

BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00109827, FO001, AmA Application of Timothy R. Engles t/d/b/a Engles Family Moving For Amendment so as to permit the transportation of property, for Joy Technologies, Incorporated, from the City of Franklin, Venango County, to points in Pennsylvania, and vice versa; and property for Franklin Steel Company from the City of Franklin, Venango County, to points in Pennsylvania, and vice versa. Initial Hearing.

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Pittsburgh, Pennsylvania  
December 21, 1993

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Pages 1 to 11, inclusive

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Stenographic report of telephonic hearing held in Hearing Room 3, Eleventh Floor, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania,

Tuesday  
December 21, 1993  
at 10:00 o'clock a.m.

BEFORE

MICHAEL NEMEC, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

SUSAN SHANAMAN, ESQ.  
21 North Fourth Street  
Harrisburg, PA 17101  
appearing on behalf of Timothy R. Engles,  
t/d/b/a Engles Family Moving

JOHN A. PILLAR, ESQ.  
Suite 700  
312 Boulevard of the Allies  
Pittsburgh, PA 15222  
appearing on behalf of Klapec Trucking  
Company and West Motor Freight, Inc.

1 ADMINISTRATIVE LAW JUDGE NEMEC: This morning  
2 we have a case captioned Application of Timothy R.  
3 Engles, trading and doing business as Engles Family  
4 Moving.

5 The matter is docketed at A-00109827, F0001,  
6 AmA.

7 At the request of counsel for Applicant, and  
8 with the agreement of the remaining Protestants,  
9 the matter has be re-designated a Prehearing  
10 Conference.

11 We are conducting the Prehearing Conference  
12 by telephone in Pittsburgh.

13 Present this morning are Attorney Susan  
14 Shanaman, representing the Applicant, Timothy R.  
15 Engles, and Attorney John Pillar, representing  
16 Klapac Trucking Company and West Motor Freight,  
17 Inc.

18 My name is Michael Nemeec. I'm an  
19 Administrative Law Judge with the Pennsylvania  
20 Public Utility Commission, and I have been assigned  
21 to conduct the hearings in this application  
22 proceeding.

23 Ms. Shanaman, why don't you bring the record  
24 up to date with regard to where this case is at the  
25 present time.

1 MS. SHANAMAN: Thank you, Your Honor.

2 Yes, there have been other protests filed to  
3 the application of Mr. Engles and but for the  
4 protests still remaining from both Klapac and West,  
5 those other Protestants have indicated that in  
6 response to proposed Amendments to the application,  
7 that they would withdraw their protests if those  
8 Restrictive Amendments were in fact adopted by Your  
9 Honor and the Commission.

10 At this point, we have been unable, although  
11 I believe Your Honor has received a copy of a  
12 letter from potentially two, or our potential  
13 witnesses from Joy Technologies, Inc., indicating  
14 that they are closing their facility tomorrow of  
15 this week for the remainder of the year and,  
16 therefore, would have been unavailable as  
17 witnesses.

18 We at this point have, in addition to Mr.  
19 Engles, three witnesses, two from Joy Technologies,  
20 being Tom Wyant and Tip Marwood, as well as Dave  
21 Miller from Franklin Steel, who we would propose  
22 when we have the hearing, assuming that Mr.  
23 Pillar's clients do not -- we are not successful in  
24 meeting any of their objections to have their  
25 withdraw, we would have those individuals as

1 witnesses at a hearing.

2 JUDGE NEMEC: Okay.

3 Mr. Pillar?

4 MR. PILLAR: Yes.

5 I have several observations, Your Honor.

6 First, with respect to the Amendments that  
7 Ms. Shanaman spoke of, I don't believe any of those  
8 have actually been filed.

9 Am I correct in that?

10 MS. SHANAMAN: No, I have filed them.

11 MR. PILLAR: I don't see in my file any  
12 copies. Let me just see here.

13 Oh, an Amendment to the application, here is  
14 a pleading called Amendment to the Application, and  
15 I just wanted to make sure.

16 Yes, I do have that. That is the Amendment  
17 that -- what is the Amendment? I don't see how you  
18 amended the application. You limited it to Joy and  
19 to Franklin Steel, but that is how the original  
20 application was, anyway.

21 What is the nature of the restriction to the  
22 application? That's what I don't quite understand.

23 MS. SHANAMAN: One second. Let me just get  
24 that in front of me.

25 MR. PILLAR: Okay.

1 MS. SHANAMAN: Okay.

2 MR. PILLAR: I think I know.

3 MS. SHANAMAN: I have to say to you right off  
4 the top of my head obviously the other two counsel  
5 thought that that was a Restrictive Amendment since  
6 they -- I was just looking through the letters from  
7 both Peter Loftus and --

8 MR. PILLAR: They withdrew?

9 MS. SHANAMAN: Yes.

10 MR. PILLAR: I think I know the answer to the  
11 question, but I wanted to make sure it was clear on  
12 the record.

13 You have excluded Petroleum and Petroleum  
14 Products --

15 MS. SHANAMAN: Right, and I also think with  
16 products that would require specialized equipment.

17 MR. PILLAR: With the exception of shipments  
18 destined for Meadowlands and West Middlesex?

19 MS. SHANAMAN: Correct.

20 MR. PILLAR: I see, okay.

21 As amended then, the application still seeks  
22 statewide authority to haul property for Joy  
23 Technologies and Franklin Steel from their  
24 facilities to points in Pennsylvania and vice  
25 versa, with those two exceptions?

1 MS. SHANAMAN: I believe that is correct.

2 MR. PILLAR: May I inquire of Ms. Shanaman  
3 has any application for temporary authority been  
4 filed?

5 MS. SHANAMAN: No.

6 MR. PILLAR: Okay.

7 And, Your Honor, with respect to the  
8 witnesses, of course I had requested the names of  
9 the witnesses and the subject matter of their  
10 testimony some time ago.

11 Now Ms. Shanaman has indicated this morning  
12 the names of the witnesses.

13 Would you be able to at this time tell me or  
14 at least have the Applicant provide me with those  
15 names, addresses, telephone numbers and the subject  
16 matter of their testimony so that I will be able to  
17 be apprised of what it is they are going to say, at  
18 least in terms of general subject matter?

19 MS. SHANAMAN: Are you also prepared to  
20 indicate what witnesses you intend to put on?

21 MR. PILLAR: Certainly; I certainly am, and  
22 I'll exchange that information with you.

23 Would ten days be okay, two weeks?

24 MS. SHANAMAN: That's okay with me, if that's  
25 okay with you and also okay with Judge Nemeč.

1 JUDGE NEMEC: It's fine with me.

2 MR. PILLAR: Let's say that on or before  
3 January 5th we will exchange information regarding  
4 the subject matter of our testimony of our  
5 witnesses, and if there are any exhibits that you  
6 want after you get the names of my witnesses, let me  
7 know and I'll do the same with you.

8 MS. SHANAMAN: Okay.

9 MR. PILLAR: I just basically need to know  
10 who is going to testify for the Applicant and the  
11 shippers.

12 MS. SHANAMAN: Okay.

13 JUDGE NEMEC: I think we know what the issues  
14 are in the case. If there are any other  
15 possibilities in terms of Restrictive Amendments,  
16 I'm sure the two of you can discuss that off the  
17 record.

18 I will endeavor to reschedule this for  
19 hearing as soon as possible. I would anticipate  
20 that would probably be about thirty days.

21 MR. PILLAR: I talked to Bud Huntington the  
22 other day about hearings, Your Honor, and he is  
23 scheduling February hearings right now.

24 JUDGE NEMEC: Yes.

25 MR. PILLAR: And Mr. Klapac, who will be the

1 witness for Klapac Trucking, is going to be in  
2 Arizona the entire month of February, and he is  
3 going to be my witness, so my request is that we  
4 don't have a hearing until he returns, and that  
5 will probably be the end of February.

6 So that's the only concern I have. If it's  
7 scheduled --

8 JUDGE NEMEC: It may be possible, but it can  
9 be scheduled sooner than February.

10 MR. PILLAR: The problem with that is he's  
11 actually leaving for Arizona in January, right  
12 after the holidays. He's going to be there for two  
13 months. If it's scheduled in January, he would  
14 have to come back.

15 Since this case has already been postponed  
16 twice, my request is that it not be scheduled until  
17 March.

18 JUDGE NEMEC: Ms. Shanaman?

19 MS. SHANAMAN: I had talked to Mr. Engles,  
20 and although I can say he told me his blood  
21 pressure is rising, you know, he wants to get this  
22 thing resolved.

23 On the other hand, I indicated to him as Mr.  
24 Pillar and I had discussed yesterday concerning his  
25 concerns relative to his witness' availability, and

1 I certainly would have no objection to  
2 accommodating the needs he has with his witnesses.

3 MR. PILLAR: If we are able to work this out  
4 in the meantime, we will certainly make every  
5 effort to do that.

6 MS. SHANAMAN: I'm glad to hear that, because  
7 that would in fact be my hope.

8 I certainly understand that if you have a  
9 witness who just is not physically available, I  
10 understand that.

11 JUDGE NEMEC: Okay, we'll reschedule it for  
12 March.

13 Is there anything else that anyone else wants  
14 to add?

15 MR. PILLAR: Not on my end.

16 As you say, I think the issues are fairly  
17 clear. I think it's a question of whether there is  
18 a need for the service.

19 I'm going to have two witnesses, essentially,  
20 the two carriers. Both of them are Burt; Burt  
21 Evans and Burt Klapac, who will testify for the  
22 Protestants.

23 MS. SHANAMAN: I just would reiterate, Your  
24 Honor, that since we are having such breathing  
25 room, that I would hope that maybe Mr. Pillar and I

1 could discuss over that time period and see if we  
2 could not reach a resolution of the issue.

3 MR. PILLAR: I'll try to get a proposal from  
4 my client as to what type of an Amendment they  
5 might be willing to live with, and I'll make an  
6 effort to do that.

7 MS. SHANAMAN: Okay, that would be greatly  
8 appreciated.

9 MR. PILLAR: By January 5th, we will have  
10 exchanged information regarding the witnesses.

11 JUDGE NEMEC: Great.

12 Anything else?

13 MR. PILLAR: That's all on my end.

14 JUDGE NEMEC: I want to wish you a Merry  
15 Christmas and Happy Holidays.

16 Mr. Pillar, same to you.

17 MS. SHANAMAN: Same to you.

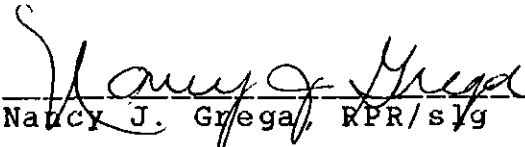
18 (The hearing concluded at 10:15 a.m.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence taken by me in the above-entitled matter are fully and accurately indicated in my notes and that this is a true and correct transcript of same.

  
Nancy J. Grega, RPR/slg