesses indicated any destination points in Mercer County to which they desired transportation.

*Proof of Public Demand/Need regarding Crawford County:*

Blue Bird already has group and party operating authority to serve parts of Crawford County including the city of Titusville; and within an airline distance of ten statute miles of the limits of said city to points in Pennsylvania; from the borough of Cambridge Springs in the township of Cambridge to points in Pennsylvania, and from the city of Meadville and points within five miles of the limits of said city to points in Pennsylvania. In its application at A-00088807, F.2, Am-K, Blue Bird has requested additional operating authority to provide group and party charter service between points throughout Crawford County and from points in Crawford County to points in Pennsylvania and return.<sup>14</sup>

In support of its application for expanded authority, Blue Bird presented the following witnesses. Mary Elizabeth Ziegler, secretary of the Pennsylvania Oil Region Antique Automobile Club, testified that the club had used

Blue Bird for an interstate trip from Crawford County to Detroit, Michigan, and for the purposes of this trip, some club members were picked up in Centerville and Titusville in Crawford County. (Tr. 717) The club inquired about using Blue Bird for a trip to Erie in 1987 but ultimately did not engage Blue Bird's services because Blue Bird's limited operating authority in Crawford County made it difficult for the club's members to reach those points in Crawford County which Blue Bird could then serve. (Tr. 735-40) The club has made trips to Hershey, Carlisle, Erie, and Clearfield. (Tr. 731) Ziegler testified that club members are limited by statute to the number of miles per year that they can drive using an antique license plate and the members are also limited by inclement weather conditions to the times of the year when they wish to drive antique vehicles. Therefore, Ziegler testified that the club likes to use public transportation for trips to antique car museums and other places of interest. (Tr. 768-69)

Ziegler also testified as a committee chairman for Boy Scout Troop 17 from French Creek Council and stated that her responsibilities as committee chairman include organizing trips and chartering buses for the Boy Scouts. (Tr. 715) Ziegler testified that, on behalf of the Boy Scouts, she had arranged a trip on Blue Bird buses from Titusville in Crawford County and from Franklin, Oil City, and Plumer in Venango County to West Point, New York. (Tr. 720) Ziegler stated that the Boy Scouts required multiple pickups for their trips so that their members could leave from areas close to their homes. (Tr. 720-23) Ziegler stated that the Boy Scouts wish to attend jamborees and other Boy Scout events throughout the state of Pennsylvania. (Tr. 724) Furthermore, Ziegler stated that Boy Scout troops from various areas often join together to charter a bus. (Tr. 724-25) She stated that occasionally Boy Scouts from Conneaut Lake in Crawford County have joined with Boy Scout Troop 17 for trips. (Tr. 725)

Dennis Burnham, director of group operations for McMullin Tours, Inc., testified that McMullin Tours broker's license encompasses a radius of 50 miles of Grove City and thus includes portions of Crawford County such as

Saegertown, Cochranton, Meadville and Titusville, from which points he has arranged transportation to other points in Pennsylvania such as Hershey, Lancaster, and Philadelphia. (Tr. 139-40)

[18] In view of Blue Bird's request for limited operating authority in the form of charter service, the small population of Crawford County (88,869),<sup>15</sup> and Blue Bird's existing authority to operate at specified points in Crawford County, we conclude that Blue Bird has demonstrated, through its witnesses constituting a cross section of the Crawford County public, a public demand/need for its proposed transportation from points in Crawford County to points in Pennsylvania outside Crawford County. Notwithstanding this, we are constrained to conclude that Blue Bird has not shown a public demand/need for its proposed transportation from points in Crawford County to points in Crawford County since none of Blue Bird's witnesses mentioned intended destination points in Crawford County.

*Proof of Public Demand/Need regarding Venango County:*

In Venango County, Blue Bird currently has group and party operating authority to transport passengers from Oil City to points in Pennsylvania, restricted to the transportation of persons for special excursions and tours or sightseeing trips originating at or in Oil City and group and party operating authority to transport persons on special excursions and tours or sightseeing trips from points in the city of Franklin and within one mile of the limits of said city to points in Pennsylvania. Additionally, Blue Bird can provide group and party service from that part of Venango County that is within an airline distance of ten miles of the limits of the city of Titusville, Crawford County, to points in Pennsylvania.

Robert Thomas, executive officer of the International Brotherhood of Electric Workers, Local Union 10, stated that he is one of the individuals responsible for arranging transportation for Local Union 10. (Tr. 680) Thomas explained that Local Union 10 organizes several social events each year and also participates in an

apprenticeship program whereby it sends 16 to 20 apprentices for training programs involving examination of electrical installations at various powerhouses. (Tr. 681-82) Apprentices have had to drive themselves to the various powerhouses from their own residences in Venango and Butler counties. (Tr. 682) Local Union 10 has sent its apprentices to Shippingport Power House, Shippingport, Beaver County; the Volkswagen Plant in New Stanton, Westmoreland County; Channellock in Meadville, Crawford County; Reesdale Power House in Armstrong County, and to the United States Steel Building in Pittsburgh, Allegheny County. (Tr. 681-87) Some of the social events sponsored by Local Union 10 have included trips to Pittsburgh for baseball games. (Tr. 683) Most of Local Union 10's trips have originated from the group's union hall in Butler Township, Butler County. (Tr. 691-92) However, Thomas stated that the trip to the Union Hall was an inconvenient distance for those members of the group living in parts of Venango County such as Oil City. Thomas indicated that Local Union 10 would prefer to use a motor carrier that could pick up its group members at their residences. (Tr. 691-92)

Athena Louise Bain, senior vice commander and chairman of the ways and means committee of the Ladies Auxiliary of Veterans of Foreign Wars Post 464 in Oil City, Venango County, asserted that in her position with the Ladies Auxiliary she is responsible for arranging trips for that group. (Tr. 772) She stated that the Ladies Auxiliary has approximately 147 members who reside in Oil City, Venango County; Sharon, Mercer County, and Titusville, Crawford County. (Tr. 773) The Ladies Auxiliary holds conventions and conferences in Harrisburg, Hershey, Philadelphia, Erie and Pittsburgh. Due to the age of the members in the Ladies Auxiliary, there are few members in the group willing to drive the long distances to the conventions, and the group would accordingly like to charter vehicles for these trips. (Tr. 773-74)

Mary Elizabeth Ziegler, identified earlier in this order, testified on behalf of the Pennsylvania Oil Region Antique Automobile Club that for past club trips, club members have been

picked up in multiple locations within Venango County including Franklin, Oil City, and Plumer. (Tr. 717-18) Club members prefer to be picked up where they live such as Rouseville, Oil City, Franklin, Plumer and Kemmerdell in Venango County. (Tr. 716-17) Ziegler testified that the club members took trips to various points of interest in the Commonwealth of Pennsylvania (Carlisle, Hershey, Pittsburgh, Altoona, Erie, Clearfield (Tr. 717-31)) to visit antique automobile museums. (Tr. 718)

Testifying on behalf of Boy Scout Troop 17, Ziegler stated that Troop 17 has used multiple pickup points in Venango County such as Plumer, Oil City and Franklin. (Tr. 720-21)

[19] Recognizing that Blue Bird's request for operating authority is limited to charter service for a county with a population of only 64,444,<sup>16</sup> we conclude that, through witnesses comprising a cross section of the Venango County public, Blue Bird has demonstrated a public demand/need for its proposed transportation service from points in Venango County to points in Pennsylvania outside Venango County.<sup>17</sup> However, we are forced to conclude that Blue Bird has not shown a public demand/need for its proposed service from points in Venango County to points in Venango County inasmuch as none of Blue Bird's witnesses discussed destination points in Venango County.<sup>18</sup>

*Proof of Public Demand/Need regarding Butler County:*

Robert Thomas,<sup>19</sup> on behalf of the International Brotherhood of Electric Workers, Local Union 10, supported Blue Bird's application with respect to transportation from Butler County. Thomas's testimony has been summarized, *supra*, with respect to Blue Bird's application for transportation from Venango County.

Dennis Burnham testified on behalf of McMullin Tours, Inc., that he has arranged trips from Süppery Rock, Butler County to the Greater Pittsburgh Airport in Allegheny County (Tr. 153) and from Butler to the Greater Pittsburgh Airport. (Tr. 161)

Robert Simms testified as the secretary/treasurer of the Butler County United

Labor Council. (Tr. 649, 656) Simms stated that it was his responsibility to make charter arrangements for the council's travel. (Tr. 649) The United Labor Council has approximately 10,000-12,000 members. (Tr. 650) Simms testified that the United Labor Council has seminars throughout Pennsylvania but often meets at Penn State in State College, Centre County, and Harrisburg, Dauphin County. (Tr. 653-54) Simms identified the City of Butler and Butler Township as origin points for the group's trips. (Tr. 653)

Richard T. Netley, senior program director of the Butler YMCA, testified that a field trip for the children was taken from the City of Butler to the Pittsburgh Zoo. (Tr. 253) Other trips were planned for activities in Pittsburgh but had to be cancelled due to the YMCA's inability to obtain enough participants to defray the cost of acquiring a standard size bus for transportation. (Tr. 254-57) The Youth and Government Club of the YMCA has chartered a bus for a trip to Harrisburg to participate in the model government program. (Tr. 258) Netley stated that the origin point for the YMCA's trips would be the YMCA's facility in the City of Butler. (Tr. 256, 260-61) However, Netley stated that one of the Youth and Government Club trips originated outside the City of Butler at the Clearview Mall. (Tr. 261) Netley stated that the YMCA is planning additional trips to Pittsburgh to attend the Three Rivers Regatta, the Three Rivers Arts Festival, a Pirates baseball game, and the Pittsburgh Zoo. (Tr. 268)

Lil Guinta and Dorothy Zang testified as residents of the Cliff Side Apartments which has an 82-member senior citizens group. (Tr. 375, 388) The senior citizens travel together in groups and would like to sponsor group charters. (Tr. 378-79, 389-90) Both witnesses testified that they would prefer to be picked up at the Cliff Side Apartments in the City of Butler. (Tr. 379, 390-98) Guinta specified Monroeville in Allegheny County as a trip destination point. (Tr. 375-76) Zang did not specify any destination points in Pennsylvania to which she personally wished to travel. (Tr. 391)

Verna Vargo, a member of Chapter 2242 of the Butler AARP (American Association of Retired Persons) (Tr. 429), stated that the AARP

Chapter had traveled to Erie, Pittsburgh, and Lancaster in the past and was planning in the future to go to Bradford, Lancaster, Kane (McKean County), and Pittsburgh. (Tr. 431) Vargo testified that all the Chapter's trips originated in the City of Butler. (Tr. 432) Additionally, Vargo stated that the AARP Chapter intended to take a trip to Sharon in Mercer County. (Tr. 454)

Eleanor Bowser a member of Chapter 2242 of the Butler AARP, stated that she had been involved in a Chapter trip that originated in the City of Butler and terminated in Kittanning in Armstrong County to allow the Chapter to attend a concert. (Tr. 477) The AARP Chapter intends to arrange a trip to Marienville in Forest County for a train ride. (Tr. 479) Additionally, the AARP Chapter is arranging trips to Harrisburg and Philadelphia. (Tr. 483)

Mary Ellen Rothem testified on behalf of the St. Peter's Roman Catholic Church Phase Two Group, and Sister Mary Joseph Trimbur testified as the director of religious education and social ministries for St. Peter's. Rothem stated that she was vice president and program chairman of the Phase Two Group, and as such, arranges transportation for the group. (Tr. 498) The Phase Two Group consists of 175 retired persons affiliated with St. Peter's who attend social gatherings. (Tr. 498-99) The group plans three or four trips per year. (Tr. 499) In the past, the Group has traveled to Bobtown in Greene County, to Pittsburgh in Allegheny County, and to McKeesport in Allegheny County. (Tr. 499, 509) Some of the Group's trips have originated in Butler Township, but the group prefers to be picked up in the City of Butler at St. Peter's Church. (Tr. 500) The Group took a trip to Pittsburgh to watch a Pirates baseball game. (Tr. 502) Occasionally, the Group takes trips across the state to visit priests who formerly served at St. Peter's. (Tr. 509-10)

Sister Mary Joseph testified that she arranges for charter service from the City of Butler to Pittsburgh for cultural pastimes such as attending the Pittsburgh Playhouse, Buhl Planetarium and the Pittsburgh Civic Arena. (Tr. 508, 557, 568) Sister Mary Joseph explained that she takes full responsibility for arranging trips for children from St. Peter's and consults

with other groups at St. Peter's, such as the Phase Two Group, with respect to their transportation arrangements. (Tr. 560-61) Erie and New Castle are additional destination points for trips that have been taken by St. Peter's groups. (Tr. 563, 572)

On behalf of the Life Member Club of the Frontier Council of the Telephones Workers, Catherine S. Fillhart stated that her club's members are located in Sharon, Mercer County; New Castle, Lawrence County, and Butler, Butler County. (Tr. 585) In order for the entire club to travel together, she wishes to arrange multiple pickup points (i.e., pickups in the three aforementioned locations) so that all the members of the group can be transported in one vehicle to a common destination point. (Tr. 585-86) The club rotates spring luncheons from Sharon one year to New Castle the next year and to Butler the third year (Tr. 586, 592-93), and the club has a Christmas program in Pittsburgh. (Tr. 587)

[20] Given Blue Bird's request for operating authority in the restricted form of charter service and the comparatively small population of Butler County (147,912)<sup>20</sup> we conclude that Blue Bird has demonstrated, through witnesses comprising a cross section of the City of Butler and Township of Butler,<sup>21</sup> a public demand/need for its proposed transportation service from the City of Butler and the Township of Butler in Butler County to points in Pennsylvania outside Butler County.<sup>22</sup> Nevertheless, we are constrained to conclude that Blue Bird has not shown a public demand/need for its proposed service from and to points in Butler County inasmuch as none of Blue Bird's witnesses identified a destination point in Butler County.<sup>23</sup>

*Proof of Public Demand/Need regarding Lawrence County:*

Blue Bird presented three witnesses on the issue of public demand/need for its proposed transportation services in Lawrence County: Donald Shelenberger, business manager for Westminster College in New Wilmington, Lawrence County; Catherine S. Fillhart, women's activity chairman for the Life Member

Club of the Frontier Council of the Telephone Workers, and Dennis Burnham, director of group operations for McMullin Tours, Inc.

With respect to the testimony of Shelenberger and Burnham, we adopt ALJ Meehan's characterization and rejection of their testimony at pages 112-14 of the Initial Decision and agree with ALJ Meehan that neither witness identified a need for transportation in Lawrence County.<sup>24</sup>

Speaking on behalf of the Life Member Club of the Frontier Council of the Telephone Workers, Fillhart stated that the Club has members residing in New Castle, Lawrence County, who wish to be picked up in New Castle as part of Club trips to Pittsburgh and other areas in Pennsylvania. (Tr. 588, 590-92) In particular, the Club desires the services of a carrier that can make multiple pickups of the Club's members in the various counties where the members reside for transportation of the members in one vehicle to a common destination point. (Tr. 588-93)

[21] Even though Blue Bird's application is limited to a request for charter service and Lawrence County has a population of only 107,150<sup>25</sup> we cannot conclude that the single witness (Fillhart) constitutes a cross section of the Lawrence County public on the issue of the public demand/need for Blue Bird's proposed transportation service throughout Lawrence County. E.g., *Application of Samuel J. Lansberry, Inc.*, A-00099642, F.1, Am-P (order adopted September 14, 1989, entered October 3, 1989). Fillhart has described a need for charter transportation exclusively from New Castle in Lawrence County. Nothing in the record suggests that Fillhart's testimony is reflective of a demand/need for charter transportation in other areas of Lawrence County. Moreover, we conclude that Blue Bird has not proven a public demand/need for its proposed transportation from a point in Lawrence County to a point in Lawrence County because Fillhart did not indicate any destination points in Lawrence County.<sup>26</sup> Accordingly, we shall grant Blue Bird operating authority from New Castle, Lawrence County to points in Pennsylvania outside Lawrence County.<sup>27</sup>

*Proof of Public Demand/Need regarding Clarion County.*<sup>30</sup>

Mary Elizabeth Ziegler, secretary of the Pennsylvania Oil Region Antique Automobile Club, stated that the Club has made trips from Knox in Clarion County. (Tr. 717, 732, 764) The Club wants to arrange chartered trips to Hershey, Carlisle, and the Pittsburgh area. (Tr. 718-19) In the past, the Club has also taken trips to the Altoona area (Tr. 728), Erie, and Clearfield. (Tr. 731) Primarily, the Club arranges charter trips to enable its members to visit antique vehicle museums in Pennsylvania. (Tr. 755)

Lee Krull, business manager for the Clarion University Student Association, testified that his duties include chartering vehicles for the Student Association. (Tr. 609-10) The Student Association requires transportation on a weekly basis from the University in Clarion, Clarion County to Pittsburgh, Philadelphia, Stroudsburg, Harrisburg and other places in Pennsylvania for the purpose of transporting groups of students to sports events, theater outings, and similar extracurricular activities. (Tr. 610-11) The Student Association awards to a particular carrier for an entire school year a contract to transport Clarion University athletic teams. (Tr. 613-14) Additionally, the Student Association sponsors approximately 30 other trips throughout the school year for non-athletic events, and carriers for the non-athletic trips are selected on a trip-by-trip basis. (Tr. 614, 623)

[22] Mindful that Blue Bird's request for operating authority is confined to charter service and the population of Clarion County is only 43,362,<sup>25</sup> we conclude that Blue Bird has presented witnesses representative of a public demand/need for Blue Bird's proposed transportation services from the boroughs of Knox and Clarion in Clarion County to points in Pennsylvania outside Clarion County.<sup>29</sup> However, Blue Bird's witnesses have not identified any destination points in Clarion County to which they require transportation. Accordingly, we shall conform our grant of operating authority to the evidence of record by granting operating authority to allow Blue Bird to transport passengers, in charter service, from points in

Clarion County to points in Pennsylvania outside Clarion County.<sup>30</sup>

*Proof of Public Demand/Need for Transportation between Points in Named Counties (Inter-County Pickups):*

Catherine S. Fillhart testified that the Life Member Club of the Frontier Council of the Telephone Workers desires the services of a motor carrier that can pick up the Club members in Butler, Butler County; New Castle, Lawrence County, and Sharon, Mercer County for the combined transportation of all the Club members in one vehicle to a point in Pennsylvania outside the three aforementioned counties. (Tr. 587) Fillhart also asserted that the Club rotates its meetings from Sharon one year to New Castle the next year and to Butler the third year so that the Club needs a carrier that can transport the Club members among the three aforementioned points. (Tr. 586)

Appearing on behalf of the International Brotherhood of Electric Workers, Local Union 10, Robert Thomas indicated that the Local Union 10 members would prefer a carrier that could pick up Union members in both Butler County (Butler Township) and Venango County (Oil City) where the members reside. (Tr. 682, 691-92) Local Union 10 would prefer the use of a carrier that could pick up the Union's members in the counties where the members reside for transportation of the members by one vehicle to common destination points outside Butler County and Venango County such as Pittsburgh, Shippingport, New Stanton, and Meadville. (Tr. 681-87, 691-92)

Mary Elizabeth Ziegler testified that the Pennsylvania Oil Region Antique Automobile Club would like its members to be picked up where the members reside in Centerville and Titusville, Crawford County; Oil City and Plumer, Venango County; Knox, Clarion County, and Greenville and Sharon, Mercer County. (Tr. 716-19) The Club would like to use a carrier that can pick up its members where the members reside for transportation in a single vehicle to a point outside the aforementioned counties such as Carlisle, Andreas, and Pittsburgh. (Tr. 718-19) A planned trip to Erie was cancelled

due to the Club's inability to find a carrier that could make multiple pickups in the enumerated locales. (Tr. 736-37)

Testifying for Boy Scout Troop 17 in Venango County, Mary Elizabeth Ziegler stated that Troop 17 often joins with other Boy Scout troops from counties bordering Venango County to enjoy a single outing. (Tr. 723-26) In particular, Ziegler identified pickup points, as being Conneaut Lake and Titusville, Crawford County; Sandy Lake, Mercer County, and Polk, Oil City, Plumer and Franklin, Venango County. (Tr. 725-26) The multiple pickup points would be used to transport in a single vehicle scouts from neighboring troops to a common destination point in Pennsylvania for an outing such as a Boy Scout jamboree. (Tr. 724, 727) Jamborees and other Boy Scout outings are held throughout the Commonwealth of Pennsylvania. (Tr. 724)

[23] We conclude that Blue Bird has demonstrated, through witnesses forming a cross section of the public in the six named counties (i.e. Mercer, Crawford, Venango, Butler, Lawrence and Clarion), a public demand/need for a carrier that can make, among the six named counties, inter-county pickups of an organization's members for the combined transportation of the organization's members in one vehicle to a common destination point.

Accordingly, in this order we shall, for example, grant Blue Bird operating authority:

To transport, as a common carrier, groups and parties of persons, in charter service, from points in Mercer County to other points in Pennsylvania and return.

To transport, as a common carrier, groups and parties of persons, in charter service, from points in the City of Butler and the Township of Butler, Butler County, to other points in Pennsylvania and return.

We opine that these two grants of authority<sup>31</sup> can be construed to permit Blue Bird to pick up members of an organization in Sharon, Mercer County, and proceed to pick up members of the same organization in the City of Butler, Butler County, for transportation of the organization members jointly in one vehicle to a common Pennsylvania destination point outside the

counties of Mercer and Butler such as Pittsburgh in Allegheny County.<sup>32</sup>

The sole caveat is that the organization members picked up in Sharon and transported to Pittsburgh must be returned to Sharon whereas the organization members picked up in the City of Butler and transported to Pittsburgh must be returned to the City of Butler. That is, Blue Bird must return to the origin point of Sharon the same persons that it transported from the origin point of Sharon, and Blue Bird must return to the origin point of the City of Butler the same persons that Blue Bird transported from the City of Butler. *Delaware Valley Transportation Co., Inc. v. Kippie Bus Lines*, 30 Pa PUC 781 (1953).

We believe it unnecessarily complicated, confusing and duplicative to state Blue Bird's authority to link the inter-county pickup points in Mercer County and the City and Township of Butler in Butler County for the transportation of a single organization by giving Blue Bird, in addition to these two above-cited grants of operating authority, a separate grant of authority which would expressly approve the linkage as follows:

To transport, as a common carrier, groups and parties of persons, in charter service, between points in Mercer County and points in the City of Butler and the Township of Butler, Butler County, and from points in Mercer County and the City of Butler and the Township of Butler, Butler County, to other points in Pennsylvania and return.

Such a separate grant of inter-county operating authority would contain language replicating the two above-cited grants of operating authority and would appear to award Blue Bird duplicate operating authority.<sup>33</sup>

[24] As evidenced by ordering paragraph six of our August 30 order, a basic precept in Pennsylvania motor carrier law is that a motor carrier cannot hold grants of duplicate/overlapping operating authority. *E.g., Application of Marshall Service, Inc.*, A-00101153, F.1, Am-D (order adopted June 18, 1987, entered June 29, 1987); *Re Ernest E. Latscha*, 56 Pa PUC 380 (1982); *Application of Lyons Transportation Lines, Inc.*, 42 Pa PUC

605 (1966). When a carrier acquires operating authority that coincides with other grants of a carrier's authority, the coextensive portions of the required and the existing operating authority merge into one, indivisible operating right. *Re Ernest E. Latscha; Application of Lyons Transportation Lines, Inc.*; 4 Pa. B.; 2475 (1974) (Commission announced that in cases involving a partial transfer of certificates containing duplicate rights, the grant of authority pursuant to the transfer will be construed as conferring only one operating right and the grant of authority will include an express condition to that effect). A merged right cannot be severed into two distinct, duplicative operating rights either to allow the carrier to retain one right and sell the other, *Application of Marshall Service, Inc.*, or to allow the carrier to sell or operate the two rights separately, *Application of County Cab, Inc.*, A-00106842 (62 Pa PUC 383) (order adopted November 13, 1986, entered November 18, 1986); *Re Ernest E. Latscha*.

Therefore, to avoid any appearance of Blue Bird's having been awarded duplicate operating authority, we shall not give Blue Bird a separate grant of inter-county authority but shall construe Blue Bird's individual grants of authority to operate from points in named counties as permitting Blue Bird to link multiple, inter-county origin points specified in Blue Bird's individual grants of named-county operating authority.

(c) *Proof of Public Demand/Need for Restricted Vehicle Type*

Exceptions to ALJ Meehan's Initial Decision were filed by Butler Motor, Bortner Bus, Anderson, and Grove City on the basis that any grant of authority to Blue Bird should be restricted to transportation in vans or minibuses. Our August 30 order denied the protesting carriers' exceptions seeking a limitation of Blue Bird's operating authority to transportation in vans and minibuses. In reconsidering our August 30 order, we avail ourselves of this opportunity to discuss more fully our reasons for not imposing upon Blue Bird's operations the condition that Blue Bird perform its charter service in vans or minibuses.

In arguing for a restriction on the type of vehicle to be used by Blue Bird, the protesting carriers have relied upon our decision in *Application of John O. Dulaney, et al/bia Dulaney Bus Service*, A-00104878 (Initial Decision issued March 28, 1984; final order entered July 6, 1984). Dulaney was granted operating authority to provide group and party service limited to transportation by van or conventional school bus. The basis for the limitation was discussed at pages 39-42 of the Initial Decision written by then Administrative Law Judge (now Chairman) Shane.

Dulaney's application was protested by an existing motor carrier named Central Cab Company which held Commission-issued operating authority to provide scheduled route bus service and call or demand (taxicab) service in addition to group and party service for special excursions and tours/sightseeing. Citing *Re Donald B. and Essie G. Fisher*, ALJ Shane decided that the public interest would not be served if Dulaney were permitted to compete with Central Cab Company by providing group and party transportation in unrestricted vehicle types because the evidence demonstrated that Central Cab Company's scheduled bus route service and call or demand service were subsidized by the revenues from Central Cab Company's group and party service. Consequently, ALJ Shane reasoned that unfettered competition between Central Cab Company and Dulaney might well result in Central Cab Company's loss of so much business that it could not continue to operate the essential services of scheduled route and call or demand. Because the public interest in having the essential services of scheduled route and call or demand transportation outweighed any public interest in having the non-essential/luxury service of group and party transportation, Dulaney's grant of operating authority to supply group and party service was limited to service in vans and conventional school buses in order to restrict Dulaney's ability to compete with Central Cab Company's group and party service and, concomitantly, to restrict Dulaney's ability to affect adversely Central Cab Company's provision of scheduled bus route transportation and call or demand transportation.

With respect to Blue Bird's application, the protesting carriers have not established that they provide any essential transportation service which is subsidized by their group and party operating revenues. Consequently, our decision in *Application of John O. Dulaney* does not control the disposition of Blue Bird's application.

[25] Furthermore, we agree with ALJ Meehan that, while many of the witnesses supporting Blue Bird's application stated a desire to have Blue Bird make available to them vans or minibuses, these witnesses also maintained that their general intent was to obtain enough reservations to fill a standard-sized coach bus for their groups' planned trips. However, the witnesses indicated that, if they were unable to obtain sufficient reservations to utilize a standard-sized bus, they would appreciate the opportunity to use smaller vans or minibuses. E.g., the testimony of Guinta (Tr. 378-79), Sister Mary Joseph (Tr. 563-65), Fillhart (Tr. 589-90), Fry (Tr. 293-95). Other witnesses stated that they needed standard-sized vehicles for some group trips but required smaller vehicles for other group trips. E.g., the testimony of Sicilian (Tr. 322-26) and Krull (Tr. 612-16).

Therefore, we conclude that it is not in the public interest to limit Blue Bird's operating authority to the use of vans or minibuses. Blue Bird's operations must conform to the Commission's requirement at 52 Pa. Code §29.323 that group and party service be supplied only in vehicles with a seating capacity of 10 passengers or greater, excluding the driver.

Based upon all the evidence of record adduced by Blue Bird, as summarized *supra*, we conclude that Blue Bird has proven a public demand/need for its proposed transportation services, subject to the limitations already discussed. Accordingly, our approval of Blue Bird's application, modified to conform to the evidence of record as explained *supra*, will serve a useful public purpose, responsive to a demonstrated public demand/need for Blue Bird's intended transportation. Blue Bird has thus sustained its burden of proof under 52 Pa. Code §41.14(a).<sup>34</sup>

B. *Blue Bird's Fitness as a Motor Carrier*

Subsection 41.14(b) requires a motor carrier applicant to prove its technical and financial ability to provide the proposed service. In addition, subsection 41.14(b) states that a motor carrier application may be denied if the record shows that the applicant lacks a propensity to operate safely and legally. In *Re Perry Hassman*, 55 Pa PUC 661 (1982), the Commission elucidated the tripartite definition of fitness:

1. Technical expertise — applicant must have technical capacity to meet the need in a satisfactory fashion . . . . Applicant must possess sufficient staff, facilities, and operating skills, to make the proposed service feasible, profitable, and a distinct service to the public . . . .

2. Financial capacity — applicant should possess the financial ability to give reliable and respectable service to the public . . . . Applicant should own or should have sufficient financial resources to obtain the equipment needed to perform the proposed service.

3. Propensity to operate safely and legally — in this regard, lack of fitness is demonstrated by persistent disregard for, flouting, or defiance of the Public Utility Law and the commission's orders and regulations . . . ; and by violations in matters affecting the safety of operations . . . .

*Id.* at 662-63.

[26] Where, as in the case of Blue Bird, a motor carrier applicant already possesses a certificate of public convenience issued by this Commission and is seeking merely to expand its certificated authority, the applicant is presumed to be technically and financially fit. *Re V.I.P. Travel Service, Inc.*, 56 Pa PUC 625 (1982). The presumption of a certificated carrier's continuing fitness is rebuttable by appropriate evidence of record. *Id.* We agree with ALJ Meehan that the record regarding Blue Bird's application is devoid of any evidence challenging Blue Bird's technical and financial ability to provide the transportation service proposed in Blue Bird's application for additional operating authority. ALJ Meehan's Initial Decision at 129-30. Nor does the record contain any suggestion that Blue Bird lacks a

propensity to operate safely and legally.

Accordingly, we conclude that Blue Bird has sustained its burden of proof under subsection 41.14(b) by establishing its fitness to perform the proposed transportation.<sup>35</sup>

### C. Impairment of Existing Carriers Contrary to the Public Interest

Subsection 41.14(c) emphasizes the advantages of healthy competition in the motor carrier industry and recognizes that "[t]he legislature in enacting the Public Utility Code did not intend to benefit established carriers by erecting artificial carriers to the entry of new competitors. It is the public interest and convenience which the law seeks to protect." *Mobilfone of Northeastern Pennsylvania v. Pennsylvania Public Utility Commission*, 73 Pa.Cmwth. 340, 346, 458 A.2d 1030, 1034 (1983); *Purolator Courier Corp. I*; *Re Mobilfone of Northeastern Pennsylvania, Inc.*; *Re Ben Franklin Carriages, Inc.* To prevent the Commission's approval of an application, existing common carriers/protestants must carry a heavy burden of proof under subsection 41.14(c); they must show that the entry of a new carrier into the transportation field would endanger or impair their existing operations to such an extent that, on balance, the granting of the requested authority would contravene the public interest. See, e.g., *Yellow Cab Co. of Pittsburgh*; *Seaboard Tank Lines, Inc.*

Both Pennsylvania appellate courts and the Commission have repeatedly advised that "[n]o carrier has a right to be granted freedom from competition." *Mobilfone of Northeastern Pennsylvania, Inc.*, 73 Pa.Cmwth. at 351, 458 A.2d at 1037 (quoting *Reeder v. Pennsylvania Public Utility Commission*, 192 Pa.Super.Ct. 298, 303, 162 A.2d 231, 233 (1960)); *Noerr Motor Freight, Inc.*; *Re Mobilfone of Northeastern Pennsylvania, Inc.*; *Re Ben Franklin Carriages, Inc.* The existence of adequate service by extant carriers does not, by itself, preclude the granting of a certificate to an applicant. *Seaboard Tank Lines, Inc.*; *Re Ben Franklin Carriages, Inc.* Thus, the mere potential for diversion of traffic volume from existing carriers to an applicant is insufficient to sustain the

protesting carriers' burden of proof under subsection 41.14(c). *Railway Express Agency, Inc. v. Pennsylvania Public Utility Commission*, 195 Pa.Super.Ct. 394, 39 PUR3d 477, 171 A.2d 860 (1961); *Re Ben Franklin Carriages, Inc.*; *Re Perkiomen Airways, Ltd.*, 51 Pa PUC 267 (1977). In some instances, an increase in competition will tend to improve the service and efficiency of other carriers in the market. *Noerr Motor Freight, Inc.*; *Re Mobilfone of Northeastern Pennsylvania, Inc.*; *Re Perkiomen Airways, Ltd.*

Only the threat of unrestrained and destructive competition which is inimical to the public interest precludes the grant of an application pursuant to subsection 41.14(c). *Yellow Cab Co. of Pittsburgh*; *Seaboard Tank Lines, Inc.*; see *Brink's Inc. v. Pennsylvania Public Utility Commission*, 56 Pa.Cmwth. 371, 424 A.2d 1010 (1981); *Purolator Courier Corp. I*; *McNaughton Bros., Inc.*; *John O. Dulaney*; *Re Ben Franklin Carrier, Inc.*; 66 Pa. C.S. §2501.

[27] The amount of intrastate competition which will benefit the public interest is a matter legislatively entrusted to the Commission's sound judgment and discretion. *Seaboard Tank Lines, Inc.*; *Mobilfone of Northeastern Pennsylvania, Inc.*; *Purolator Courier Corp. I*; *McNaughton Bros., Inc.*; *Railway Express Agency, Inc.*; *Zurcher*; *Re Mobilfone of Northeastern Pennsylvania, Inc.*; *Re Donald B. and Effie G. Fisher*, 51 Pa. PUC 735 (1978); 66 Pa. C.S. §§1103 and 2501. As the Commonwealth Court of Pennsylvania noted in *Mobilfone of Northeastern Pennsylvania, Inc.*, "[i]t is for the commission to determine whether the available equipment and facilities are sufficient to meet the public demand; the propriety of permitting competition in a particular field in a specific locality is largely an administrative question . . ." *Id.* at 351, 458 A.2d at 1037 (emphasis in original) (quoting *Reeder*, 192 Pa.Super.Ct. at 303, 162 A.2d at 233); *Re Mobilfone of Northeastern Pennsylvania, Inc.* Consequently, whether the proffer of competition by a particular motor carrier applicant will comprise a benefit or a detriment to the public interest is a decision solely within the Commission's discretion. E.g., *Seaboard Tank Lines, Inc.*; *Mobilfone of Northeastern Pennsylvania, Inc.*; *Purolator*

*Courier Corp. I.*

On pages 131-39 of his Initial Decision, ALJ Meehan summarized the evidence of record presented by the protesting carriers' witnesses for the proposition that Blue Bird's application would endanger the existing carriers' operations to such an extent that approval of Blue Bird's application would be detrimental to the public interest. We adopt ALJ Meehan's summarization and characterization of the protestants' testimony at pages 131-39 of the Initial Decision.

Additionally, we note that the president and chairman of the board of Butler Motor, W. R. Kaylor, testified that Butler Motor provides scheduled route service from the City of Butler to Kittanning to Pittsburgh on a daily basis and that Butler Motor also runs a scheduled route service to shopping malls in and around the City of Butler and Butler Township from several senior citizen housing complexes. (Tr. 968-69) However, the record is devoid of any evidence indicating the revenues derived by Butler Motor from its scheduled route services. Moreover, Butler Motor has not argued by way of exceptions to the Initial Decision or a petition for reconsideration that its scheduled route services are subsidized by its group and party transportation authority. Strikingly, in its exceptions to ALJ Meehan's Initial Decision, Butler Motor has cited *Application of John O. Dulaney* but has not referred to any portion of the *Application of John O. Dulaney* order regarding preservation of scheduled route service. Hence, we conclude that Butler Motor has waived any arguments concerning the efficacious impact, if any, of its group and party authority upon its scheduled route service.

We agree with ALJ Meehan that the protestants have argued against the granting of Blue Bird's application on the ground that approval of Blue Bird's application may result in a diversion of business from the protestants. ALJ Meehan's Initial Decision at 138-39. Inasmuch as we have stated that a mere diversion of traffic volume is insufficient to sustain a protestant's burden of proof under subsection 41.14(c), we conclude that none of the protestants to Blue Bird's application has established that the granting of Blue Bird's application would contravene

the public interest. See, e.g., *Mobilfone of Northeastern Pennsylvania, Inc.*; *Railway Express Agency, Inc.*; *Noerr Motor Freight, Inc.*; *Re Ben Franklin Carriages, Inc.*; *Re Perkiomen Airways, Ltd.* Furthermore, to the extent that the existing carriers have not regularly offered vans or minibuses to the public, Blue Bird will not be diverting traffic from the protestants because Blue Bird will be offering the public a service different from that service provided by the protestants. E.g., *Noerr Motor Freight, Inc.*; *Re Perkiomen Airways, Ltd.*

We are also mindful that we have awarded very limited operating authority to Blue Bird (e.g., charter service only from New Castle in Lawrence County; charter service only from the City of Butler and Township of Butler in Butler County) and that we have accordingly restricted Blue Bird's ability to compete with the protestants.

Consequently, we conclude that the expanded entry of Blue Bird into the Pennsylvania motor carrier market will not endanger or impair the operations of existing common carriers to such an extent that, on balance, granting Blue Bird's application would be contrary to the public interest.

### THEREFORE, IT IS ORDERED:

1. That reconsideration of the Commission order entered August 30, 1989 at Docket No. A-00088807, F.2, Am-K is hereby granted.
2. That the Commission order entered August 30, 1989 at Docket No. A-00088807, F.2, Am-K is hereby rescinded, and accordingly, the stay/supersedes of the Commission's August 30, 1989 order at A-00088807, F.2, Am-K is hereby terminated upon the entry date of this Commission order.
3. That the application of Blue Bird Coach Lines, Inc. at A-00088807, F.2, Am-K for additional operating authority is hereby approved in part and denied in part to grant Blue Bird Coach Lines, Inc. the following operating authority:

To transport, as common carrier groups and parties of persons, in charter service, from points in Mercer County to other points in Pennsylvania and return.

To transport, as a common carrier groups and parties of persons, in charter

service, from points in Crawford County to other points in Pennsylvania and return.

To transport, as a common carrier, groups and parties of persons, in charter service, from points in Venango County to other points in Pennsylvania and return.

To transport, as a common carrier, groups and parties of persons, in charter service, from points in the City of Butler and the Township of Butler, Butler County to other points in Pennsylvania and return.

To transport, as a common carrier, groups and parties of persons, in charter service, from points in New Castle, Lawrence County to other points in Pennsylvania and return.

To transport, as a common carrier, groups and parties of persons, in charter service, from points in the Borough of Knox and the Borough of Clarion, Clarion County to other points in Pennsylvania and return.

4. That the certificate of public convenience held by Blue Bird Coach Lines, Inc. at A-00088807, F.2 be and is hereby amended to include the above-stated operating authority.

5. That Blue Bird Coach Lines, Inc. 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 evidence of insurance and the filing and acceptance of a tariff establishing just and reasonable rates.

6. That Blue Bird Coach Lines, Inc. shall comply with all the provisions of the Public Utility Code as now existing, or as may be hereafter amended, and with all the pertinent rules and regulations of this Commission now in effect, or as may be hereafter prescribed by this Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the authority and privileges conferred by the certificate of public convenience.

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

8. That, in the event Blue Bird Coach

Lines, Inc. has not, on or before sixty (60) days from the service date of this order, complied with the requirements set forth herein, the application of Blue Bird Coach Lines, Inc. at A-00088807, F.2, Am-K shall be dismissed without further proceeding.

#### FOOTNOTES

<sup>1</sup>Country Trails withdrew its protest to Blue Bird's application but was then permitted to become an intervenor in Blue Bird's application proceeding. Additional active protestants to the application proceeding were George Ku, Inc.; Lenzner Coach Lines, Inc.; v/d/b/a North Boroughs Cab; and Buco Transportation, Inc. However, none of these three protestants remained active in this proceeding after the issuance of the Initial Decision disposing of Blue Bird's application. None of these three protestants filed exceptions to the Initial Decision rendered on Blue Bird's application, petitioned for reconsideration of the Commission's August 30, 1989 order ruling on the exceptions, or petitioned for appellate court review of the Commission's August 30 order.

<sup>2</sup>Because Bortner Bus's petition for reconsideration was filed near the end of the 30-day period for appealing the Commission's August 30 order, the Commission was unable to rule upon the reconsideration petition before the expiration of the 30-day appeal period triggered by the filing of the aforementioned petitions for appellate review. Consequently, due to the jurisdictional strictures of Pa. R.A.P. 1701, the Commission's grant of reconsideration of its August 30 order was necessarily conditioned upon the withdrawal of all petitions for appellate review of the August 30 order.

<sup>3</sup>In their petitions for supersedeas/stay, Butler Motor, Anderson, Bortner Bus, Country Trails and Grove City actually requested supersedeas/stay pending appellate court review of the Commission's August 30, 1989 order as sought by the aforementioned parties' petitions for review filed in the Commonwealth Court at No. 1883 C.D. 1989 and No. 2031 C.D. 1989. The intent of the aforementioned parties clearly was to preclude Blue Bird's operation under the authority granted in the Commission's August 30, 1989 order pending the reexamination of that order. Because the Commission's October 20, 1989 order granted reconsideration of the August 30 order conditioned upon the aforementioned parties' withdrawal of their petitions for review in Commonwealth Court, the Commission regards the aforementioned parties' petitions for supersedeas/stay as requests that the Commission stay the effectiveness of its August 30 order pending the Commission's order

discussing the merits of the case on reconsideration. The Commission regards this as an equitable interpretation of the parties' petitions for supersedeas/stay which were filed prior to the Commission's October 20, 1989 order and which thus could not have anticipated the parties' withdrawal of their appellate petitions for review and the Commission's grant of reconsideration. See 52 Pa. Code §1.2(a), the Commission shall liberally construe its regulations in order to secure the just, speedy and inexpensive determination of every proceeding and the Commission will disregard an error or defect in procedure which does not effect parties' substantive rights). The Commission believes that its construction of the parties' petitions for supersedeas/stay does not effect Blue Bird's substantive rights inasmuch as Blue Bird availed itself of the opportunity to file an answer in opposition to the petitions for supersedeas/stay and therefore had notice and an opportunity to be heard on the issue of supersedeas/stay to assert and defend any "rights" potentially affected by granting supersedeas/stay of the Commission's August 30 order.

<sup>4</sup>In this Order, we occasionally refer to cases which preceded the effective date of section 1103 of the Public Utility Code, 66 Pa. C.S. §1103, as amended, which was enacted as part of the Act of July 1, 1978, P.L. 598. Instead of section 1103, the older cases cite section 203 of the Public Utility Law, Act of May 28, 1937, P.L. 1053, as amended, 66 P.S. §1123, which contained the following wording identical to the wording of section 1103: "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 . . ." Because the wording of sections 203 of the Public Utility Law and 1103 of the Public Utility Code is the same, cases interpreting section 203 are valid precedents for construing section 1103. E.g., *Masland v. Bachman*, 473 Pa. 280, 374 A.2d 517 (1977); *Commonwealth v. Miller*, 469 Pa. 24, 364 A.2d 886 (1976); *Department of Transportation, Bureau of Traffic Safety v. Von Altimus*, Pa.Cmwth. 245, 410 A.2d 1303 (1980); 1 Pa. C.S. §1922(4) (when court of last resort has construed language used in a statute, General Assembly in subsequent statute on same subject is presumed to intend same interpretation to be placed upon that language).

<sup>5</sup>There are two, currently recognized exceptions to the requirement that an applicant prove a public demand/need for its proposed service. First, in subsection 1103(c) of the Public Utility Code, 66 Pa. C.S. §1103(c), the General Assembly has declared that an

applicant for a certificate of public convenience to operate a taxicab in a city of the first class is relieved from the burden of establishing public need for taxicab service. Second, both Commission and appellate court precedents have created a rebuttable presumption of continuing public demand/need for service in situations where an applicant seeks to acquire operating authority by transfer of that authority from an existing motor carrier that has been providing transportation for the public. *Byerty; Re Edward R. Simpson*, 50 Pa PUC 655 (1977).

<sup>6</sup>An administrative agency's interpretation of its own regulation will be upheld by an appellate court if the interpretation is consistent with the statute pursuant to which the regulation was adopted and is consistent with the language of the regulation. *Harkins; Mill v. Pennsylvania Public Utility Commission*, 67 Pa.Cmwth. 597, 447 A.2d 1100 (1982).

<sup>7</sup>Before we grant an application for motor common carrier authority, the applicant must also establish its fitness to provide its proposed service, 52 Pa. Code §41.14(b), and we must determine that approval of the application will not endanger existing carriers' operations to such an extent that, on balance, the granting of the application would contravene the public interest. 52 Pa. Code §41.14(c).

<sup>8</sup>As explained *infra*, the evidence of record does not show a public demand/need for all of the transportation services proposed in Blue Bird's application.

<sup>9</sup>In *Application of LizRick Tours, Inc., ud/b/a Royal Star Limousine Service*, A-00107419, F.4 (Initial Decision issued January 12, 1989; final order entered April 4, 1989), the Commission stated that a broker's testimony, standing alone, is insufficient to support a motor carrier application because a broker lacks actual need for transportation for himself. However, the Commission added that a broker's testimony may be helpful in establishing a public demand/need for proposed transportation service if that testimony is offered in conjunction with the testimony of other witnesses actually requiring transportation. *Id.* Hence, Burnham's testimony may be read together with the testimony of passenger/witnesses (e.g., Sicilian and Ziegler, *infra*) as establishing public demand/need for Blue Bird's proposed service.

<sup>10</sup>Like Burnham of McMullin Tours, Inc., Lapcevic did not testify about actual need for Blue Bird's proposed transportation: either for herself or the Chamber of Commerce, i.e., the organization she represented. We find our analysis of the utility of Burnham's testimony equally applicable to Lapcevic's testimony. By itself, Lapcevic's testimony does not demonstrate public demand/need for Blue Bird's proposed service. But, taken together with

other witnesses' evidence of actual need for Blue Bird's proposed service, Lapoevic's testimony is helpful in showing public demand/need for Blue Bird's intended transportation because it tends to corroborate the other witnesses' statements of need.

<sup>11</sup>Group and party charter-service is transportation which is definitionally narrow in focus because it involves the exclusive use of a vehicle by a group organized by someone other than the carrier, for that group's unique purposes typically of a recreational (e.g., Pittsburgh baseball game outings for the Mercer Moose Lodge (Tr. 318)) or special interest (e.g., trips to automobile museums for the Pennsylvania Oil Region Antique Automobile Club (Tr. 768)) nature. See 52 Pa. Code §§29.13 and 29.322; *Re Donald B. and Effie G. Fisher*, 51 Pa PUC 735 (1978); *accord Transport of New Jersey v. Greyhound Lines, Inc.*, 463 F. Supp. 1117 (1979).

<sup>12</sup>This population statistic appears at 108 *The Pennsylvania Manual* 543 (1987) and in the testimony of Butler Motor's witness W.R. Kaylor. (Tr. 1043)

<sup>13</sup>In a subsequent portion of this order, we shall address Blue Bird's evidence concerning the need for transportation service between points in one named county (i.e., Mercer, Crawford, Venango, Lawrence, Butler and Clarion) and points in another named county.

<sup>14</sup>In a subsequent portion of this order, we shall address Blue Bird's evidence concerning the need for transportation service between points in one named county (i.e., Mercer, Crawford, Venango, Lawrence, Butler and Clarion) and points in another named county.

<sup>15</sup>This population statistic appears at 108 *The Pennsylvania Manual* 531 (1987).

<sup>16</sup>This population statistic appears at 108 *The Pennsylvania Manual* 553 (1987).

<sup>17</sup>We disagree with ALJ Meehan's determination that Blue Bird needed to sustain its burden of proving a public demand/need for its proposed transportation from points throughout Venango County because Blue Bird's existing intrastate operating authority already permits Blue Bird to transport from Franklin, Oil City, and Plumer in Venango County. ALJ Meehan's Initial Decision at 109. Whereas Blue Bird's current application for operating authority requests charter service authority, Blue Bird's existing authority in Venango County is confined to the transportation of persons for special excursions and tours/sightseeing. See 52 Pa. Code §29.322. Consequently, Blue Bird's existing authority does not permit Blue Bird to supply charter service from Franklin, Oil City, or Plumer. Moreover, we note that witness Ziegler identified Rouseville as an origin point for

trips from Venango County, and, under its existing grant of operating authority, Blue Bird is unable to serve Rouseville.

<sup>18</sup>In a subsequent portion of this order, we shall address Blue Bird's evidence concerning the need for transportation service between points in one named county (i.e., Mercer, Crawford, Venango, Lawrence, Butler and Clarion) and points in another named county.

<sup>19</sup>We disagree with ALJ Meehan's characterization of the testimony of certain witnesses regarding Butler County, namely, Thomas, Burnham, and Simms. See ALJ Meehan's Initial Decision at 123-24. We find the testimony of these witnesses to be competent, credible, relevant, and probative. *Pennsylvania Retailers' Association v. Pennsylvania Public Utility Commission*, 64 Pa.Cmwlth. 491, 440 A.2d 1267 (1982); *G.G. & C. Bus Co., Inc. v. Pennsylvania Public Utility Commission*, 42 Pa.Cmwlth. 384, 400 A.2d 941 (1979); *Pennsylvania Public Utility Commission v. Bates Taxi, Inc.*, 28 Pa.Cmwlth. 1, 367 A.2d 355 (1976).

<sup>20</sup>This population statistic appears at 108 *The Pennsylvania Manual* 526 (1987) and in the testimony of Butler Motor's witness, W.R. Kaylor, at Tr. 1043.

<sup>21</sup>With respect to Blue Bird's proffered witnesses Howard Jaillit and Fred M. Vero, we adopt ALJ Meehan's reasons for disregarding the testimony of these witnesses. See ALJ Meehan's Initial Decision at 124.

<sup>22</sup>The witnesses designated solely the City of Butler and the nearby Township of Butler as Butler County origin points from which their groups require transportation. We do not consider these two points representative of a public demand/need for transportation generally from points throughout Butler County. Therefore, we restrict our grant of operating authority to the City of Butler and the Township of Butler in Butler County. We contrast the testimony regarding origin points in Butler County with the testimony regarding origin points in Mercer County, Crawford County, and Venango County where we stated that Blue Bird could transport from any point in those counties to other points in Pennsylvania. A greater sampling of representative origin points in those three counties was provided by the respective witnesses testifying about transportation needs in those counties. Hence, we justifiably awarded Blue Bird authority to transport from any site in those counties.

<sup>23</sup>In a subsequent portion of this order, we shall address Blue Bird's evidence concerning the need for transportation service between points in one named county (i.e., Mercer, Crawford, Venango, Lawrence,

Butler and Clarion) and points in another named county.

<sup>24</sup>Blue Bird did not except to ALJ Meehan's Initial Decision concerning Shelenberger's and Burnham's testimony. Nor has Blue Bird petitioned the Commission for reconsideration of the evidence offered by these two witnesses. Consequently, Blue Bird has waived any issue concerning the restriction of its operating territory to New Castle in Lawrence County.

<sup>25</sup>This population statistic appears at 108 *The Pennsylvania Manual* 540 (1987) and in the testimony of Butler Motor's witness, W.R. Kaylor. (Tr. 1043)

<sup>26</sup>In a subsequent portion of this order, we shall address Blue Bird's evidence concerning the need for transportation service between points in one named county (i.e., Mercer, Crawford, Venango, Lawrence, Butler and Clarion) and points in another named county.

<sup>27</sup>As explained *supra*, the number of witnesses comprising a cross section of the public on the issue of public demand/need for an applicant's proposed transportation depends upon the size of the intended operating territory, the population density in the intended operating territory, and the scope of the requested operating authority. Consequently, where, as here, the operating territory is being restricted to a single point in a rural county and the operating authority is confined to charter service, one witness may adequately support such a limited grant of authority. See e.g., *Application of Suburban Transi, Inc.*

<sup>28</sup>This population statistic appears at 108 *The Pennsylvania Manual* 529 (1987) and in the testimony of Butler Motor's witness, W.R. Kaylor at Tr. 1043.

<sup>29</sup>The witnesses specified only two origin points in Clarion County from which their groups desire transportation. We do not consider these two points representative of a public demand/need for transportation generally from points throughout Clarion County. Therefore, we restrict our grant of operating authority to the boroughs of Knox and Clarion.

<sup>30</sup>In a subsequent portion of this order, we shall address Blue Bird's evidence concerning the need for transportation service between points in one named county (i.e., Mercer, Crawford, Venango, Lawrence, Butler and Clarion) and points in another named county.

<sup>31</sup>Prior Commission decisions have established that the phrase "other points in Pennsylvania" contained in these two grants of authority means points in Pennsylvania outside the specified origin counties, as for example, Mercer County in the first grant of

authority and Butler County in the second grant of authority.

<sup>32</sup>It would be absurd and a waste of resources to require a carrier to use two vehicles for a single group merely because members of the group have separate origins within the carrier's territory. In any event, the trip would be from two origin points, not between those points.

<sup>33</sup>To the extent that any prior Commission decisions suggest that a carrier cannot link multiple, inter-county pickup points contained in the carrier's authority, without a separate grant of authority expressly permitting the linkage, we now overrule those decisions.

<sup>34</sup>Even following our earlier interpretation of 52 Pa. Code §41.14(s) as enunciated in *Re Richard L. Kinard, Inc.*, Blue Bird has met its burden of proof under subsection 41.14(a). The evidence of record reveals that Blue Bird's proposed transportation would satisfy several "alternatives to inadequacy" such as providing a different type of service from that offered by existing carriers (choice of vehicle sizes from vans and minibuses to standard-dimension coach buses); fulfilling the supporting witnesses' anticipated future transportation needs (allowing organizations to choose smaller-sized vehicles in order to avert trip cancellations due to a last-minute inability to fill a standard-dimension coach bus); supplying backup service to supplement the forms of transportation proffered by existing carriers; providing a different service from that of existing carriers by offering multiple, inter-county pickup points from which members of a single group can be transported together in one vehicle to a common destination point; providing a different service by originating trips from points more convenient for the witnesses and their organizations' members; and allowing Blue Bird to operate more efficiently by having coextensive intrastate and interstate authority in Pennsylvania so that Blue Bird can serve its customers' intrastate needs as well as its customers' interstate travel needs. Again, we emphasize that by overruling our decision in *Re Richard L. Kinard, Inc.*, we have rejected the concept of "alternatives to inadequacy" as part of an applicant's burden of proof under subsection 41.14(a).

<sup>35</sup>In their exceptions to ALJ Meehan's Initial Decision, none of the protesting carriers objected to ALJ Meehan's determination that Blue Bird is fit. None of the protestants has petitioned the Commission for reconsideration on the issue of Blue Bird's fitness. Hence, any contentions regarding Blue Bird's fitness have been waived by the protestants.

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OF COUNSEL

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SEP 24 1992

Pittsburgh Office of A.L.J.  
Public Utility Commission

September 23, 1992

A-00109698  
F.I. Am-B

JEFFREY T. MORRIS  
MICHAEL MCGREAL  
ALAN B. GORDON  
MARK S. SEEWALD  
THERESA L. WASSER  
MICHAEL KAMINSKI  
K. BRADLEY MELLOR  
ROBERT G. BELLO  
THOMAS M. FERGUSON

9594.02

VIA HAND DELIVERY

ALJ James D. Porterfield  
1103 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222

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SEP 23 1992

Office of A.L.J.  
Public Utility Commission

Re: Bill Snoddy Construction Company, Inc. PUC Application  
Schwerman Trucking Company: Withdrawal of Protest

Dear Judge Porterfield:

Enclosed please find a Stipulation and Restrictive Amendment with regard to the above-mentioned Protest. This Stipulation and Restrictive Amendment represents a withdrawal of Schwerman Trucking Company's Protest to Bill Snoddy Construction Company, Inc.'s PUC Application.

Very truly yours,

SABLE, MAKOROFF & GUSKY, P.C.



Robert G. Bello

RGB:ro

Enclosure

cc: William R. Snoddy, Jr.  
Gregg M. Rosen  
David A. Levine

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

DOCKET NO.:

APPLICATION OF:

A-00109698

BILL SNODDY CONSTRUCTION CO., INC.

FOLDER 1, Am-B

STIPULATION AND RESTRICTIVE AMENDMENT

TO: THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Applicant Bill Snoddy Construction Company, Inc. ("Snoddy"), by and through its counsel, Robert G. Bello, Esquire, and Schwerman Trucking Company ("Schwerman"), by and through its counsel, S. Berna Smith, Esquire, hereby enter into this Stipulation and Restrictive Amendment as follows:

1. The Restrictive Amendments agreed upon by the parties involve motor carrier authority requested by Snoddy with respect to providing service for Uniontown Builders Supply Company. One provision of the PUC motor carrier authority requested in Snoddy's original application presently requests temporary and permanent:

authority to transport, as a Common Carrier, cement, in bulk in tank vehicles or packaged in bags on flat bed trailers, from points in Allegheny County, Beaver County and Lawrence County, Pennsylvania to the Uniontown Builders Supply Company plant located in either Uniontown, Pennsylvania or Washington, Pennsylvania.

2. The above quoted provision shall be restrictively amended as stipulated by the parties herein to substitute the following

provision for the above quoted provision, providing that Snoddy shall thereby seek temporary and permanent:

authority to transport, as a Common Carrier, cement, in bulk in tank vehicles or packaged in bags on flat bed trailers for Uniontown Builders Supply Company, from points in Allegheny County, Beaver County and Lawrence County, Pennsylvania to the Uniontown Builders Supply Company plant located in either Uniontown, Pennsylvania or Washington, Pennsylvania.

3. In addition, one provision of Snoddy's original application for PUC motor carrier authority states that Snoddy seeks temporary and permanent:

authority to transport, as a Common Carrier, sand or gravel, in bulk in dump trucks to the Uniontown Builders Supply Company facility at either Uniontown, Fayette County, Pennsylvania or to their facility at Washington, Washington County, Pennsylvania, from any point within a 100 air mile radius of either of the aforementioned facilities.

4. The parties hereby stipulate and agree that Snoddy shall restrictively amend the provision of the application quoted in paragraph 3 herein so that the following provision quoted below shall be substituted for the provision specified in paragraph 3 herein, providing that Snoddy shall thereby seek temporary and permanent:


authority to transport, as a Common Carrier, sand or gravel, in bulk in dump trucks for Uniontown Builders Supply Company to the Uniontown Builders Supply Company facility at either Uniontown, Fayette County, Pennsylvania or to their facility at Washington, Washington County, Pennsylvania, from any point within a 100 air mile radius of either of the aforementioned facilities.

5. Conditioned upon the acceptance of these restrictive amendments by the Commission, and any order which is issued being

consistent therewith, Schwerman hereby withdraws its protest to the application of Snoddy. Schwerman desires to remain a party of record for the purpose of receiving copies of Commission notices and orders.


IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Stipulation and Restrictive Amendment to be executed on the dates stated.

BILL SNODDY CONSTRUCTION COMPANY, INC.

BY:   
Robert G. Bello, Esquire  
Sable, Makoroff & Gusky, P.C.  
7th Floor, Frick Building  
Pittsburgh, PA 15219  
Counsel for Applicant  
Bill Snoddy Construction Company

Dated this 23 day of September, 1992.

SCEWERMEN TRUCKING COMPANY

BY:   
S. Berne Smith, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Counsel for Protestant  
Schwerman Trucking Company

Dated this 23 day of September, 1992.

ORIGINAL LPW

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September 24, 1992

The Honorable John G. Alford, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17120

DOCKETED  
OCT 01 1992

IN RE: Bill Snoddy Construction Co., Inc.  
APPLICATION # A-00109698  
Folder 1, Am-B  
OUR FILE # PGL-163

Dear Secretary Alford:

After review of the above captioned matter with the General Manager of Seaboard Tank Lines the Protestant Seaboard agrees to withdraw its Protest based upon the Answers received to Seaboard's Interrogatories. It is requested that Seaboard Tank Lines, Inc. be kept on the mailing list for all future notices, orders, opinions, etc.

Very truly yours,

PETER G. LOFTUS, P.C.

*Peter G. Loftus*  
Peter G. Loftus

DOCC  
FOLE

PGL/sn

cc: Robert G. Bello, Esquire  
Walter Orzolek, General Manager Seaboard

RECEIVED  
SEP 28 1992  
SECRETARYS OFFICE  
Public Utility Commission

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K. BRADLEY MELLOR  
ROBERT G. BELLO  
THOMAS M. FERROUSON

September 24, 1992

RECEIVED

SEP 28 1992<sup>9594.02</sup>

SECRETARY'S OFFICE  
Public Utility Commission

VIA HAND DELIVERY

ALJ James D. Porterfield  
1103 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222

Re: Bill Snoddy Construction Company, Inc. PUC Application  
Schwerman Trucking Company: Withdrawal of Protest

Dear Judge Porterfield:

A109698 F001

Enclosed please find a copy of the letter from Peter G. Loftus, counsel for Seaboard Tank Lines, Inc. withdrawing its protest to Bill Snoddy Construction Company, Inc.'s Application for PUC Motor Carrier Authority. It is my understanding that the hearing which had been scheduled for Friday, September 25, 1992 has accordingly been cancelled. As indicated, this notice of withdrawal of protest was sent directly to Secretary Alford by Mr. Loftus. AMB

Please do not hesitate to contact me should you have any questions.

DOCKETED

OCT 08 1992

Very truly yours,

SABLE, MAKOROFF & GUSKY, P.C.

*Robert G. Bello*  
Robert G. Bello

RGB:ro  
Enclosure

cc: William R. Snoddy, Jr.  
John Alford, Secretary, PUC  
Gregg M. Rosen  
David A. Levine

DOCUMENT  
FOLDER

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
September 25, 1992

In Re: A-00109698, F001, Am-B

(See letter dated 8/11/92)

Application of Bill Snoddy Construction Co., Inc.

For amendment so as to permit the transportation of crushed and sized stone and aggregate, in bulk in dump trucks, for Coolspring Stone Supply, Inc. from the township of North Union, Fayette County, to points in Pennsylvania within an airline distance of one hundred (100) statute miles of the limits of said township; and crushed and sized stone and aggregates for Marsh Asphalt, Inc. from points in Pennsylvania located within an airline distance of one hundred (100) statute miles of the limits of the borough of Belle Vernon and the township of North Union, Fayette County, the borough of Dravosburg and the township of North Versailles, Allegheny county, the borough of Carmichaels, Greene County, and the city of Washington, Washington County, to its facilities located in said townships, boroughs, and city.

NOTICE

This notice is to inform you that at the request of counsel for applicant the hearing scheduled for Friday, September 25, 1992, in Pittsburgh, Pennsylvania was cancelled.

As soon as the restrictive amendment and letters withdrawing all protests are received in this office, the subject application will be referred to the Bureau of Transportation for review and report to the Commission.

cc: Judge Porterfield  
Mr. Frazier - PIO  
Mrs. Lewis  
Scheduling Sec.  
Mrs. Plantz  
Docket Room

**DOCKETED**  
SEP 30 1993

**DOCUMENT  
FILED**

APPEARANCE SHEET

ALJ HEARING REPORT

**KJR**

DOCKET NO. A-00109698, F001, Am-B

CHECK THOSE BLOCKS WHICH APPLY:

CASE NAME Applic. of Bill Snoddy Construction  
Co., Inc.

Hearing held YES  NO

Testimony taken YES  NO

Hearing concluded YES  NO

Further hearing needed YES  NO

HEARING LOCATION Pittsburgh

HEARING DATE Sept. 25, 1992

Estimated add'l days \_\_\_\_\_

ALJ Porterfield

RECORD CLOSED YES  NO   
Date \_\_\_\_\_

Briefs to be filed YES  NO   
Date \_\_\_\_\_

BENCH DECISION YES  NO

**RECEIVED**  
OCT 05 1992

Public Utility Commission  
SECRETARY'S BUREAU  
Information Control Division

**RECEIVED**

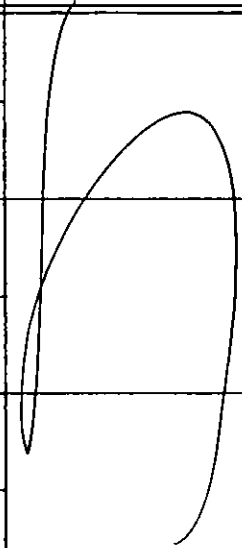
SEP 28 1992

Office of A. L. J.  
Public Utility Commission

**DOCUMENTED  
FOLDED**

REMARKS: Schwinn sign  
strip - Seaboard  
util. union  
conf w BH 09-22-92  
09-24-92

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD  
PLEASE PRINT CLEARLY  
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS			APPEARING FOR
Telephone No. ( )	City	State	Zip	
Telephone No. ( )	City	State	Zip	
Telephone No. ( )	City	State	Zip	

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

Reporter \_\_\_\_\_