

LAW OFFICES
SILVERBLATT & TOWNEND
1400 UNITED PENN BANK BUILDING
8 WEST MARKET STREET
WILKES-BARRE, PA. 18701-1868

EDWIN SHORTZ, JR., 1876-1953
WILLIAM S. MCLEAN 1903-1963
ARTHUR H. JAMES 1883-1973
DANIEL F. DALEY 1930-1973

ARTHUR SILVERBLATT
CHARLES H. MINER, JR.
FRANK TOWNEND
CHARLES D. LEMMOND, JR.
HOWARD A. BERMAN
BENJAMIN R. JONES, III
JAMES F. GEDDES, JR.
STEPHEN B. KILLIAN

July 17th, 1991

TELEPHONE
(717) 823-5181

FAX
(717) 829-4633

Pennsylvania Public Utility Commission
P.O. Box 3265, North Office Building
Harrisburg, PA 17120

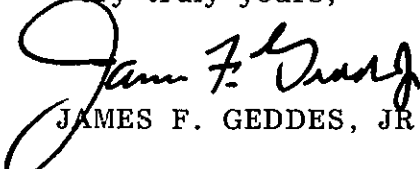
RECEIVED
JUL 18 1991
FILE SECRETARY'S OFFICE
Public Utility Commission

Re: Application of P.A. Mangione Trucking, Inc. -
A. 00109823; Protest of J & R Trucking Co.

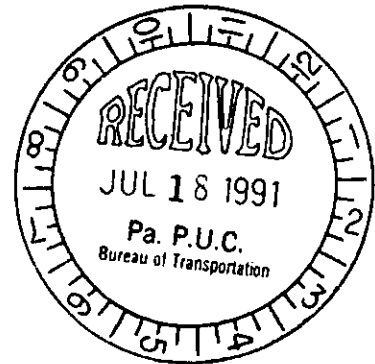
Gentlemen:

Please find enclosed herewith an original and one copy of a protest to be filed on behalf of Joseph Mihalka and Robert Romanski, t/d/b/a J & R Trucking Co. in connection with the above matter. Appropriate copies are also being sent to the Applicant and its counsel.

Very truly yours,


JAMES F. GEDDES, JR.

JFGJr/alc
Enclosures
pc: J & R Trucking Co.



**DOCUMENT
FOLDER**

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re:

APPLICATION OF

P.A. MANGIONE TRUCKING, INC.
A-00109823

RECEIVED
JUL 18 1991
SECRETARY'S OFFICE
Public Utility Commission

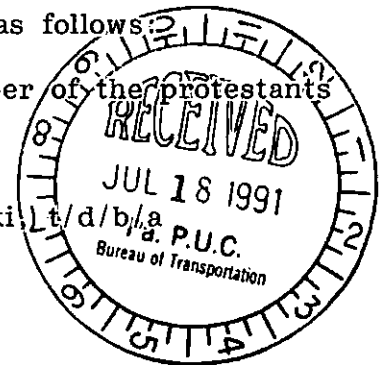
PROTEST ON BEHALF OF JOSEPH MIHALKA and
ROBERT ROMANSKI, t/d/b/a J & R TRUCKING CO.

FILE

AND NOW COME Joseph Mihalka and Robert Romanski, t/d/b/a J & R
Trucking Co., who protest this application, representing as follows:

1. The names, business address and telephone number of the protestants
are as follows:

Joseph Mihalka and Robert Romanski, t/d/b/a
J & R Trucking Co.
531½ South Main Street
Pittston, PA 18640-3217
(717) 654-2273



2. The name, business address and telephone number of the protestant's
attorney is:

James F. Geddes, Jr., Esquire
Silverblatt & Townend
1400 United Penn Bank Building
Wilkes-Barre, PA 18701
(717) 823-5181

3. Protestants hold authority with the Commission in conflict with the
applicant seeks in this proceeding. Protestant transports a significant amount
of various commodities covered by the application between points within the
scope of the application. This transportation, as well as other transportation...

DOCUMENT
FOLDER

DOCKETED
APPLICATION DOCKET
JUL 18 1991
ENTRY No.

which protestants could perform within the scope of the application, and the revenue derived, or to be derived, therefrom, are important to protestants. Said traffic and revenue could be diverted from protestants by approval of the instant application. Diversion of present and future traffic would have an adverse impact on protestants.

4. Protestants operate under docket number A. 00108327, as amended. A copy of protestant's authority held with the Pennsylvania Public Utility Commission, upon which their protest is predicated, is set forth on Appendix "A", attached hereto.

5. If applicant would restrict its application, so as to eliminate the conflicting authority of protestants, as shown on Appendix "A", this would protect protestant's interests, and protestants would withdraw their protest conditioned upon final acceptance of the amendment by the Commission.

6. Approval of this application in conflict with the authority of protestant is not necessary or proper for the service, accommodation, convenience, or safety of the public.

WHEREFORE, Joseph Mihalka and Robert Romanski, t/d/b/a J & R Trucking Co., respectfully pray that this application be dismissed.

AND, they will ever pray, etc.

JOSEPH MIHALKA and ROBERT ROMANSKI,
t/d/b/a J & R TRUCKING CO.

By: 
JAMES F. GEDDES, JR., ESQUIRE
Attorney for Protestants

1400 United Penn Bank Building
Wilkes-Barre, PA 18701
July 17th, 1991

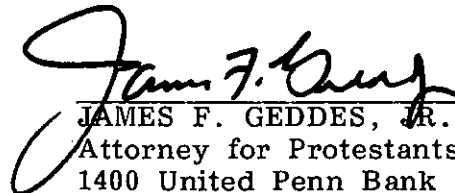
OPERATING AUTHORITY

CERTIFICATE NO. A.00108327

- (1) To transport, as a Class D Carrier, sand, gravel, crushed stone and coal between points in the counties of Luzerne and Lackawanna;
 - (2) To transport, as a Class D carrier, coal, from points in the county of Northumberland, to points in the county of Luzerne;
 - (3) To transport, as a Class D carrier, coal, between points in the county of Northumberland;
 - (4) To transport, as a Class D carrier, coal, from points in the counties of Luzerne and Lackawanna, to points in the county of Northumberland;
 - (5) To transport, as a Class D carrier, prepared coal, for Centralia Coal Sales Company, between points in the counties of Carbon, Lackawanna, Luzerne, Monroe, Northumberland, Schuylkill, Wayne and that portion of Snyder County, being on and east of U.S. Highway Route 15;
 - (6) To transport, as a Class D carrier, coal, for Carbon Sales, Inc., South Tamaqua Coal Productions, The Tamaqua Anthracite Company, and the John Popple Trucking Company, between points in the counties of Schuylkill, Northumberland, Luzerne and Lackawanna.
-

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the applicant, P.A. Mangione Trucking, Inc., 510 South Main Street, Pittston, PA 18640, and applicant's representative, Joseph F. Saporito, Esquire, 490 North Main Street, Pittston, PA 18640, by first class mail, postage prepaid and properly addressed.



JAMES F. GEDDES, JR., ESQUIRE
Attorney for Protestants
1400 United Penn Bank Building
Wilkes-Barre, PA 18701
(717) 823-5181

Dated: July 17th , 1991

MIHALKA TRUCKING CO.
406 Suscon Rd.
Avoca, Pa. 18641
717-654-2273

RECEIVED

JUL 22 1991

SECRETARY'S OFFICE
Public Utility Commission

July 18, 1991

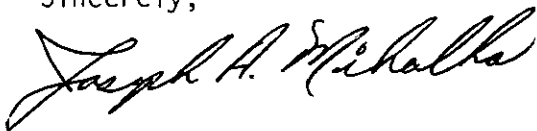
Pennsylvania Public Utility Commission
P.O. Box 3265, North Office Building
Harrisburg, PA 17120

RE: Application of P.A. Mangione Trucking, Inc. -
A.00109823; Protest of Mihalka Trucking Co.,

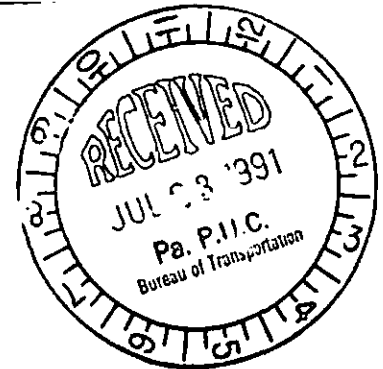
Gentlemen:

Please find enclosed an original and one copy of a protest to be filed on behalf of Joseph Mihalka, t/d/b/a Mihalka Trucking Co. in connection with the above matter. Appropriate copies are also being sent to the Applicant and its counsel.

Sincerely,



JOSEPH MIHALKA



DOCUMENT
FOLDER

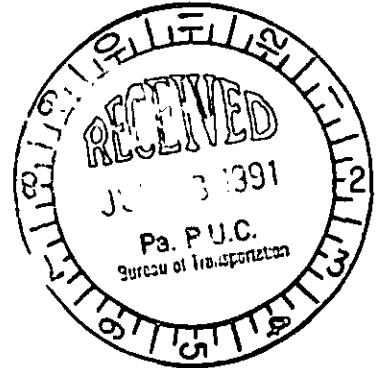
RECEIVED
JUL 22 1991
SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re:

APPLICATION OF

P.A. MANGIONE TRUCKING, INC.
A-00109823



PROTEST ON BEHALF OF JOSEPH MIHALKA,
t/d/b/a MIHALKA TRUCKING CO.

AND NOW COME Joseph Mihalka t/d/b/a Mihalka Trucking Co.,
who protest this application, representing as follows:

1. The names, business address and telephone number of the
protestant is as follows:

Joseph Mihalka, t/d/b/a
Mihalka Trucking Co
406 Suscon Rd.
Avoca, Pa 18641
717-654-2273

2. The name, business address and telephone number of the
protestant's attorney is:

NONE

3. Protestant holds authority with the Commission in conflict with the
applicant seeks in this proceeding. Protestant transports a significant amount
of various commodities covered by the application between points within the
scope of the application. This transportation, as well as other transportation

DOCUMENT
FOLDER

DOCKETED
APPLICATION DOCKET
JUL 29 1991
ENTRY No.

which protestant could perform within the scope of the application, and the revenue derived, or to be derived, therefrom, are important to protestant. Said traffic and revenue could be diverted from protestant by approval of the instant application. Diversion of present and future traffic would have an adverse impact on protestant.

4. Protestant operate under docket number A. 98090. A copy of protestant's authority held with the Pennsylvania Public Utility Commission, upon which his protest is predicated, is set forth on Appendix "A" attached hereto.

5. If applicant would restrict its application, so as to eliminate the conflicting authority of protestant, as shown on Appendix "A", this would protect protestant's interests, and protestant would withdraw his protest conditioned upon final acceptance of the amendment by the Commission.

6. Approval of this application in conflict with the authority of protestant is not necessary or proper for the service, accommodation, convenience, or safety of the public

WHEREFORE, Joseph Mihalka, t/d/b/a Mihalka Trucking Co., respectfully pray that this application be dismissed.

AND, he will ever pray, etc.

JOSEPH MIHALKA, t/d/b/a MIHALKA TRUCKING CO.

By: 
JOSEPH MIHALKA

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Application Docket No. 98090

Application of JOSEPH A. MIHALKA, trading and doing
business as MIHALKA TRUCKING COMPANY

REPORT AND ORDER
APPROVING SERVICE AS A MOTOR CARRIER

BY THE COMMISSION:

This matter being before the Pennsylvania Public Utility Commission upon application of JOSEPH A. MIHALKA, trading and doing business as MIHALKA TRUCKING COMPANY, dated January 3, 1973, to operate motor vehicles as a common carrier, and having been duly presented in accordance with the rules of the Commission, and full investigation of the matters and things involved having been had, and it appearing that the rights granted herein are in effect a transfer of the rights which have been held by CHARLES DeMARK (deceased) AND CARMEN DeMARK (deceased) copartners, under report and order issued at A.77437, on July 9, 1951 and the certificate of public convenience issued thereunder; which certificate will be subsequently cancelled as of the date of this order upon compliance with the tariff and insurance requirements of the Commission by JOSEPH A. MIHALKA, trading and doing business as MIHALKA TRUCKING COMPANY, the Commission finds and determines that approval of the application limited to the following right:

To transport, as a Class D carrier, lawfully-mined and lawfully-prepared coal from mines, breakers, and stripping operations in the counties of Luzerne, Lackawanna, Wayne, and Susquehanna to points in the said counties, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination.

To transport, ~~as a Class D carrier,~~ sand, gravel, stone, cement, brick, and lumber in dump trucks between points in the counties of Luzerne, Lackawanna, Wayne, and Susquehanna, provided no haul shall exceed a distance of twenty-five (25) miles from point of origin to point of destination.

and subject to the following conditions is necessary or proper for the service, accommodation or convenience of the public:

FIRST: 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.

A. 98090

THIRD: That the \$1,000 consideration paid by applicant for the rights and going concern value of the business be capitalized by applicant 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.

FOURTH: That the certificate holder shall comply with all the provisions of the Public Utility Law as now existing or as may hereafter be amended, and revised General Order No. 29 effective July 1, 1939, or as may hereafter be revised, and any other rules and regulations as may hereafter be prescribed by the Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate.

NOW, to wit, October 10, 1973, IT IS ORDERED: That upon compliance with the requirements of the Public Utility Law relating to insurance and the filing and acceptance of a tariff establishing just and reasonable rates a certificate of public convenience 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 thirty days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceeding.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

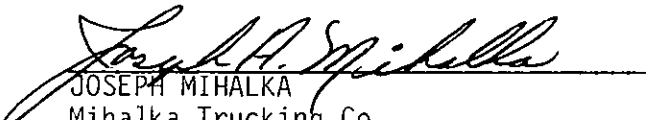
George L. Bloom
Chairman

ATTEST:

Will Pettigrew
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the applicant, P.A. Mangione Trucking, Inc., 510 South Main Street, Pittston, PA 18640, and applicant's representative, Joseph F. Saporito, Esquire, 490 North Main Street, Pittston, PA 18640, by first class mail, postage prepaid and properly addressed.

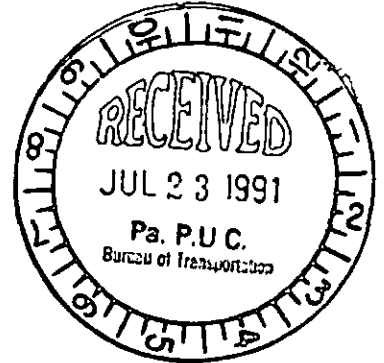

JOSEPH MIHALKA
Mihalka Trucking Co
406 Suscon Rd.
Avoca, Pa 18641
717-654-2273

Dated: July 18, 1991

ROMANSKI TRUCKING
10 UNION STREET
JENKINS TOWNSHIP, PA 18640
717-654-2273

July 19, 1991

Pennsylvania Public Utility Commission
P.O. Box 3265, North Office Building
Harrisburg, Pa 17120



RE: Application of P.A. Mangione Trucking, Inc.-
A.00109823; Protest of Romanski Trucking

Gentlemen:

Please find enclosed an original and one copy of a protest to be filed on behalf of Robert Romanski, t/d/b/a Romanski Trucking in connection with the above matter. Appropriate copies are also being sent to the Applicant and its counsel.

Sincerely,

A handwritten signature in cursive script that reads "Robert Romanski".

Robert Romanski

FILE

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re:

APPLICATION OF
P.A. MANGIONE TRUCKING, INC.
A-00109823



PROTEST ON BEHALF OF ROBERT ROMANSKI,
t/d/b/a/ROMANSKI TRUCKING

AND NOW COME Robert Romanski, t/d/b/a Romanski Trucking, who protest this application, representing as follows:

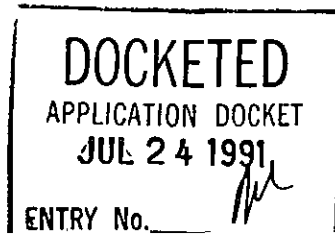
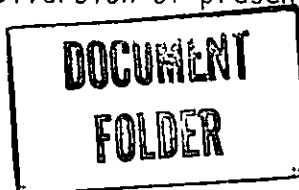
1. The names, business address and telephone number of the protestant are as follows:

Robert Romanski, t/d/b/a
Romanski Trucking
10 Union St.
Jenkins Township, Pa 18640
717-654-2273

2. The name, business address and telephone number of the protestant's attorney is:

NONE

3. Protestant holds authority with the Commission in conflict which the applicant seeks in this proceeding. Protestant transports a significant amount of various commodities covered by the application between points within the scope of the application. This transportation, as well as other transportation which protestant could perform within the scope of the application, and the revenue derived or to be derived, therefrom, are important to protestant. Said traffic and revenue could be diverted from protestant by approval of the instant application. Diversion of present and future traffic would have



and adverse impact on protestant.

4. Protestant operates under docket number A. 100438. A copy of protestant's authority held with the Pennsylvania Public Utility Commission, upon which their protest is predicated, is set forth on Appendix "A", attached hereto.

5. If applicant would restrict its application, so as to eliminate the conflicting authority of protestant, as shown on Appendix "A", this would protect protestant's interests, and protestant would withdraw their protest conditioned upon final acceptance of the amendment by the Commission.

6. Approval of this application in conflict with the authority of protestant is not necessary or proper for the service, accommodation, convenience, or safety of the public.

WHEREFORE, Robert Romanski, t/d/b/a Romanski Trucking, respectfully pray that this application be dismissed.

AND, they will ever pray, etc.

ROBERT ROMANSKI, t/d/b/a ROMANSKI TRUCKING

By: 
ROBERT ROMANSKI

RECEIVED

MAR 7 1978

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

ADOPTED AS
PA. P. U. C. NO. <u>1</u>
OF <u>ROBERT ROMANSKI</u>
<u>T/D/B/A ROMANSKI TRUCKING</u>
<u>AT A-102357</u>

Louise Romanski, trading and doing business as Romanski Trucking

RATES AND RULES GOVERNING THE TRANSPORTATION OF

To transport, as a Class D carrier, coal, sand, gravel, stone, asphalt and bituminous materials, in dump trucks, between points in the township of Jenkins, Luzerne County, and within an airline distance of fifty (50) statute miles of the limits of said township;

Subject to the following condition:

*That no right, power or privilege is granted to perform transportation to, from or between points in Schuylkill County.

Issued: March 7, 1978.

Effective: March 8, 1978.

Louise Romanski
 By: Louise Romanski t/d/b/a Romanski Trucking
~~10 Union Street~~ *67 PARSONAGE ST*
 Jenkins Township, Pa. 18640
PITTSBURGH, PA. 18640

RECEIVED
 Penna. Public Utility Comm.
 MAR 7 1978
 BUREAU OF INVESTIGATION
 TRAFFIC DIVISION

LOUISE ROMANSKI, T/D/B/A
ROMANSKI TRUCKING
(A-100438)

Supplement No. 1
to
Freight-Pa. P.U.C. No. 1

ROBERT ROMANSKI, T/D/B/A
ROMANSKI TRUCKING
(A-102357)

Supplement No. 1
to
Freight-Pa. P.U.C. No. 1 ✓

LOUISE ROMANSKI, T/D/B/A
ROMANSKI TRUCKING

ROBERT ROMANSKI, T/D/B/A
ROMANSKI TRUCKING

LOUISE ROMANSKI, T/D/B/A
ROMANSKI TRUCKING

Pa. P.U.C. No. 1

hereby withdraws Tariff Freight.

Signed: Louise Romanski

Address: 67 Parsonage Street,
Pittston, Pa. 18640

ROBERT ROMANSKI, T/D/B/A
ROMANSKI TRUCKING

hereby accepts and establishes as

Tariff Freight-Pa. P.U.C. No. 1 the tariff of LOUISE ROMANSKI, T/D/B/A
ROMANSKI TRUCKING
heretofore known as Freight-Pa. P.U.C. No. 1

RECEIVED
Penna. Public Utility Comm.
NOV 28 1980
Bureau of Non-Rail
Transportation
Tariff Section

Signed: Robert Romanski


Address: 42 Market Street,
Jenkins Township, Pa. 18640

Issued: November 28, 1980 Effective: November 29, 1980.

OFFICIALLY FILED TARIFF

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the applicant, P.A. Mangione Trucking, Inc., 510 South Main Street, Pittston, PA 18640, and applicant's representative, Joseph F. Saporito, Esquire, 490 North Main Street, Pittston, Pa 18640, by first class mail, postage prepaid and properly addressed.



ROBERT ROMANSKI
Romanski Trucking
10 Union St.
Jenkins Township, Pa 18640
717-654-2273

Dated: July 19, 1991

APPEARANCE SHEET

ALJ HEARING REPORT

DOCKET NO. A-00109823

CASE NAME P. A. Mangione Trucking, Inc.

HEARING LOCATION Scranton, PA.

HEARING DATE Oct. 8, 1991

ALJ Lovenwirth

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES NO

Testimony taken YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days _____

RECORD CLOSED YES NO

Date _____

Briefs to be filed YES NO

Date _____

YES NO

BENCH-DECISION

10/8/91
RECEIVED
 OCT 10 1991
 Office of A. L. J.
 Public Utility Commission

DOCKETED
 OCT 17 1991

RECEIVED
 OCT 17 1991

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
 PLEASE PRINT CLEARLY
 INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
James F. Geddes, Jr., Esq. Telephone No. (717) 823-5181	1400 United Penn Bank Bldg. City: <u>Wilkes-Barre</u> State: <u>PA</u> Zip: <u>18701</u>	J & R Trucking Co., Joseph Mihalko, and Robert Romanski } Three Pro- testants
Joseph F. Saporito, Esq. Telephone No. (717) 654-4643	490 NORTH MAIN STREET City: <u>PITTSBURGH</u> State: <u>PA</u> Zip: <u>15201</u>	P.A. Mangione Trucking, Inc.
Telephone No. ()	City: _____ State: _____ Zip: _____	

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

JoAnn Leiby
 Reporter



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

KJR

FROM: Scranton Office of Administrative Law Judge
Room 108, State Office Building
100 Lackawanna Avenue
Scranton, Pennsylvania 18503

IN REPLY PLEASE
REFER TO OUR FILE

November 21, 1991

SEE ATTACHED SERVICE LIST

In re: Application of P. A. Mangione, Inc. **UNRECORDED**
A-109823

DEC 02 1991

Gentlemen:

The transcript of testimony in the above-entitled proceeding has been received and it is indicated that the parties will file briefs.

In accordance with the regulations of the Commission set forth in 52 Pa. Code Section 5.502, the initial brief will be filed within two weeks of the date of this letter by the participant(s) upon whom rests the burden of proof concerning the main issue(s) in this case, namely: Applicant.

Within ten (10) days after the time fixed for the filing of the initial brief, Respondent will file a responding brief. No other briefs shall be filed without special order, upon request first made, of the Administrative Law Judge.

All briefs shall conform with the regulations of the Commission set forth in 52 Pa. Code Section 5.501 and shall contain: (1) a concise statement or counterstatement of the case; (2) a statement of the questions involved; (3) proposed findings of fact (with reference to transcript pages); (4) an argument preceded by a summary; (5) proposed conclusions of law; and (6) proposed ordering paragraphs. It is also requested that an impartial summary of testimony be included in the initial brief, with reference to the pages of the record or exhibits where referred evidence may be found; with any proposed modifications to the said summary of testimony to be included in the responding brief(s).

An original and (9) copies of each initial brief and responding brief shall be filed with the Commission, % the New Filing Section, Secretary's Bureau, Room B-18, North Office Building, Harrisburg, Pennsylvania 17120. One (1) copy must be served on the Presiding Administrative Law Judge and three (3) copies on each party of record.

The record will be closed upon conclusion of the briefing schedule.

If there are any questions, kindly contact this office at (717) 963-4818. Thank you.

**DOCUMENT
FOLDER**

Very truly yours,

RICHARD M. LOVENWIRTH
Administrative Law Judge

RML/rmm
cc Beth Plantz, OALJ Office, Harrisburg

P. A. Mangione Trucking, Inc.
A-109823
Briefing Letter

Service of the foregoing document was made on November 21, 1991
via first-class mail upon the following parties:

James F. Geddes, Jr., Esquire
1400 United Penn Bank Building
Wilkes-Barre, PA 18701

Joseph F. Saporito, Esquire
490 North Main Street
Pittston, PA 18640

KJR

SAPORITO & SAPORITO

ATTORNEYS AT LAW
SUITE 202

FOUR HUNDRED NINETY NORTH MAIN STREET
PITTSTON, PENNSYLVANIA 18640

December 3, 1991

JOSEPH F. SAPORITO
JOSEPH F. SAPORITO, JR.

(717) 654-4643
FAX (717) 654-5050

ORIGINAL

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
New Filing Section
Secretary's Filing Section
Secretary's Bureau, Room B-18
North Office Building
Harrisburg, PA 17120

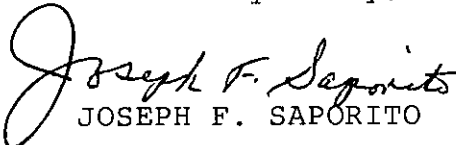
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DEC 4 - 1991
SECRETARY'S OFFICE
Public Utility Commission

Re: Application of P.A. Mangione, Inc.
A-109823

Gentlemen:

On behalf of P.A. Mangione, Inc., I am forwarding herewith original and nine copies of Applicant's Brief in support of its Application.

Yours very truly,


JOSEPH F. SAPORITO

JFSSR:nk
Enclosure

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Application of P.A. Mangione, Inc.

A-109823

BRIEF FOR APPLICANT, P.A. MANGIONE, INC.

RECEIVED

DEC 4 - 1991

SECRETARY'S OFFICE
Public Utility Commission

STATEMENT OF THE CASE

ORIGINAL

On June 17, 1991, P.A. Mangione, Inc. filed an Application for Approval of Transfer and Exercise of Common Carrier Rights seeking a transfer of the rights of Joseph W. Knorr for the transportation of property as set forth in the Application. On July 18, 1991, a Protest to the transfer was filed on behalf of Joseph Mihalka and Robert Romanski, t/d/b/a J & R Trucking Co. On July 22, 1991, a Protest to the transfer was filed by Joseph Mihalka t/d/b/a Mihalka Trucking Co., and on July 23, 1991, a like Protest was filed by Robert Romanski, t/d/b/a Romanski Trucking Co. Hearing was held on October 8, 1991, before the Honorable Richard M. Lovenwirth, Administration Law Judge. All protests essentially allege that approval of the Application of transfer would result in diversion of present and future traffic from protestants and would have an adverse impact upon them. The rights sought to be transferred were originally acquired by the Transferor, Joseph W. Knorr, by a certificate issued January 1, 1989. Applicant is not seeking the issuance of a new certificate of public convenience but merely the transfer of rights under an existing certificate.

SUMMARY OF TESTIMONY

Joseph W. Knorr, transferor, testified that he is the current holder of Certificate of Public Convenience No. A - 00108238 (N.T. 12) issued on January 18, 1989 (N.T. 15). The Certificate confers the following operating authority:

To transport , as a class D carrier, coal, culm, silt, cinders, sand, gravel, and stone between points in the City of Scranton, Lackawanna County, and within an airline distance of fifty (50) statute miles of the limits thereof.

Subject to the following conditions:

That no right, power or privilege is granted to transport coal from points in the counties of Luzerne and Schuylkill to points in the counties of Sullivan and Lycoming.

That no right, power or privilege is granted to render service in the counties of Monroe and Pike. (N.T. 14).

Mr. Knorr stated that he has been operating under the Certificate since the date of the transfer, and he has conformed to all Public Utility Commission requirements since that time. (N.T. 16). He further testified that he entered into an agreement with the proposed transferee, P.A. Mangione Trucking, Inc., on January 29, 1991, to sell his rights under the Certificate subject to approval of the P.U.C. (N.T. 18). Mr. Knorr hauled coal and ash for the period he owned the rights (N.T. 22). On redirect examination, Mr. Knorr stated that if the transfer was not approved, he would continue to operate under the certificate and would honor requests for his services (N.T. 24). He also testified that the agreed upon purchase price for the Certificate of \$2,000.00 was fair and reasonable (N.T. 19).

Mr. Peter A. Mangione, testified that he is the President and Secretary of the transferee, P.A. Mangione Trucking, Inc., which currently operates an interstate trucking business under certificate number MC-221472 issued by the Interstate Commerce Commission (N.T. 26,30) in 1989 (N.T. 34). The company owns two tractors, one freight liner trailer and three (3) dump trailers, which would be used in the business if the transfer is approved (N.T. 35-36), and would be adequate for that purpose (N.T. 39). Mr. Mangione stated that he currently has a safety program in place for his drivers (N.T. 39) and performs his own maintenance on the trucks (N.T. 35).

On the cross examination, Mr. Mangione stated that his father had transferred certain rights under a P.U.C. Certificate to J & R Trucking, protestants herein, in February, 1989 (N.T. 41). He testified that he at the time his father sold his rights had no money to purchase them. (N.T. 42). On redirect, he testified that he has had numerous requests to haul on the interstate level but he is unable to accommodate these prospective customers because he lacks a P.U.C. Certificate.

Robert Romanski was called and testified both as the owner of Romanski Trucking Co. and also as a partner of J & R Trucking Company (N.T. 64). His testimony revealed that both Romanski Trucking and J & R possess Class D P.U.C. trucking certificates which overlap some of the territory covered by Mr. Knorr's

certificate. (N.T. 65-68). Mr. Romanski: He stated that J & R acquired its certificate of public convenience from Mr. Mangione's father, Alphonso, in 1989 for a consideration of \$50,000.00 (N.T. 68,69). He testified that the J & R Trucking is currently working at seventy (70) per cent capacity. He felt there was no need for additional or continued Class D service in the area (N.T. 71). Mr. Romanski stated that to his knowledge Mr. Knorr has not carried on a trucking business under the certificate for the past year (N.T. 71). In addition to P.U.C. rights, J & R purchased I.C.C. rights from Alfonso Mangione for \$50,000.00, some equipment, and picked up some of his customers (N.T. 74).

On cross examination, Mr. Romanski revealed the J & R has been cited by the P.U.C. in the past for illegal moves - moves outside the territory authorized by its certificate.

Joseph Mihalka on direct examination stated that he is the owner of Mihalka Trucking Co., that his business is conducted chiefly by J & R Trucking in which he is a partner (N.T. 84). He also testified that his territories overlap to some extent those held by Mr. Knorr (N.T. 85).

On cross examination, Mr. Mihalka stated that since 1973 he was engaged in the trucking business and for that period Consumer Coal Co. operated under the same P.U.C. rights which were transferred to Mr. Knorr and which he now proposes to transfer to Mr. Mangione. (N.T. 87-88).

STATEMENT OF QUESTION INVOLVED

Whether the Application of P.A. Mangione Trucking, Inc., for the transfer of the existing common carrier rights under a certificate granted to the transferor, Joseph W. Knorr, should be approved when such rights have not been abandoned by the transferor?

Answered in the affirmative by the applicant, P.A. Mangione Trucking, Inc.

PROPOSED FINDINGS OF FACT

1. Joseph W. Knorr, transferor herein, is the holder of P.U.C. Certificate No. A-00108238 since January 18, 1989, said Certificate having been previously granted to Consumer Coal Co. and having been purchased by the said Joseph F. Knorr in 1989 (N.T. 15,16);
2. There are no affirmative acts on behalf of the transferor which indicate an intent to abandon the authority granted under the Certificate (generally N.T. 15-24);
3. The transferor always had equipment available to provide service under the Certificate and at no time put himself into a position whereby he could not render any service requested of

him by the public, and never refused any service to the public (N.T. 20,24);

4. The transferor paid annual assessments as a public utility, maintained insurance, filed annual reports and tariffs with the P.U.C. (N.T. 16);

5. The transferor did not orally or in writing evidence any intention to abandon his rights under the Certificate (generally N.T. 15-24);

6. The Transferee is capable of rendering services under the Certificate if the transfer is approved (N.T. generally 25-63).

ARGUMENT

The Application for Transfer filed by P.A. Mangione, Inc. should be approved. The transferor in no way abandoned the authority conferred by his Certificate of Convenience, and , in transfer situations there is a presumption that public convenience, once found, continues.

The protestants in the instant matter would appear from the record to object to the proposed transfer on three grounds: (1) the transferee's father sold similar rights to them; (2) transferor has abandoned the authority afforded by his certificate; and (3) there is no necessity for the services

authorized by the certificate. Transferee will address these matters seriatim. The only objection noted in these Protests is that approval would have an adverse impact on their business.

(1) Because the father of the proposed transferee sold similar rights to the protestants herein should in no way bar the transfer in this case. Mr. Mangione testified that at the time of the transfer in 1989, he did not purchase the business and certificate because he "could not acquire the money at the time." This in no way should have any bearing in the present matter. This case involves another certificate being acquired by a different entity, P.A. Mangione, Inc. If there was a covenant not to compete incorporated into the transfer to protestants in 1989, there might be an argument that this transfer would be in violation of that covenant. There was no such restriction imposed and, even if there were, Mr. Mangione, Sr., is not a party to the sale. There is also no credible evidence showing that P.A. Mangione, Inc., is attempting to lure customers away from protestants. On the contrary, transferee testified that he has been approached by some of the businesses for whom he does interstate hauling to also do intrastate work (N.T. 45-47). In the case of Rubright Co. v. Pa. P.U.C., 197 Pa Super. 242, A. 2d (1962), protestants alleged that transferee's operations would be unduly competitive and harmful, yet the Court held that this was not sufficient to deny the transfer. The transfer here should

not be denied because of a prior transfer by the father of the proposed transferee in this case to the protestants. This is a distinct transaction with no connection whatsoever to the previous transaction.

(2) The transferor, Joseph W. Knorr, has not abandoned any rights conferred by the certificate in question. Mr. Knorr testified that he did little work under the certificate this year because he "thought that this transfer would be over a lot quicker..." (N.T. 21). Even if no services were rendered, this still would not constitute an abandonment because mere absence of use of authority granted by the P.U.C. does not establish abandonment, but abandonment requires an affirmative showing of intent to abandon. Feather v. Pa P.U.C. et al., 41 Pa. Commonwealth 544, 399 A,2d 829 (1979). To constitute abandonment there must be an intention to abandon together with external acts by which the intention is carried into effect. Byerly v. Pa. P.U.C., 440 Pa. 521,270 A.2d 186 (1970). In the Feather case, *supra*, the transferor had not exercised his authority from the date of acquisition to the date of application for transfer, a period in excess of ten years, yet the court found that he had not abandoned any such authority.

In the case at bar, Mr. Knorr evidenced no intent, not even an inferable intent , to abandon his rights under the certificate. He maintained insurance, had vehicles to provide the service, filed tariffs, etc. with the P.U.C. and when asked

whether he would honor requests for services under the certificate in question, he replied: "Yes, I would have to, you know." (N.T. 24). There are absolutely no external acts on Mr. Knorr's part which would evidence an intent to abandon as required by the Byerly case, supra; and the proposed transfer to P.A. Mangione Trucking, Inc. should not be denied on this ground.

(3) Since, 1937, the Public Utility Commission has followed a rule, established by its decision in Grimm's Application, 17 Pa P.U.C. 25, that in applications for transfers of existing certificated rights proof of necessity shall not be required. This rule was adopted by the Pennsylvania Superior Court in Hostetter v. Pa P.U.C., 160 Pa. Super. 94, 49 A.2d867 (1946). It is presumed that the convenience once found continues until the contrary is shown, and the fact that a carrier has not transported the certificated product, and, even the fact that he has not been requested to do so, does not rebut the presumption of continuing necessity. Byerly, supra, at page 527. The only evidence in the record which protestants might point to so rebut the presumption in the instant case is their own testimony that during the current year they are operating at 70% capacity. It is respectfully submitted that such statement is self-serving and made by a party who opposes the transfer here. No witnesses other than the protestant's own statement substantiates that that figure is representative of the trucking industry as a whole and

it is a short term observation at best. It may simply be that the protestant's customers are using another carrier. There is no substantial, credible evidence to rebut the presumption of continuing necessity in this matter. As stated previously, the proposed transferee has even been approached by his interstate customers to handle intrastate hauling indicating that there is a continuing need for the service.

In summary, the Applicant would note that although he has addressed the foregoing issues, the only complaint set forth in each of the filed Protests is the possible "diversion of present and future traffic" which would have an adverse impact on protestants-- no mention is made of abandonment of rights nor a prior transfer of rights by Applicant's father, and Applicant suggests that these matters not be considered by the Commission, but the Applicant has argued these issues, supra, in the event they are allowed.

The Applicant is qualified to render service under the certificate in question; the purchase price is reasonable; there has been no abandonment of rights by the transferor, and, therefore, the transfer should be approved.

PROPOSED CONCLUSIONS OF LAW

1. Joseph W. Knorr, transferor, holds a continuing and valid Certificate of Public Convenience (No. A - 00108238);

2. Said Joseph W. Knorr has not abandoned any rights under the said Certificate;

3. There is a continuing necessity for the services permitted under said Certificate;

4. P.A. Mangione Trucking, Inc., transferee, a Pennsylvania corporation, is qualified to render services under the Certificate;

5. The proposed purchase price for the Certificate and rights thereunder is reasonable.

6. The transfer of Certificate No. A- 00109823 from Joseph W. Knorr to P.A. Mangione Trucking, Inc. should be approved.

PROPOSED ORDERING PARAGRAPHS

1. The Protests of Joseph Mihalka and Robert Romanski t/d/b/a J & R Trucking Co., Joseph Mihalka t/d/b/a Mihalka Trucking Co., and Robert Romanski t/d/b/a Romanski Trucking Co. are hereby dismissed;

2. The Application of P.A. Mangione Trucking, Inc. at A-00108238 for transfer of certificate from Joseph W. Knorr is approved and Applicant is granted the following authority:

To Transport, as a Class D carrier, coal, culm, silt, cinders, sand, gravel and stone between points in the City of Scranton, Lackawanna County, and within an airline distance of fifty (50) statute miles of the limits thereof,

Subject to the following conditions:

That no right, power or privilege is granted to transport coal from points in the counties of Luzerne and Schuylkill to points in the counties of Sullivan and Lycoming. That no right, power, or privilege is granted to render service in the counties of Monroe and Pike.

3. The Applicant shall not engage in any transportation granted herein until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing of proof of insurance and the filing and acceptance of a tariff establishing just and reasonable rates.

4. The Applicant shall submit proof of compliance with the provisions of the Pennsylvania Business Corporation law.

5. The Applicant (Certificate holder) shall comply with all the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all pertinent regulations of this Commission now in effect, or as may hereafter be prescribed by the Commission.

6. The authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to Applicant, shall not be construed as conferring more than one operating right.

7. In the event Applicant has not, on or before 60 days

from the date of approval, complied with the requirements set forth herein, the application may be dismissed without further proceeding.

Respectfully submitted:



JOSEPH F. SAPORITO, SR.
ATTORNEY FOR APPLICANT

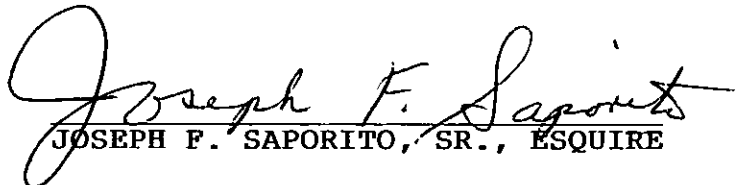
CERTIFICATE OF SERVICE

I, JOSEPH F. SAPORITO, SR., ESO., hereby certify that on the
3rd day of December, 1991, I served nine copies and original of
Applicant's Brief with the Pennsylvania Public Utility Commission, one
copy of the Brief upon Honorable Richard Lovenwirth, Administrative
Law Judge, and three copies of the Brief upon James F. Geddes, Jr.,
Esq., Attorney for Joseph Mihalka and Robert Romanski, t/d/b/a
Romanski Trucking, and Joseph Mihalka, t/d/b/a Mihalka Trucking Co.,
by mailing the same, first-class, U.S. mail, postage pre-paid and
addressed as follows:

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
New Filing Section
Secretary's Bureau, Room B-18
North Office Building
Harrisburg, PA 17120

Honorable Richard M. Lovenwirth
Administrative Law Judge
Scranton Office of administrative Law Judge
Room 108, State Office Building
100 Lackawanna Avenue
Scranton, PA 18503

James F. Geddes, Jr., Esquire
1400 United Penn Bank Building
Wilkes-Barre, PA 18701


JOSEPH F. SAPORITO, SR., ESQUIRE

ORIGINAL

LAW OFFICES

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SILVERBLATT & TOWNEND

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8 WEST MARKET STREET

WILKES-BARRE, PA. 18701-1868

EDWIN SHORTZ, JR., 1876-1953
WILLIAM S. MCLEAN 1903-1963
ARTHUR H. JAMES 1883-1973
DANIEL F. DALEY 1930-1973

ARTHUR SILVERBLATT
CHARLES H. MINER, JR.
FRANK TOWNEND
CHARLES D. LEMMOND, JR.
HOWARD A. BERMAN
BENJAMIN R. JONES, III
JAMES F. GEDDES, JR.
STEPHEN B. KILLIAN

December 13th, 1991

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Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
New Filing Section
Secretary's Bureau, Room B-18
North Office Building
Harrisburg, PA 17120



Re: Application of P. A. Mangione, Inc.
A-109823

Gentlemen:

Please find enclosed herewith the original and nine (9) copies of Protestants' Brief to be filed in connection with the above matter.

Very truly yours,

JAMES F. GEDDES, JR.

JFGJr/alc
Enclosures

pc: Hon. Richard M. Lovenwirth, Administrative Law Judge
Joseph F. Saporito, Sr., Esquire

RECEIVED

DEC 16 1991

SECRETARYS OFFICE
Public Utility Commission

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN RE: Application of P.A. : Protest of J & R Trucking Co., et al
Mangione, Inc. :
A-109823 :

DOCKETED
DEC 17 1991

RECEIVED
DEC 16 1991
SECRETARYS OFFICE
Public Utility Commission

BRIEF ON BEHALF OF PROTESTANTS

Counterstatement of the Case

The Protestants herein essentially concur with the procedural background set forth under Applicant's Statement of the Case; however, they would note that their protests also aver that approval of the transfer application is not necessary or proper for the service, accommodation, convenience, or safety of the public.

Protestants also suggest the following modifications or additions to the

SUMMARY OF TESTIMONY set forth in Applicant's Brief:

On cross-examination Joseph W. Knorr, Transferor, stated that he generated "very little" business under his Certificate of Public Convenience during 1991. (N.T. 21-23.) Furthermore, the only vehicle he is presently using (primarily for himself) is a 1984 Highlift vehicle, and his other vehicles are presently out of service. (N.T. 23.)

On examination by the Law Judge, the Applicant, by Peter A. Mangione, indicated that he presently stored his truck and performed maintenance on them out of doors either at a rented location in West Pittston or behind his mother's home at 510 South Main Street, Pittston, Pa. (N.T. 56-57.)

Mr. Robert Romanski, one of the protestants, indicated that Romanski Trucking, owned solely by him, had one piece of equipment and that J & R

DOCUMENT
FOLDER

Trucking Company, owned by him and Joseph Mihalka, has seven tri-axles, seven tractors, and ten trailers. (N.T. 69.) Mr. Romanski also indicated that he did not feel there was a need for any additional Class D service in the area being served by him, and that there were numerous other Class D carriers in the Luzerne/Lackawanna County area. Mr. Mangione would be providing the same type of service as is currently being provided by J & R Trucking, and an approval of the transfer requested by Applicant would divert traffic and revenue from his business, putting him a "downhill slump." (N.T. 71-72.) Mr. Romanski also asserted that the Applicant had been contacting customers that he acquired when he purchased rights from the Mr. Mangione's father some years ago. (N.T. 74-75.)

Mr. Joseph Mihalka, a co-owner of J & R Trucking Co., confirmed that their business was down about 30% and that they had trucks sitting idle. (N.T. 84.) He further asserted that his traffic and revenue might be diverted to the Applicant's if the transfer were approved. (N.T. 85.)

Statement of Questions Involved

1. Is there evidence of an abandonment of his authority by the Transferor, Joseph W. Knorr? (Suggested answer: Yes.)
2. Have Protestants established a lack of necessity for the transfer of the authority of Transferor to Applicant? (Suggested answer: Yes.)

Proposed Findings of Fact

1. Joseph W. Knorr, the proposed Transferor, is the holder of P.U.C. Certificate No. A-00109823 since January 18, 1989, having acquired the same from Consumer Coal Co. (N.T. 15-16.);
2. The Transferor has generated little or no activity under the authority

of his certificate during 1991, and currently only has one of his three trucks licensed and registered to operate in Pennsylvania. (N.T. 21, 23.)

3. The Applicant does not own garage facilities and presently stores his trucks and performs maintenance on them at the rear of his residence or on a property in West Pittston, Pennsylvania. (N.T. 56-57.)

4. The Transferor's authority is virtually congruent with that of Protestants'. (N.T. 64-68, 82.)

5. Protestants' business is presently down approximately 30%, and they do not believe that there is a continuing need for additional Class D service in the area covered by the respective certificates. (N.T. 70-71, 84.)

6. The transfer of authority, if approved, would divert traffic and revenue from Protestants' business to the Applicant's. (N.T. 72, 85.)

Argument

The Protestants in this proceeding essentially contend that the Transferor has abandoned the authority which he has held and that there is no necessity for the services authorized by said certificate. Accordingly, it is respectfully submitted that the transfer application be denied.

(1) Protestants are cognizant of the holdings in Feather vs. Pa. P.U.C., 41 Pa. Cmwlth. 544, 399 A2d 829 (1979) and Byerly vs. Pa. P.U.C., 440 Pa. 521, 270 A2d 186 (1970), but maintain that there is evidence of abandonment in this instance. Mr. Knorr at present only operates and maintains one truck vehicle, principally for his own purposes, and he has effectively provided no service under his Authority during 1991. It is easy for him to say that he "thought that this transfer would be over a lot quicker", but that is, in reality, a self serving statement. Obviously the Protestants are not privy to all of the details of Mr. Knorr's business, and they really had not been aware that he had acquired

the authority in question. It is submitted that the question of abandonment is one to be determined within the discretion of the Administrative Law Judge.

(2) While an applicant may not have a burden to establish a presumption of continuing necessity (c.f. Byerly, Supra), such lack of necessity can be established by testimony of the protestants. In this case Robert Romanski and Joseph Mihalka both testified that their business was currently down roughly 30%, that there were numerous other Class D carriers in their geographical area, that the authority proposed for transfer covers the same territory as their authority, and that approval of the transfer of authority to Applicant would divert revenue and business from their operations. In fact, as is apparent from the record, the Protestants purchased their authority from the father of Peter A. Mangione, sole officer and stockholder of P. A. Mangione, Inc., Applicant. The Protestants claimed that Mr. Mangione was actively soliciting customers that they had acquired when they purchased from his father.

Class D certificates are very numerous in the Luzerne/Lackawanna County area, and the existing proliferation of said certificates in light of today's economy is unwarranted. Many of said certificates issued at a time when the coal industry was more active in the Northeastern Pennsylvania region, but that segment of the local economy is certainly not as viable as it once was.

Proposed Conclusions of Law

1. The evidence and testimony fairly establishes that Joseph W. Knorr, Transferor, has abandoned his Certificate of Public Convenience (No. A-00109823).

2. There is no continuing necessity for the service permitted under said Certificate.

3. The transfer of Certificate No. A-00109823 from Joseph W. Knorr to

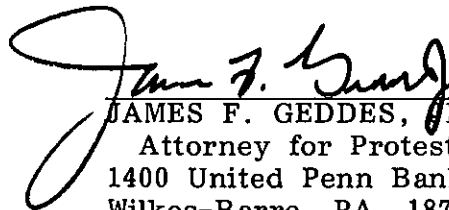
P.A. Mangione Trucking, Inc., should be disapproved.

Proposed Ordering Paragraphs

1. The Protests of Joseph Mihalka and Robert Romanski t/d/b/a J & R Trucking Co., Joseph Mihalka t/d/b/a Mihalka Trucking Co., and Robert Romanski t/d/b/a Romanski Trucking Co., are hereby upheld.

2. The Application of P. A. Mangione Trucking, Inc., at A-00108238 for transfer of certificate from Joseph W. Knorr is denied.

Respectfully submitted,



JAMES F. GEDDES, R., ESQUIRE
Attorney for Protestants
1400 United Penn Bank Building
Wilkes-Barre, PA 18701
(717) 823-5181
Attorney No. 14971


CERTIFICATE OF SERVICE

I, JAMES F. GEDDES, JR., ESQUIRE, hereby certify that on the 13th day of December, 1991, I served nine copies and the original Brief on behalf of Protestants with the Pennsylvania Utility Commission, one copy of the Brief upon Honorable Richard Lovenwirth, Administration Law Judge, and three copies of the Brief upon Joseph F. Saporito, Sr., Esquire, Attorney for P. A. Mangione Trucking, Inc., by mailing the same, first-class, U.S. mail, postage pre-paid and addressed as follows:

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission New Filing Section
Secretary's Bureau, Room B-18
North Office Building
Harrisburg, PA 17120

Honorable Richard M. Lovenwirth
Administrative Law Judge
Scranton Office of Administrative Law Judge
Room 108, State Office Building
100 Lackawanna Avenue
Scranton, PA 18503

Joseph F. Saporito, Sr., Esquire
Suite 202
490 North Main Street
Pittston, PA 18640



JAMES F. GEDDES, JR., ESQUIRE