

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheets

1. <u>REPORT DATE:</u>	March 15, 1991	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u>	Transportation	:	APR-91-T-328*
4. <u>SECTION</u>	Technical Review	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>		:	April 5, 1991
Director:	Ernst 7-2154	:	
Supervisor:	Bigelow/Marzolf 3-5945	:	
7. <u>MONITOR:</u>		:	
8. <u>PERSON IN CHARGE:</u>	Zeigler 3-5946	:	
9. <u>DOCKET NO.:</u>	A-00109669	:	
10. (a) <u>CAPTION</u> (abbreviate if more than 4 lines)			
(b) Short summary of history & facts, documents & briefs			
(c) Recommendation			

(a) Application of Keith Hough, Smithton, Westmoreland County, for the transfer of all of the operating rights of Midland Carriers, Inc., a corporation of the Commonwealth of Pennsylvania, under the certificate issued at A-00100414, subject to the same limitations and conditions.

(b) The application for transfer is unopposed. The transferor seeks to sell all of its operating authority to the applicant for the total consideration of \$1,000. No tangible assets are being transferred.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order approving the transfer application, and cancelling the certificate issued to the transferor by supplemental order.

TZ:kmb

**DOCKETED**  
 JUN - 7 1991

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

CONTENT OF MOTION: Staff recommendation adopted.

NVL



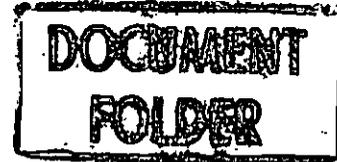
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P. O. BOX 3265, HARRISBURG, Pa. 17120

KJR

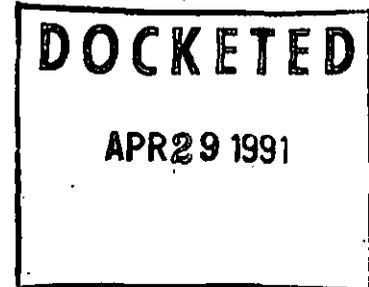
April 16, 1991

IN REPLY PLEASE  
REFER TO OUR FILE  
A-00109669

James R. Gaut, Esquire  
402 Coulter Building  
Greensburg, PA 15601



Application of Keith Hough



Enclosed is the compliance order issued by the Commission in this proceeding.

A Certificate of Public Convenience evidencing the Commission's approval of the right to operate will not be issued until the applicant has complied with the following insurance and tariff requirements:

- I. Arrange through an insurance agent to have an insurance company file the following forms with the Commission.
  - a. A Form E as evidence of minimum public liability and property damage insurance coverage as shown on the back of this sheet.
  - b. A Form H or Form UCPC-31 as evidence of cargo insurance coverage in an amount not less than \$5,000 per vehicle. Under certain circumstances, exemption from the cargo insurance requirement may be secured by filing the enclosed Form PUC-288.
- II. Prepare and file a tariff according to the enclosed instructions except applicants for transfer of authority must file a tariff adoption supplement which will be forwarded by separate cover at a later date.

Minimum Limits for PA Public Utility Commission Authorized Service

Passenger Carriers:

15 passengers or less: \$35,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.

\$25,000 first party medical benefits, \$10,000 first party wage loss benefits and \$1,500 first party funeral benefits for all passengers and pedestrians.

\$10,000 first party medical benefits, \$5,000 first party wage loss benefits, and \$1,500 first party funeral benefits for drivers (PA registered vehicles only).

16 to 28 passengers: \$1,000,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.

29 passengers or more: \$5,000,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.

Property Carriers:

Common or Contract: \$300,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.

\$10,000 first party medical benefits, \$5,000 first party wage loss benefits, and \$1,500 first party funeral benefits (PA registered vehicles only).

Common only: \$5,000 per accident per vehicle for loss or damage to cargo.

No motor carrier shall operate or engage in any transportation until compliance with all of the above requirements and a certificate has been issued authorizing actual operations. A motor carrier operating without complying with the above requirements will be subject to the penalty provisions of the Public Utility Code.

Commission regulations require compliance with all of the above requirements within sixty days of the date of this letter. Failure to comply within the sixty day period will cause the Commission to rescind the action of April 5, 1991 and dismiss the application without further proceedings.

If you foresee problems in meeting these requirements, please direct your questions to the following contact persons:

Insurance Filings: Mr. James McCarthy-Insurance Section  
(717) 783-5933

Tariff Filings: Mr. Joseph Machulsky-Tariff Section  
(717) 787-5521

Very truly yours,

A handwritten signature in black ink, appearing to read "Jerry Rich". The signature is stylized with a large loop at the end.

Jerry Rich, Secretary

smk  
Enclosures  
Certified Mail  
Receipt Requested

Keith Hough  
R.D.#1, Box 221-A  
Smithton, PA 15479

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120

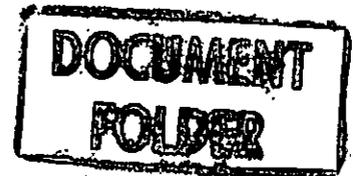
Public Meeting held April 5, 1991

Commissioners Present:

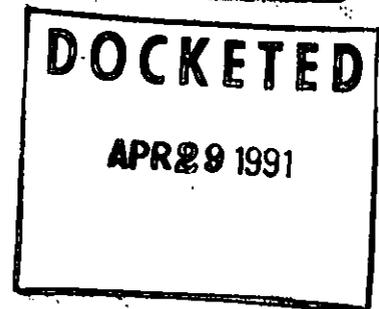
William H. Smith, Chairman  
Joseph Rhodes, Jr., Vice-Chairman  
Frank Fischl, Commissioner  
Wendell F. Holland, Commissioner  
David W. Rolka, Commissioner

Application of Keith Hough, for the transfer of all of the operating rights of Midland Carriers, Inc., a corporation of the Commonwealth of Pennsylvania, under the certificate issued at A-00100414, subject to the same limitations and conditions.

A-00109669



\_\_\_\_\_  
James R. Gaut for the applicant.  
\_\_\_\_\_



O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed February 19, 1991. Public notice of the application was given in the Pennsylvania Bulletin of March 9, 1991. The unopposed application is certified to the Commission for its decision without oral hearing.

Keith Hough plans to initiate common carrier service in Pennsylvania by acquisition of all of the common carrier authority of Midland Carriers, Inc. He will operate as a sole proprietor from R.D. #1, Smithton, Westmoreland County. Service will be provided using one triaxle dump truck. As of December 3, 1990, the applicant sets forth total assets of \$121,723.03 with total liabilities of \$69,402.62 for a net worth of \$52,320.78.

The total consideration for the rights is \$1,000. No tangible assets are involved. The sales agreement requires the consideration to be paid as follows: the total purchase amount of \$1,000 has been placed into escrow upon execution of the sales agreement dated December 3, 1990. Within ten days following approval of the transfer application by the Commission the \$1,000 consideration will be released to the seller.

The second right to transfer in this matter authorizes the transportation of coal, coke, sand, stone, cinders and refuse between points the counties of Allegheny, Fayette and Westmoreland, provided no haul shall exceed a distance of twenty-five miles from point of origin to point of destination. The Public Utility Code at 66 Pa. C.S. §102(4) exempts from its definition of common carrier by motor vehicle any person or corporation who or which uses, or furnishes for use, dump trucks for the transportation of ashes, rubbish, excavated and road construction materials. By extension, the exemption of this commodity from the definition of common carrier by motor vehicle does not require a certificate of public convenience for this transportation. In this instance, we are transferring to the applicant the right to transport coal, coke, sand, stone, and cinders, but are excluding the transportation of refuse as we determine this to be synonymous with rubbish and not within our jurisdiction.

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

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

We find:

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

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

1. To transport, as a Class D carrier, building materials in bulk in dump trucks, coal and coke between points in the village of Alverton, Westmoreland County, and within a radius of twenty-five (25) miles thereof, no haul to exceed a distance of twenty-five (25) miles from point of origin to point of destination.
2. To transport, as a Class D carrier, coal, coke, sand, stone and cinders between points in the counties of Allegheny, Fayette and Westmoreland, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination.

subject to the following general conditions:

1. That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on the property and rights to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by applicant, or to approve or prescribe rates sufficient to yield a return thereon.
2. That applicant shall not record in its utility accounts any amount representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.
3. That the applicant charge to Account 1550, Other Intangible Property, \$1,000, being the amount of the consideration payable by him 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 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 Midland Carriers, Inc., a corporation of the Commonwealth of Pennsylvania, at A-00100414 be cancelled and the record be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich", written over a large, stylized, circular flourish or scribble.

Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: April 5, 1991

ORDER ENTERED: APR 16 1991



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

April 22, 1991

IN REPLY PLEASE  
REFER TO OUR FILE

R-16

James R. Gaut, Esquire  
402 Coulter Building  
Greensburg, PA 15601

Re: A-00109669, Keith Hough

Dear Mr. Gaut:

Under date of 4-16-91, the Secretary's office transmitted to you the Commission's compliance order adopted 4-5-91, evidencing approval of the above application which is in effect a transfer of the rights formerly held by Midland Carriers, Inc. at A-00100414. The letter transmitting the order directs attention to the requirement for the filing of a tariff.

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

In this instance it is not possible to meet the tariff requirements by the adoption of the former tariff for the reason that the present tariff's description of operating authority does not conform with the approval of this application.

It will be necessary, therefore, to file a new tariff which should be designated Freight Pa. P.U.C. No. 1. The tariff should name the same rates, rules and regulations as were filed by the former operator and may be issued to become effective on one day's notice under authority of Pa. Code, Title 52, Section 23.42.

Very truly yours,  
Barry L. Ernst, Director  
Bureau of Transportation

By: Joseph M. Machulsky, Chief  
Financial Document Section

cc: Keith Hough  
R.D. #1, Box 221-A  
Smithton, PA 15479

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

