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C O N T E N T S

WITNESSES

DIRECT CROSS REDIRECT RECROSS

[None.]

E X H I B I T S

NUMBER

FOR IDENTIFICATION IN EVIDENCE

[None.]

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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE ROBERT CHRISTIANSON: I
3 am Administrative Law Judge Robert Christianson. We are
4 here this morning for what was scheduled as a hearing,
5 but I have now designated as a prehearing conference.

6 This concerns the application of David E. Hurst
7 for the authority to carry commodities, in dump vehicles,
8 between points in the counties of Union, Snyder, and
9 Northumberland.

10 We have had some discussions off the record. In
11 fact, I have spoken to the Applicant and to Mr. Fullerton
12 by phone before today. I think we are working toward
13 probably a restrictive amendment and withdrawal of the
14 protest, but the parties have to enter into discussions
15 still to see just where we go.

16 There has been a fair amount of background work
17 on this application, and I don't think I have to go into
18 great detail about it.

19 Mr. Hurst has a need for authority. Evidently,
20 he is serving a couple of shippers and is operating as
21 a carrier. Evidently, he didn't realize the legal
22 intricacies involved here and now is attempting to get
23 authority, but seems to have applied for a broader scope
24 of authority than he really needs to continue to carry
25 out his functions.

1 Mr. Fullerton has had some discussions with
2 Applicant, as have I. And, at this point, it looks
3 like we will work toward an amendment and withdrawal.
4 This has not been done yet.

5 Considering the situation, there is no great need
6 for a formal proceeding at this point, and I think we can
7 just allow the parties to work out their differences and
8 see where we go.

9 If the Protestants remain outstanding, we will
10 have to go to a formal hearing in order to get the
11 application approved or granted or granted in part or
12 perhaps, in some cases, denied.

13 Basically, the Applicant has to show his own
14 fitness, and there are various sub-tests or basic fitness
15 tests, and has to show that approval of the application
16 is in the public interest. That is just support for the
17 application. Evidently, you will have support readily
18 enough.

19 But, even if the protests are withdrawn, there
20 is a requirement in the law that you affirmatively
21 demonstrate that the application should be granted;
22 you have to show certain things, and you will have
23 some guidance in doing this.

24 Now, let me check with Mr. Fullerton. Do you
25 have any comments at this point, Mr. Fullerton?

1 MR. FULLERTON: No, sir. I think you stated the
2 situation correctly. And, as you indicated, Mr. Hurst
3 and I are going to sit down and find out exactly what he
4 claims he is doing or what he wants to do. And, in all
5 likelihood, we will be able to work out a restrictive
6 amendment, whereby the protests will be withdrawn.

7 Then you can be in a position to refer it to the
8 Bureau of Transportation, based upon my request that the
9 matter be disposed of by modified procedure.

10 JUDGE CHRISTIANSON: Yes. I think that is
11 probably best for Mr. Hurst.

12 There are two options when we get to withdrawal.
13 I can keep it and perhaps go to a hearing, and I could
14 have witnesses come in and formally testify.

15 Or we can do what we call a modified procedure,
16 send it over to the Bureau. We have detailed rules about
17 that.

18 I think we probably ought to send it over there.

19 MR. FULLERTON: I think, Your Honor, that a formal
20 hearing is expensive, time consuming; it takes up your
21 time, et cetera. I think the Commission prefers to do it
22 by verified statements, if possible.

23 JUDGE CHRISTIANSON: Yes.

24 MR. FULLERTON: That relieves you of that, and you
25 can be doing more productive work.

1 JUDGE CHRISTIANSON: Yes. If we had the witnesses
2 here, we would continue and have the hearing, but we
3 don't have them here at this point.

4 So, Mr. Hurst, I think we have tried to explain a
5 little bit of background.

6 I realize you feel like you are just mired in
7 bureaucracy with the whole thing; it is more trouble
8 than it is worth. But there are reasons for what we do.

9 But, in any case, do you have anything you want to
10 say at this point?

11 MR. HURST: No.

12 JUDGE CHRISTIANSON: I think we can work it out
13 informally at this point.

14 If you can't work it out, we will go formally on
15 it, and we will have further communication. We can
16 check. If you want to get a lawyer, go ahead and get
17 one.

18 If you were a corporation, the fundamental rule
19 then is that the corporation has to be represented by
20 a lawyer, but there are some exceptions and some
21 allowances.

22 But, if you are an individual, you are not
23 required to have a lawyer.

24 Certainly, in the so-called modified procedure
25 where you send in written statements and such, you are

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certainly free to retain a lawyer, but it is the sort of process you can probably do without one.

For Mr. Fullerton's end of it, he is representing corporations. It is very common for people to work through lawyers who are expert in public utility regulation. For instance, Mr. Fullerton has been doing it for many years, as have other specialists in this area.

But you are not required to have a lawyer to go through this process just as an individual.

Well, I think we have had our sufficient conference. I think it is helpful to get everybody together in the same room and work it out.

I did speak with Mr. Haynes briefly. You have indicated you have approached him. At this point, he feels he has not yet been retained by you. I think you have not met with him yet. He had conflicts for the date. I spoke to him briefly, and he knows the situation well.

I think we can then be done with the prehearing conference. At this point, we will adjourn the conference and we will be off the record.

[Whereupon, at 10:17 a.m., the prehearing conference was concluded.]

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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