

PUC-77

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheets

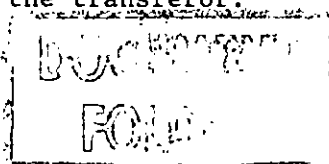
1. <u>REPORT DATE:</u>	November 20, 1990	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u>	Transportation	:	DEC-90-T-1347*
4. <u>SECTION</u>	Technical Review	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>		:	December 13, 1990
Director:	Ernst 7-2154	:	
Supervisor:	Bigelow/Marzolf 3-5945	:	
7. <u>MONITOR:</u>		:	
8. <u>PERSON IN CHARGE:</u>	Hoshour 7-5513	:	
9. <u>DOCKET NO.:</u>	A-00109526	:	
10. (a) <u>CAPTION</u> (abbreviate if more than 4 lines)		:	
(b) Short summary of history & facts, documents & briefs		:	
(c) Recommendation		:	

(a) Application of Harry J. Kemmerer and Karl D. Kemmerer, copartners, Ashley, Luzerne County, for approval of the transfer to the applicant of all of the rights held by Samuel J. Giordano (deceased), t/d/b/a Samuel J. Giordano Trucking under the certificate issued at A-00036427, F. 3, subject to the same limitations and conditions.

(b) The application for transfer is uncontested. The applicant seeks to acquire by transfer a single common carrier right issued to the transferor for the total consideration of \$1,000. The applicant is also acquiring two parcels of land and a building for the additional consideration of \$29,000. The consideration for the land and building has been paid to the transferor with the consideration for the common carrier right having been placed in escrow pending approval of the transfer application.

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

WPH:kmb



DOCKETED
JAN 28 1991

11. MOTION BY:	Commissioner Chm. Smith	Commissioner Fischl - Yes
SECONDED:	Commissioner Rolka	Commissioner Holland - Not Participating Commissioner Rhodes - Yes

CONTENT OF MOTION: Staff recommendation adopted.



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

KJR

December 21, 1990

IN REPLY PLEASE
REFER TO OUR FILE

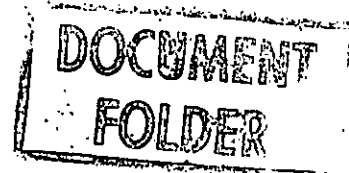
A-109526

DUPLICATED
JAN 01 1991

George L. Fenner, Jr., Esquire
171 South Franklin Street
P.O. Box 1161
Wilkes-Barre, PA 18703

Application of Harry J. Kemmerer and Karl D. Kemmerer, copartners.

To Whom It May Concern:



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.

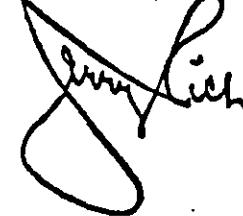
Commission regulations require compliance with all of the above requirements within sixty days of the date of this letter. Failure to comply within the sixty day period will cause the Commission to rescind the action of December 13, 1990 and dismiss the application without further proceedings.

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

lg

Enclosures
Certified Mail
Receipt Requested

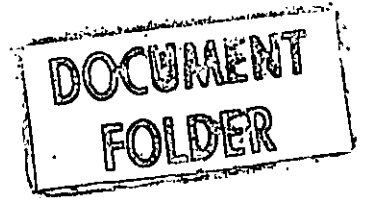
cc:appliant
Harry J & Karl D. Kemmerer, copts.
.31 Hazleton Street
P.O. box 43
Ashley, PA 18706

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held December 13, 1990

Commissioners Present:

William H. Smith, Chairman
Joseph Rhodes, Jr., Vice-Chairman
Frank Fischl
Wendell F. Holland, not participating
David W. Rolka



Application of Harry J. Kemmerer and Karl D. Kemmerer, copartners, for the transfer of all of the operating rights of Samuel J. Giordano (deceased), t/d/b/a Samuel J. Giordano Trucking, under the certificate issued at A-00036427, F. 3, subject to the same limitations and conditions.

A-00109526

DOCKETED
JAN 01 1991

George L. Fenner, Jr., for the applicant.

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed October 2, 1990. Public notice of the application was given in the Pennsylvania Bulletin of November 10, 1990. No protests were filed. The unopposed application is certified to the Commission for its decision without an oral hearing.

Harry J. Kemmerer and Karl D. Kemmerer, copartners (applicant), 31 Hazleton Street, Ashley, Luzerne County, seek to acquire by transfer the single common carrier right issued to Samuel Giordano (deceased), t/d/b/a Samuel J. Giordano Trucking (transferor) issued under the certificate at A-00036427, F. 3. The right authorizes the transportation of building materials in bulk in dump trucks, lawfully mined and lawfully prepared coal and scrap metal between points in the county of Luzerne and within a radius of twenty-five (25) miles thereof, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination.

In accordance with the sales agreement of July 6, 1990, the applicant will acquire two parcels of land and a building, and the common carrier right for the total consideration of \$30,000. The

consideration for the land and building is \$29,000, which was paid on August 7, 1990 to the estate of the transferor. The \$1,000 consideration for the common carrier right, has been placed in escrow pending approval of the transfer application.

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 evidence, this presumption of continuing public need applies in this transfer proceeding.

The right to be transferred, contains the language "lawfully mined and lawfully prepared coal". We will modify the right to eliminate from the authority hereinafter granted the antiquated language "lawfully mined and lawfully prepared".

We find:

1. The applicant is fit, willing and able to provide the service proposed.
2. That transfer of the authority, as modified, 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, as modified, be and is hereby approved and that a certificate be issued granting the following right:

To transport, as a Class D carrier, building materials in bulk in dump trucks, coal and scrap metal between points in the county of Luzerne and within a radius of twenty-five (25) miles thereof, 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 their utility accounts any amount representing the right herein granted in excess of the actual cost of said right to the original holder thereof.
3. That the \$1,000 consideration paid by applicants for the right and going concern value of the business be capitalized by applicants in Account 1550 - Other Intangible Property or in the alternative be charged off against applicant's ownership equity less any amount recorded under condition 2 above; provided the latter is sufficient in amount to absorb said charge off.
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 their utility accounts any amounts representing the right herein granted in excess of the actual cost of said right to the original holder thereof.

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 they have 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 applicants have 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 right granted the transferor, Samuel J. Giordano (deceased), t/d/b/a Samuel J. Giordano Trucking, at A-00036427, F. 3 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 loop at the end.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: December 13, 1990

ORDER ENTERED: DEC 21 1990