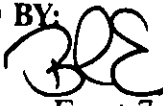
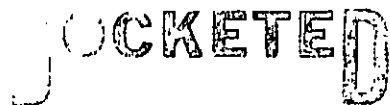
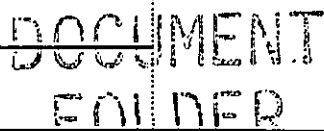


**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet**

1. REPORT DATE: May 16, 1994	2. BUREAU AGENDA NO. JUN-94-T-559*
3. BUREAU: Transportation	
4. SECTION(S): Technical Review	5. PUBLIC MEETING DATE: June 23, 1994
6. APPROVED BY: <div style="text-align: center;">  Director: Ernst 7-2154 Supervisor: Marzolf 3-5945 </div>	<div style="text-align: center;">  JUL 07 1994 </div>
7. PERSONS IN CHARGE: Travitz 7-5513	<div style="text-align: center;">  </div>
8. DOCKET NO.: A-00109670, F. 2	

- 9. (a) CAPTION (abbreviate if more than 4 lines)**
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) Application of M. Simon Zook Co., t/d/b/a Zook Molasses Co., Norristown, Montgomery County, a corporation of the Commonwealth of Pennsylvania, for a brokerage license, evidencing the Commission's approval of the beginning of the right and privilege to operate as a broker, to arrange for the transportation of property, between points in Pennsylvania.

(b) The application was unopposed and the applicant has entered a verified statement. The applicant is currently a certificated common carrier holding authority from the Commission under authority issued April 27, 1992. The instant application seeks the right to institute service as a broker for transportation for property, between points in Pennsylvania. The applicant has demonstrated that it is fit, willing and able to properly perform the service proposed and that the proposed service will be consistent with the public interest and policy declared in 66 Pa. C.S. §2501.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order approving the application.

10. MOTION BY:	Commissioner Chm. Rolka	Commissioner Quain - Yes	
		Commissioner Crutchfield - Yes	
SECONDED:	Commissioner Rhodes	Commissioner Hanger - Yes	

CONTENT OF MOTION: Staff recommendation adopted.



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

July 6, 1994

IN REPLY PLEASE
REFER TO OUR FILE

A-00109670F0002

DAVID H RADCLIFF ESQUIRE
2216 WALNUT STREET
HARRISBURG PA 17103

DOCKETED DOCUMENT
FOLDER
JUL 21 1994

Application of M. Simon Zook Co., t/d/b/a Zook Molasses Co.,
a corporation of the Commonwealth of Pennsylvania

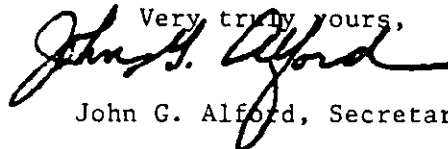
Enclosed is the compliance order issued by the Commission in this proceeding.

The brokerage license evidencing the Commission's approval of the right to operate will not be issued until the applicant furnishes a bond or other security approved by the Commission in an amount of not less than \$10,000 to insure the financial responsibility of the applicant in providing brokerage services.

No broker shall operate until it has complied with the above requirement and a brokerage license has been issued authorizing actual operations. Brokers operating without complying with the above requirement will be subject to the penalty provisions of the Public Utility Law.

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 June 23, 1994 and dismiss the application without further proceedings.

Very truly yours,


John G. Alford, Secretary

Encls.

Certificied Mail

Receipt Requested

Questions concerning the bond filing should be directed to: Insurance Section
(717) 787-1227

M SIMON ZOOK CO
T/A ZOOK MOLASSES CO
P O BOX 160
HONEY BROOK PA 19344

JEP

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 23, 1994

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
John M. Quain
Lisa Crutchfield
John Hanger

DOCUMENT
FOLDER

Application of M. Simon Zook Co., t/d/b/a Zook
Molasses Co., a corporation of the Commonwealth
of Pennsylvania, for a brokerage license,
evidencing the Commission's approval of the
beginning of the right and privilege to operate
as a broker, to arrange for the transportation of
property, between points in Pennsylvania.

A-00109670
F. 2

David H. Radcliff, P.C. for the applicant.

DOCKETED
JUL 21 1994

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed February 3, 1994. Public notice of the application was given in the Pennsylvania Bulletin of April 2, 1994. No protests were received. The application is unopposed and the record is certified to the Commission for its decision without oral hearing. The record consists of a verified statement entered by the applicant.

Larry Martin is the president of M. Simon Zook Co. which trades and does business as Zook Molasses Co. (applicant or Zook). Larry Martin is familiar with the applicant and is authorized to present this statement on its behalf. Applicant is a certificated common carrier holding authority from this Commission at Docket No. A-00109670, Folder 1. Applicant also holds certificates and permits from the I.C.C. and has applied for a broker's license from that Commission. Zook operates under its intrastate operating authority by transporting such commodities as liquid sweeteners and edible oils to points in Pennsylvania. Within the scope of applicant's authority, it serves commercial accounts in the delivery of processed and unprocessed molasses in tank vehicles. Applicant's customers requested that it make application to secure a broker's license so that Zook may arrange for the transportation of its product from storage and provide a complete transportation service for the shippers.

The offices of the applicant are located on West Main Street, Honey Brook, Pennsylvania. The office is manned by five full-time and one part-time employee and communications are maintained via an 800 number. Applicant also leases storage facilities at Leola, Pennsylvania and this facility is a transfer terminal where commodities may be unloaded from rail cars into storage. These commodities may be distributed directly from the storage facilities or may be blended meeting the specific requirements of applicant's customers. The commodities may then be shipped to customers or may be moved to applicant's warehouse in Honey Brook before final distribution.

Zook has received requests from shippers of freight to act as a broker arranging transportation service on behalf of its customers in the shipment of freight, except household goods, between points in Pennsylvania. Applicant will assume the responsibility of securing motor carriers for the transportation of its shippers' products. Zook will meet the needs of the shippers for expedited service and special handling of food grade commodities and arrange transportation on the basis of exclusive use of the equipment.

As stated earlier, applicant is itself an authorized carrier, and if it is able to handle the shipment, applicant will not act as a broker. (emphasis added) Applicant will arrange for transportation via any authorized carrier providing a service that meets the needs of the shipper. When acting as a broker, applicant will not assume custody of the freight, but will arrange transportation directly to and from the facility of its customers. Applicant will not issue bills of lading but will forward those documents received to its customers. Freight bills will be issued to the party paying the freight, either the consignor or the consignee.

As stated, applicant operates a storage facility for liquid commodities. Property of its storage customers will be subject to the transportation brokerage activities for which a license is sought in this proceeding. (emphasis added) Applicant will use its own vehicles when available for shipments within the scope of its authority. The motor carrier transporting the freight will properly assume liability for loss or damage of the freight. Where Zook Molasses is the carrier, it will assume such liability. Brokerage charges will be made according to agreements reached with applicant's customers. In most instances by agreement with the applicant's customer, the brokerage commission will be charged to the customer; in some instances by agreement with applicant's customer and the motor carriers involved, the brokerage commissions may be charged to the motor carriers.

DISCUSSION AND FINDINGS

The statutory standard for granting a broker's license is found in Section 2505(b) of the Public Utility Code, 66 Pa. C.S. §2505(b). That section reads in pertinent part:

... A brokerage license shall be issued ... if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this part and the lawful orders and regulations of the commission thereunder, and the

proposed service, to the extent authorized by the license, will be consistent with the public interest and the policy declared in section 2501 (relating to declaration of policy and definitions); otherwise such application shall be denied.

With regards to the fact that the applicant is a certificated common carrier, 66 Pa. C.S. §2505(a) states:

No person or corporation shall engage in the business of a broker in this Commonwealth unless such person holds a brokerage license issued by the Commission. No such person or corporation, by virtue of a brokerage license, shall render service as a motor carrier unless he holds a certificate of public convenience or permit, as the case may be. It shall be unlawful for any broker to employ any motor carrier who or which is not the lawful holder of an effective certificate of public convenience or permit. (emphasis added)

The Public Utility Code clearly indicates that a carrier may also be a broker as long as it possesses the proper certificate or permit and license.

Because the applicant is also a certificated common carrier and a warehouseman, we must advise the applicant to be aware of the provisions of 52 Pa. Code §39.10(a):

No broker shall charge or receive compensation from a carrier for brokerage service performed in connection with any shipment which he owns, in which he has a material interest, the routing of which he controls by reason of affiliation with any carrier as defined in the act, or non-brokerage relationship to the traveler, the shipper, consignor, or consignee as traffic consultant or otherwise, or which he controls by reason of his performance for the traveler, shipper, consignor, or consignee of non-brokerage services.

As a result of the applicant being a carrier, the applicant is precluded by §39.10(a) from receiving compensation when it acts as the broker and the carrier.

Due to a statement made by the applicant that it is an authorized carrier, and if it (the carrier) is able to handle the shipment, applicant will not act as a broker, we must caution the applicant of the Commission's regulation at 52 Pa. Code §39.11(a) which states:

A broker shall fairly protect the interest of a shipper/traveler employing his services, by providing or advising the shipper/traveler of the transportation service which, because of rates, schedules, type of motor carrier, or otherwise, will best

meet the needs of the shipper/traveler and no broker may misrepresent or make false promises to a shipper/traveler with respect to the service rendered or to be rendered by a carrier.

In other words, applicant (the broker) cannot arbitrarily decide to use itself as the motor carrier just because it has the authority to make the move. Applicant must consider which carrier, because of rates, schedules, type of motor carrier, or otherwise, will best meet the needs of the shipper.

Also, because applicant engages in other businesses such as a motor carrier and warehouseman, applicant must maintain separate records for its operations. See 52 Pa. Code §39.14.

Applicant intends to hold itself out to broker the transportation of property throughout Pennsylvania. It does not appear that service will be limited to any specific class of commodities. Applicant indicates that it will arrange transportation for carriers in Pennsylvania. The verified statement reveals that the applicant is knowledgeable of the Commission's regulations relating to brokers and their operations.

It is evident from the record that the applicant is capable of providing the public with the services of a property broker. It has office facilities from which to arrange the transportation. It also seeks a brokerage license from the I.C.C. It currently operates as both a P.U.C. and I.C.C. carrier. The balance sheet illustrates that the applicant's financial posture is such that it should have no difficulties in instituting the proposed service.

We find:

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

2. That the proposed service will be consistent with the public interest and policy declared at 66 Pa. C.S. §2501; THEREFORE,

IT IS ORDERED: That the application be and is hereby approved, granting the following right:

To operate as a broker, to arrange for the transportation of property, between points in Pennsylvania.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted in this application until the following is submitted to the Commission:

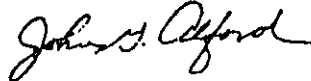
1. Surety Bond as proof of financial responsibility.

IT IS FURTHER ORDERED: That upon compliance with the above-stated provisions, a brokerage license issue evidencing the Commission's approval to operate as above-determined.

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

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.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: June 23, 1994

ORDER ENTERED: **JUL 6 1994**