



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

KJR

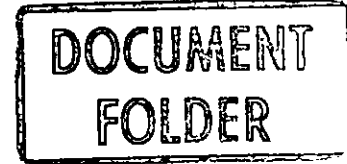
ISSUED: July 15, 1991

IN REPLY PLEASE  
REFER TO OUR FILE

BRIAN C HINKLEY  
HALLSTEAD PLAZA  
PO BOX 901  
HALLSTEAD PA 18822

A-00109681

Application of Brian C. Hinckley



TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Marlane R. Chestnut. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

cc:ALJ Chestnut/Office of ALJ/Law Bureau/Mr. Bramson/Bureau of Trans/OSA/Chairman/Commissioners/Correspondence/our:file

Very truly yours,

lg

Encls.

Certified Mail

Receipt Requested

Allison K. Turner

Chief Administrative Law Judge

Similar letter to: GARY R LOUDERBACK PRESIDENT  
260 HANSE ACCESS ROAD  
KING OF PRUSSIA PA 19406

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF :  
BRIAN C. HINCKLEY : DOCKET NUMBER A-00109681

DOCUMENT  
FOLDER

INITIAL DECISION

Before  
MARLANE R. CHESTNUT  
Administrative Law Judge

DOCKETED  
JUL 17 1991

HISTORY OF THE PROCEEDING

On February 28, 1991, Brian Hinckley (Hinckley or applicant) filed an application with the Pennsylvania Public Utility Commission (Commission) for initial authority to provide the following common carrier service:

Right to transport, as a common carrier, household goods, personal effects and property used or to be used in a dwelling, in connection with a removal from one location to another; and articles, in use, including objects of art, displays and exhibits which because of their nature or value require specialized handling and equipment usually employed in moving household goods between points in the county of Susquehanna, and from points in said county to points in Pennsylvania, and vice versa.

Notice of the application was provided and one protest, by Louderback Transportation Company (protestant or Louderback)

was filed against the application. The matter was assigned to me and set for hearing on June 26, 1991.

The hearing was held as scheduled. Applicant, appearing pro se, was present and prepared to proceed. Protestant was not present, and had not indicated any reason why it would not attend the hearing. Applicant stated that he had not had any negotiations with protestant, and had not agreed to a restrictive amendment.

At the hearing, applicant moved to dismiss the protest (presumably, for failure to prosecute), and have the application considered by the Commission's Bureau of Transportation pursuant to 52 Pa. Code §3.381(e). This motion was granted.

#### FINDINGS OF FACT

1. The application in this proceeding was filed on February 28, 1991.

2. A protest against the application was filed by Gary L. Louderback, President of Louderback Transportation Company, on March 21, 1991.

3. After filing the protest, protestant conducted no discovery, did not contact applicant and did not appear at the hearing held on June 26, 1991.

4. Applicant and his witnesses were present and prepared to proceed at the hearing on June 26, 1991.

## DISCUSSION

As described above, the only protest in this case was the one filed by Louderback. Clearly, this protestant had no intention of actively participating in this proceeding. Had this protest not been filed, the matter would never have been set for hearing, and the Commission would not have been required to have incurred the expense of having a hearing and obtaining the services of a court reporter, and the applicant and his witnesses (all of whom were present in the hearing room) would not have been required to travel to Philadelphia from Susquehanna County.

The Rules of Administrative Practice and Procedure promulgated by the Commission at 52 Pa. Code §1.35(c)(1)(iv) provide that the signature of the person subscribing a document filed with the Commission constitutes a certificate by the individual that "The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The regulation goes on to state at 52 Pa. Code §1.35(c)(2) that:

(2) If a document is signed in violation of this subsection, the presiding officer or the Commission, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 3301

of the act (relating to civil penalties for violations).

The instant protest apparently was filed for no reason other than to unnecessarily delay consideration of the application. Protestant did not contact applicant to learn more of the proposed service, or to take any actions to represent its interests. While a proposed restrictive amendment was attached to the protest, protestant never made any effort to discuss this with applicant. This situation obviously must be distinguished from those cases where protests are filed and then withdrawn, based on agreements concerning restrictive amendments or where a protestant through discovery has determined that approval of the application would not be detrimental to its interests.

For the above reasons, pursuant to 52 Pa. Code §§1.35(c)(2) and 5.245 and 66 Pa.C.S. §3301, a civil penalty in the amount of \$100.00 should be imposed against Louderback in this proceeding.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. The protest filed by Louderback constituted a violation of 52 Pa. Code §1.35(c)(iv).
3. The Commission has authority to impose fines and civil penalties pursuant to 66 Pa.C.S. §3301 et seq.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Protest of Gary R. Louderback, t/d/b/a Louderback Transportation Company, be dismissed for lack of prosecution.

2. That the application filed by Brian C. Hinckley at Docket No. A-00109681 and the record of this proceeding be referred to the Commission's Bureau of Transportation pursuant to 52 Pa. Code §3.381(e).

3. That protestant Louderback shall pay a civil penalty of One Hundred Dollars (\$100.00), by certified check of money order, sent within twenty (20) days of the service of the Commission order to:

Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

DATE:

6/27/91

  
MARLANE R. CHESTNUT  
Administrative Law Judge

Act 294

Case Identification: A-00109681; Application of Brian C. Hinckley

Initial Decision By: ALJ Marlene R. Chestnut

Deadline for Return to OSA: July 29, 1991

This decision has not been reviewed by OSA.

\* \* \* \* \*

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

W<sup>m</sup> H. Smith  
Commissioner

7-29-91  
Date

DOCUMENT  
FOLDER

DOCKETED  
JUL 31 1991

Act 294

Case Identification: A-00109681; Application of Brian  
C. Hinckley

Initial Decision By: ALJ Marlene R. Chestnut

Deadline for Return to OSA: July 29, 1991

This decision has not been reviewed by OSA.

\* \* \* \* \*

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

X Joseph P. Phelan, Jr.  
Commissioner

7/29/91  
Date

C.

Act 294

Case Identification: A-00109681; Application of Brian C. Hinckley

Initial Decision By: ALJ Marlene R. Chestnut

Deadline for Return to OSA: July 29, 1991

This decision has not been reviewed by OSA.

RECEIVED

JUL 19 1991

\* \* \* \* \*

COMMISSIONER HOLLAND'S OFFICE

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

Kendall F. Holland  
Commissioner

7/30/91  
Date

Act 294

Case Identification: A-00109681; Application of Brian  
C. Hinckley

Initial Decision By: ALJ Marlene R. Chestnut

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\* \* \* \* \*


I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Date

RECEIVED

JUL 15 1991

COMMISSIONER ROLKA'S OFFICE

KJR

2569

07/22/91

DEPOSITED  
JUL 30 1991

A-109681

LOUDERBACK TRANSPORTATION COMPANY INCORPORATED • 260 Hansen Access Road • King of Prussia, PA 19406



260 Hansen Access Road  
King of Prussia, PA 19406

MERIDIAN BANK

60-46  
313

CHECK  
NUMBER  
009460

PAY One Hundred dollars and 00/100

DATE 07/22/91 \$ 100.00

LOUDERBACK TRANSPORTATION COMPANY INCORPORATED

*[Handwritten Signature]*

AUTHORIZED SIGNATURE

TO THE  
ORDER  
OF

Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pa 17105-3265

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FOLDER