

PUC-77

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheets

KJR

1. <u>REPORT DATE:</u>	March 26, 1991	:	2. <u>BUREAU AGENDA NO.</u>	
		:		APR-91-T-361*
3. <u>BUREAU:</u>	Transportation	:		
4. <u>SECTION</u>	Technical Review	:	5. <u>PUBLIC MEETING DATE:</u>	
6. <u>APPROVED BY:</u>		:		April 11, 1991
Director:	Ernst 7-2154	:		
Supervisor:	Bigelow/Marzolf 3-5945	:		
7. <u>MONITOR:</u>		:		
8. <u>PERSON IN CHARGE:</u>	Hoshour 7-5513	:		
9. <u>DOCKET NO.:</u>	A-00109670	:		
10. (a) <u>CAPTION</u> (abbreviate if more than 4 lines)		:		
(b) Short summary of history & facts, documents & briefs		:		
(c) Recommendation		:		

DOCKETED

JUN 20 1991

(a) Application of M. Simon Zook Co., t/d/b/a Zook Molasses Co., Honey Brook, Chester County, a corporation of the Commonwealth of Pennsylvania, for the transfer of all of the operating rights of B & B Carriers, Inc., under the certificate issued at A-00102318, subject to the same limitations and conditions.

(b) The applications for temporary and permanent authority were filed by the applicant on February 25, 1991. No protests were filed. The applicant seeks to acquire by transfer seven common carrier rights issued to the transferor for the total consideration of \$5,000. No tangible assets are involved.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order approving the transfer application; and cancel by supplemental order the certificate issued to the transferor at A-00102318.

WH:np

11. <u>MOTION BY:</u>	Commissioner Chm. Smith	Commissioner Fischl - Yes
		Commissioner Holland - Yes
<u>SECONDED:</u>	Commissioner Rhodes	Commissioner Rolka - Yes

CONTENT OF MOTION: Staff recommendation adopted.

DOCUMENT  
FOLDER



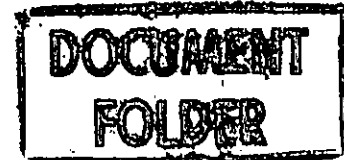
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P. O. BOX 3265, HARRISBURG, Pa. 17120  
April 19, 1991

KJR

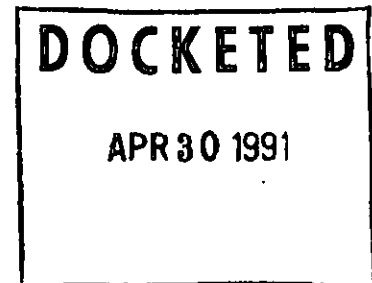
IN REPLY PLEASE  
REFER TO OUR FILE

A-00109670

Christian V. Graf, Esquire  
Graf, Andrews & Radcliff  
407 North Front Street  
Harrisburg, PA 17101



Application of M. Simon Zook Co.,  
t/d/b/a Zook Molasses Co.



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.

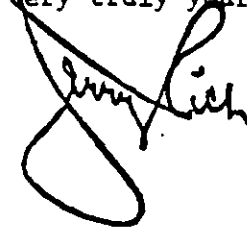
Commission regulations require compliance with all of the above requirements within sixty days of the date of this letter. Failure to comply within the sixty day period will cause the Commission to rescind the action of April 11, 1991 and dismiss the application without further proceedings.

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,



Jerry Rich, Secretary

smk  
Enclosures  
Certified Mail  
- Receipt Requested

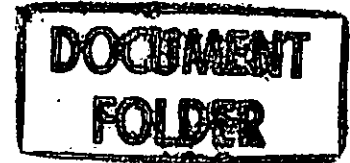
M. Simon Zook Co.  
t/a Zook Molasses Co.  
P.O. Box 160  
Honey Brook, PA 19344

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120

Public Meeting held April 11, 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 M. Simon Zook Co., t/d/b/a  
Zook Molasses Co., for the transfer of all  
of the operating rights of B & B Carriers,  
Inc., under the certificate issued at  
A-00102318, subject to the same limitations  
and conditions.

A-00109670

**DOCKETED**

**APR 30 1991**

\_\_\_\_\_  
Graf, Andrews & Radcliff, P.C. by David H. Radcliff for the applicant.

**O R D E R**

**BY THE COMMISSION:**

This matter comes before the Commission on applications for temporary and permanent authority filed February 25, 1991. Public notice of both applications was given in the Pennsylvania Bulletin of March 16, 1991. No protests were filed. The unopposed applications are certified to the Commission for its decision without an oral hearing.

M. Simon Zook Co., t/d/b/a Zook Molasses Co. (applicant) is a Pennsylvania corporation domiciled on West Main Street, Honey Brook, Chester County. By the instant application, the applicant seeks to acquire by transfer seven common carrier rights issued to B & B Carriers, Inc. under the certificate issued at A-00102318.

The applicant was incorporated on October 29, 1956. The officers of the applicant are Larry Martin, president; and Sally Martin, secretary/-treasurer. Both officers are shareholders and directors of the corporation, with Sally Martin holding 98 percent of the outstanding stock with the balance held by Larry Martin.

The balance sheet of the applicant indicates that as of October 31, 1990, it had current assets of \$996,709, total assets of \$3,242,106, current liabilities of \$1,053,909, total liabilities of \$1,617,221, retained earnings of \$1,724,885 and total stockholders' equity of \$1,624,885. The income statement for the year ending October 31, 1990, sets forth that from total

revenue of \$4,799,984, the applicant generated a net income after taxes of \$133,213.

The sales agreement of March 1, 1991, sets forth that the applicant will acquire the Pennsylvania common carrier rights along with the transferor's interstate rights for the total consideration of \$10,000. Of the total consideration, \$5,000 has been allocated for the Pennsylvania rights. No tangible assets are involved.

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. PUC, 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.

With the approval of this application, the applicant will be rendering both private and common carriage. The concerns as raised in Makovsky Bros. v. Pa. P.U.C., 55 Pa. Commonwealth Ct. 435 (1980), and clarified in the Application of Gene Fuller Homes, Inc.,\* A-00108928 (Order entered August 7, 1990), do not arise in this instance because the fifth and sixth rights involved in this proceeding authorize service for Zook Molasses Co., the applicant herein. We do caution the applicant that should it provide private carriage service for commodities and to an area not stated in the fifth and sixth rights additional authority may be required.

We find:

1. That the applicant is fit, willing and able to provide the service proposed.

2. That 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:

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\* The Commission determined in Gene Fuller Homes that a carrier providing common carriage and private carriage did not need authority to serve itself when service for private carriage is provided in the area authorized by its certificate.

- (1) To transport, as a Class D carrier, in dump vehicles, athletic field and track surfacing materials and fertilizer from points in the township of West Sadsbury, Chester County to points in Pennsylvania;
- (2) To transport, as a Class D carrier, in dump vehicles, crushed stone and lime, from points in the township of Paradise, Lancaster County, to points in Pennsylvania;
- (3) To transport, as a Class D carrier, in dump vehicles, crushed stone from points in the township of Salisbury, Lancaster County, to points within an airline distance of thirty-five (35) statute miles of the limits of said township;
- (4) To transport, as a Class D carrier, in dump vehicles, slag, from points in the township of East Fallowfield, Chester County, to points within an airline distance of thirty-five (35) statute miles of the limits of said township;
- (5) To transport, as a Class D carrier, molasses, corn syrup and maple syrup, for Good Food, Inc. and Zook Molasses Co., from points in the borough of Honey Brook, Chester County, and the city and county of Philadelphia, to points in Pennsylvania;
- (6) To transport, as a Class D carrier, edible oils, for Good Food, Inc. and Zook Molasses Co., from points in Pennsylvania, to the borough of Honey Brook, Chester County, and from said borough, and the borough of New Holland, Lancaster County, to points in Pennsylvania;
- (7) To transport, as a Class D carrier, syrups, sweeteners and edible oils, from points in Upper Leacock Township, Lancaster County, to points in Pennsylvania, and vice versa.

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 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, \$5,000, 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 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. Section 1102(a)(3).

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 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 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 the application for temporary authority filed at A-00109670 be and is hereby dismissed.

IT IS FURTHER ORDERED: That upon compliance with this order the rights granted the transferor, B & B Carriers, Inc., at A-00102318 be cancelled and the record be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich". The signature is written in a cursive style with a large, looping initial "J".

Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: April 11, 1991

ORDER ENTERED: APR 19 1991