

1. <u>REPORT DATE:</u>	October 17, 1991	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u>	Transportation	:	NOV-91-T-1006*
4. <u>SECTION</u>	Technical Review	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>		:	November 7, 1991
Director:	Ernst 7-2154	:	
Supervisor:	Bigelow/Marzolf 3-5945	:	
7. <u>MONITOR:</u>		:	
8. <u>PERSON IN CHARGE:</u>	White 7-4387	:	
9. <u>DOCKET NO.:</u>	A-00109635	:	

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

(a) Application of David E. Hurst, Mifflinburg, R.D. 1, Union County, for the right to begin to transport, as a common carrier by motor vehicle, commodities in bulk, in dump vehicles, between points in the counties of Union, Snyder and Northumberland.

(b) The application is protested by four carriers. A prehearing conference was held in Harrisburg on June 12, 1991, wherein all parties advised that they were in the process of reaching a mutually agreeable restrictive amendment. No other testimony was taken. The application has been amended to the effect that service is proposed for two specifically named shippers between points in the three counties of Union, Snyder and Northumberland. The applicant has shown that a public need for the service as proposed and amended does exist, and that he is fit, ready, willing and able to render same.

(c) The Bureau of Transportation recommends that the Commission adopt the proposed order approving the application as amended.

RW:rs

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

CONTENT OF MOTION: Staff recommendation adopted.

**DOCUMENT FOLDER**

**DOCKETED**  
 JAN 27 1992  
 JAN 27 1992



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

KJR

November 14, 1991

IN REPLY PLEASE  
REFER TO OUR FILE

A-00109635

MICHAEL HUDDOCK ESQUIRE  
269 CHESTER STREET  
MIFFLINBURG PA 17844

DOCUMENT  
FOLDER

Application of David E. Hurst

DOCKETED

NOV 19 1991

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 November 7, 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,



Jerry Rich, Secretary

smk  
Enclosures  
Certified Mail  
Receipt Requested

DAVID E HURST  
R D 1 BOX 120  
MIFFLINBURG PA 17844

DOCKETED

NOV 19 1991

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

DOCUMENT  
FOLDER

Public Meeting held November 7, 1991

Commissioners Present:

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

Application of David E. Hurst, for the right to begin to transport, as a common carrier by motor vehicle, commodities in bulk, in dump vehicles, between points in the counties of Union, Snyder and Northumberland.

A-00109635

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Michael Huddock for the applicant.  
John E. Fullerton for protestants: William C. Confer, R. J. Glass, Inc., Powers Trucking Co., and Hiram Wible & Son, Inc.

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O R D E R

BY THE COMMISSION:

This matter comes before the Commission by an application filed on January 30, 1991, and published in the Pennsylvania Bulletin of February 23, 1991. Four carriers protested the application. A prehearing conference was held on June 12, 1991, in Harrisburg, with ALJ Robert Christianson presiding. All parties advised that they were in the process of reaching a mutually agreeable restrictive amendment. No other testimony was taken and the prehearing conference was adjourned.

The applicant submitted a restrictive amendment dated June 25, 1991, and as a result, the four protestants withdrew. The proposed authority was amended to the following extent:

"To transport, as a Class D carrier, commodities in bulk in dump vehicles, for Fairchild Brothers, Inc., and George M. Richard's Excavating, between points in the counties of Union, Snyder and Northumberland."

The unopposed record is now certified to the Commission for its decision without oral hearing. Verified statements were submitted by the applicant and the two named shippers.

David Hurst (or applicant) operates as an individual with a 1981 Mack dump truck from his place of residence at R.D. 1, Mifflinburg, Union County. He holds no other authority from this Commission and he is not affiliated with other carriers. The vehicle is inspected as required by state law and kept in good operating condition at all times.

A statement of assets and liabilities compiled by the applicant's accountant, shows that as of December 31, 1990, the applicant had current assets of \$1,550 and total assets of \$9,566, with no liabilities of any kind. The assets include the dump truck valued at \$8,016 after depreciation.

The applicant states that he does occasional short notice trucking work for both of the supporting shippers. In fact, during 1990, he had revenues of \$37,982 and incurred operating expenses of \$14,360, leaving a net profit of \$23,622.

George M. Richard is sole proprietor and owner of George M. Richard's Excavating, located at Richard Road, Penns Creek, Snyder County. He supports the applicant and states that in his business of excavating and contracting, he requires the hauling of crushed stone, fill, topsoil, brush, stumps, paving materials, shale and related items, to and from job sites within all areas of Snyder, Union and Northumberland Counties. Some specific origins and destinations include Mifflinburg, Middleburg, Penns Creek, Troxellville, Paxtonville, Selinsgrove, Adams Township, Centre Township, Limestone Township, and the surrounding areas. Dump truck service is required at all times. The applicant will be used regularly.

Bruce Boynton, vice president of Fairchild Brothers, Inc., located at R.D. 1, Mifflinburg, Union County, supports the applicant. The company is a contractor engaged in excavation and related contracting services which requires the hauling of crushed stone, fill, topsoil, brush, stumps, paving materials, earth, shale, etc. The frequency of need is irregular and seasonal, depending on availability of work and weather conditions. All origins and destinations are within the three counties of Union, Snyder and Northumberland, most specifically Lewisburg, Mifflinburg, Milton, Watsontown, Northumberland, Sunbury, Middleburg and Selinsgrove. The applicant will be used as the occasions arise.

#### DISCUSSION AND FINDINGS

David E. Hurst seeks initial motor carrier operating authority in Pennsylvania. To the extent his application has been amended in order to satisfy the protests of four carriers, he seeks a common carrier certificate which would authorize him to transport property for two specifically named shippers, between points in Union, Snyder and Northumberland Counties.

The two supporting shippers are in the contracting and excavating business with their places of domicile in Union and Snyder Counties. Their business is, of course, centered within the two counties, and also in the adjacent county of Northumberland. By his own admission, the applicant has been providing service for both shippers for some time, obviously without benefit of certification by this Commission, and therefore illegal.

Both shippers, engaged in the business of contracting and excavation, have need for transportation of such material as crushed stone, fill, topsoil, brush, stumps, paving materials, shale, etc., on, to and from construction sites. Obviously, some of the transportation, such as that involving brush and stumps, would be destined for disposal and therefore come under the exemption afforded to the hauling of rubbish, excavated materials, road construction materials, etc., in dump trucks, at Section 102(4) of the Public Utility Code. It is also reasonable to assume that there are instances involving transportation for road construction purposes which also would fall under the same exemption. The material transported for private construction projects, sale purposes or stockpiling is of concern here and does require certification.

While we do not base our determination of public need on past service of an illegal nature, we are convinced in this instance that the applicant's contention that he was unaware that his service required certification by this Commission is credible. We do not believe the service was provided with willful intent to violate the Public Utility Law. He is now before us for appropriate authority.

The applicant owns the dump vehicle required and has knowledge of the shippers' requirements. His financial position is favorable. Notwithstanding the illegal service he has provided, we believe the applicant is fit to hold a common carrier certificate of public convenience and necessity.

We find:

1. That the applicant has shown that a public need for the service as proposed and amended does exist.
2. That the applicant is fit, ready, willing and able to provide the service as proposed and amended.
3. That approval of the application, as amended, is necessary for the accommodation and convenience of the public; THEREFORE,

IT IS ORDERED: That the application be and is hereby approved as amended, and that a certificate be issued granting the applicant the right to operate as follows:

To transport, as a Class D carrier, property in bulk in dump vehicles, for Fairchild Brothers, Inc., and George M. Richard's Excavating between points in the counties of Union, Snyder and Northumberland.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until he shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of the 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 as 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 the 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 the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich", written over a horizontal line.

Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: November 7, 1991

ORDER ENTERED: NOV 14 1991