

1. <u>REPORT DATE:</u>	September 5, 1991	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u>	Transportation	:	SEPT-91-T-911*
4. <u>SECTION</u>	Technical Review	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>		:	September 26, 1991
Director:	Ernst 7-2154	:	
Supervisor:	Bigelow/Marzolf 3-5945	:	
7. <u>MONITOR:</u>		:	
8. <u>PERSON IN CHARGE:</u>	Keener-Farley 7-4386	:	
9. <u>DOCKET NO.:</u>	A-00109827	:	

DOCKETED

JAN 10 1992

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

(a) Application of Timothy R. Engles, t/d/b/a Engles Family Moving, Franklin, Venango County, for the transfer of all of the operating rights of Ronald H. Schilk under the certificate issued at A-00100721 subject to the same limitations and conditions.

(b) Two protests were filed to the application and the applicant agreed to a restrictive amendment to obtain a withdrawal of the protest. Pursuant to case law, the Commission does not accept restrictions to existing authorities in transfer proceedings and will not do so in this case. Transferor proposes to transfer all of his PUC operating authority for a total consideration of \$5,000; no tangible assets are involved in the sale.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order dismissing the protests and approving the transfer application and that the certificate issued to the transferor be cancelled by supplemental order and that a copy of the order be forwarded to the Department of Revenue.

LK-F:11

11. MOTION BY:	Commissioner Chm. Smith	Commissioner	Holland - Yes
		Commissioner	Rhodes - Yes
SECONDED:	Commissioner Rolka	Commissioner	

CONTENT OF MOTION: Staff recommendation adopted.

DOCUMENT FOLDER



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

KJR

October 2, 1991

IN REPLY PLEASE
REFER TO OUR FILE

A-109827

TIMOTHY R ENGLES T/A
ENGLES FAMILY MOVING
805 ATLANTIC AVENUE
PO BOX 123
FRANKLIN PA 16323

Application of Timothy R. Engles, t/d/b/a Engles Family Moving

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.

DOCUMENT
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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 September 26, 1991 and dismiss the application without further proceedings.

If you foresee problems in meeting these requirements, please direct your questions to the following contact persons:

Insurance Filings: Mr. James McCarthy-Insurance Section
(717) 783-5933

Tariff Filings: Mr. Joseph Machulsky-Tariff Section
(717) 787-5521

Very truly yours,

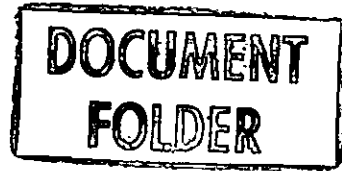
A handwritten signature in black ink, appearing to read "Jerry Rich", written over a large, stylized loop.

Jerry Rich, Secretary

lg

Enclosures
Certified Mail
Receipt Requested

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265



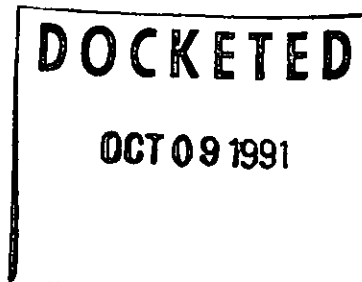
Public Meeting held September 26, 1991

Commissioners Present:

William H. Smith, Chairman
Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner
David W. Rolka, Commissioner

Application of Timothy R. Engles,
t/d/b/a Engles Family Moving, for
the transfer of all of the operating
rights of Ronald H. Schilk under the
certificate issued at A-00100721
subject to the same limitations and
conditions.

A-00109827



Timothy R. Engles pro se.
Dwight L. Koerber, Jr., for the protestants, Venco Trucking, Inc., and
H. E. Shoup, Inc.

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed June 20, 1991. Public notice of the application was given in the Pennsylvania Bulletin of July 13, 1991. The record is now certified to the Commission for its decision without oral hearing.

Two protests were filed to the application. The applicant agreed to a restrictive amendment, prohibiting transportation for Pennzoil Products Company and Continental Can Company. In a similar transfer application case, where a protestant attempted to restrict existing authority we said:

The Commission has observed that in proceedings for the transfer of motor carrier certificates it is common for protestants to use their protests as a lever to force the applicants to agree to amendments restricting or diminishing the rights held by the transferor. Further, the Commission

is of the opinion that the parties to a transfer proceeding have no authority to compromise, barter, or otherwise dilute an operating right, which would deprive the public of transportation services which carriers are authorized and obligated to furnish.

Glenn Yeager, 49 Pa. P.U.C. 138, 147 (1975). The same conclusion must be reached in this case. The Commission is not bound by restrictive amendments agreed to by parties in motor carrier applications. 52 Pa. Code §5.235(b). Our right to reject restrictive conditions when not in the public interest has been upheld on appeal. Glenside Suburban Radio Cab, Inc. v. Pa. P.U.C., 49 Pa. Cmwlth. Ct. 523 (1980), Federal Reserve Bank of Philadelphia v. Pa. P.U.C., 15 Pa. Cmwlth. Ct. 360 (1974). We do not believe that the proposed restrictive amendment is in the public interest and we will not accept it and we will dismiss the protests.

Timothy R. Engles (transferee) is a sole proprietor, who intends to do business as "Engles Family Moving". His principal place of business is located at 805 Atlantic Avenue, Franklin, Venango County. Engles has over nine years of experience in various phases of the trucking industry. A 1988 Ford F350 one ton truck and a 1991 Carmate thirty-two foot fifth wheel trailer will be used to perform the proposed service. A safety program will be instituted to comply with the Commission's Safety Code. Engles maintains separate accounts for his trucking business and as evidence of his financial capacity to begin operations as a common carrier reports assets of \$18,391, current liabilities of \$4,126, long term debt of \$14,126, leaving a net worth in the business of \$139.

The total consideration for the rights is five thousand dollars (\$5,000). No tangible assets are involved. The sales agreement requires the consideration to be paid at closing, after approval of this transfer by the Commission.

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

We find:

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

2. Transfer of the authority is in the public interest and is necessary for the continued accommodation and convenience of the public.

3. It is not in the public interest to accept the proposed restrictive amendment to this existing authority; THEREFORE,

IT IS ORDERED: That the protests be and are hereby dismissed.

IT IS FURTHER ORDERED: That the transfer application be and is hereby approved and that a certificate be issued granting the following rights:

1. To transport, as a Class D carrier, property between points in Venango County;
2. To transport, as a Class D carrier, pool car shipments from the city of Franklin, Venango County, to points within fifty (50) miles, by the usually traveled highways of the limits of said city;
3. To transport, as a Class C carrier, property in emergency shipments from points in Venango County to points within one hundred (100) miles, by the usually traveled highways, of the limits of said county;
4. To transport, as a Class D carrier, household goods in use from points in the county of Venango to other points in Pennsylvania and vice versa;
5. To transport, as a Class D carrier, property from station to station for the Penn Central Transportation Company, between the city of Oil City, Venango County, and the borough of Jamestown, Mercer County.

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 his utility accounts any amount representing the rights

herein granted in excess of the actual cost of such rights to the original holder thereof.

3. That the \$5,000 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.
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 his utility accounts any amounts representing the rights herein granted in excess of the actual cost of such rights to the original holder thereof.
5. That the operating authority granted herein, or now held or subsequently granted to the applicant to the extent that it is duplicative shall not be construed as conferring more than one operating right.
6. That the certificate/permit holder shall not transfer, sell or in any way convey any of his interest to any individual, partnership, corporation or any entity, without the prior filing of an application and approval thereof by the Commission under 66 PA C.S.A. §1102(a)(3).

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it has complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relative to the filing and acceptance of evidence of insurance and a tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That upon compliance with the requirements above set forth, a certificate 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 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 rights granted the transferor, Ronald H. Schilk at A-00100721 be cancelled and the record be marked closed.

BY THE COMMISSION,

A handwritten signature in cursive script, appearing to read "Jerry Rich". The signature is written in dark ink and is positioned above the printed name and title.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: September 26, 1991

ORDER ENTERED: OCT 2_ 1991