

LAW OFFICES

VUONO, LAVELLE & GRAY

2310 GRANT BUILDING

PITTSBURGH, PA. 15219-2383

(412) 471-1800

JOHN A. VUONO
WILLIAM J. LAVELLE
WILLIAM A. GRAY
MARK T. VUONO •
RICHARD R. WILSON
DENNIS J. KUSTURISS
CHRISTINE M. DOLFI
PETER J. SCANLON

January 20, 1995

TELECOPIER
(412) 471-4477

• ALSO MEMBER OF FLORIDA BAR

Re: Marianne Industries, Inc. (Transferor)
Docket No. A-00109648, F. 2 and F. 2, Am-A
Valley Lines, Inc. (Transferee)
Docket No. A-00104027, F. 5, Am-B
Our File 3749-5-1

LETTER-PETITION REQUESTING RESCISSION
OF SUPPLEMENTAL ORDER ADOPTED ON
OCTOBER 13, 1994 CANCELLING
CERTIFICATE OF PUBLIC CONVENIENCE OF
MARIANNE INDUSTRIES, INC.

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PA. P.U.C. DIV.
INFO. CONTROL

Mr. John G. Alford
Secretary
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

Dear Mr. Alford:

We represent Marianne Industries, Inc., the Transferor.

We request that the Pennsylvania Public Utility Commission immediately rescind its Supplemental Order Cancelling Certificate of Public Convenience of Marianne Industries, Inc. at Docket No. A-00109648, F. 2 which was adopted on October 13, 1994 and entered on January 13, 1995, a copy of which is attached hereto as Appendix 1. This Supplemental Order was issued in error since the parties did not consummate the transaction and have previously notified the Commission that the transfer proceeding should be dismissed.

The application to transfer the operating authority of Marianne Industries, Inc., the Transferor, to Valley Lines, Inc., the Transferee, was originally transmitted to the Commission under letter dated May 31, 1994. Due to the fire at the Commission offices in June, 1994, the application was resubmitted under letter dated July 13, 1994 in accordance with the instructions of Ms. Joan E. Gorenc of the Application Section. Notice of the application was published in the Pennsylvania Bulletin on August 20, 1994. No protests were filed.

Mr. John G. Alford
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By Order adopted on October 13, 1994 and entered on October 21, 1994, the Commission approved the transfer of the rights at Docket No. A-00104027, F. 5, Am-B. The Order was conditioned upon Transferee submitting to the Commission within 60 days of the service date of the Order a tariff establishing just and reasonable rates. Otherwise, according to the Order, the application would be dismissed without further proceedings.

As the Commission is well aware, in August, 1994 President Clinton signed into law The Federal Aviation Administration Authorization Act of 1994 which resulted in the federal preemption of intrastate regulation of transportation of property, except household goods, by motor carriers, effective January 1, 1995. In light of that development, Valley Lines, Inc. notified Marianne Industries, Inc. that it was no longer interested in purchasing the operating authority and that it did not intend to consummate the transaction. The parties thereafter agreed to terminate the transaction in accordance with the provisions of paragraph 3.4(c) of the Agreement of Sale dated May 27, 1994 and a Termination Agreement giving effect to that intent was signed by all of the parties on December 5, 1994.

By letter dated December 22, 1994, a copy of which is attached hereto as Appendix 2, the undersigned notified the Commission of the termination of the transaction, requested that the proceeding be discontinued, and requested that all of the operating authority involved remain in the name of Marianne Industries, Inc. and not be transferred to Valley Lines, Inc. The Commission has confirmed receipt of that letter.

Inasmuch as Valley Lines, Inc. did not file a tariff (either a new tariff or an adoption of the Marianne Industries, Inc. tariff) and thereby did not comply with the Commission's Order adopted on October 13, 1994, the application should have been dismissed without further proceedings as of December 20, 1994. In addition, the request by the parties to have the transfer application dismissed, as requested in the December 22, 1994 letter, should have terminated the proceeding and left the parties in their original positions. Under the circumstances, the Supplemental Order was adopted prematurely on October 13, 1994 and entered erroneously on January 13, 1995.

Marianne Industries, Inc. is fully aware of the fact that after January 1, 1995 the operating authority contained in its certificates at Docket No. A-00109648, F. 2 and F. 2, Am-A have been superseded by federal preemption. However, it is of extreme importance to Marianne Industries that the operating authority remain in its name and under its docket number. Only in that way can it remain a registered and enrolled motor carrier with the Commission for purposes of being considered a

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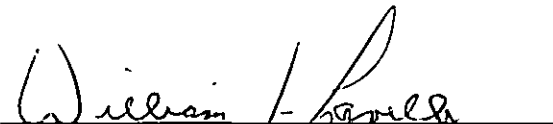
motor carrier with a valid certificate as of January 1, 1995 and thereby presumed to be in compliance with the Commission's safety code and to be deemed to possess a certificate pursuant to the Commission's authority to regulate safety and insurance as of that date, in accordance with the Commission's Final Decision adopted on December 15, 1994. Otherwise, Marianne Industries, Inc. would not enjoy its status as a "grandfathered in" carrier. It would then not have authority and would be unnecessarily required to file a new application under the Commission's new procedures for certification as a new entrant.

For the reasons set forth above, we request that the Commission rescind its Supplemental Order cancelling the Certificate of Public Convenience of Marianne Industries, adopted on October 13, 1994, dismiss the transfer application at Docket No. A-00104027, F. 5, Am-B and restore the parties to their original positions. This would be the most efficient, direct and least burdensome procedure to deal with this situation.

If additional information is required, please contact the undersigned.

Respectfully submitted,

VUONO, LAVELLE & GRAY

By: 
William J. Lavelle, Esq.
Attorney for
MARIANNE INDUSTRIES, INC.

pz

cc: John B. Wilson, Esq.
Bureau of Transportation and Safety-Legal Division
Mr. Peter S. Marzolf
Bureau of Transportation and Safety-Application
Review Section
Ms. Katherine L. Zeigler, Audit Program Manager
Pennsylvania Department of Revenue
Marianne Industries, Inc.
Valley Lines, Inc.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265
Harrisburg, PA 17105-3265

Public Meeting held October 13, 1994

WILLIAM J LAVELLE
ATTORNEY AT LAW
2310 GRANT BUILDING
PITTSBURGH PA 15219

Application Docket No. A-00109648, F. 2 - Application of Marianne Industries, Inc.

SUPPLEMENTAL ORDER CANCELLING
CERTIFICATE OF PUBLIC CONVENIENCE


BY THE COMMISSION:

It appearing that the rights granted to Marianne Industries, Inc. under the certificate of public convenience issued at A-00109648, F. 2, have been transferred to Valley Lines, Inc. at A-00104027, F. 5, Am-B and are now contained under the certificate of public convenience issued to it, and that the transferor has no other operating authority; and that the matters and things involved having been duly considered by the Commission;
THEREFORE,

IT IS ORDERED: That the operating rights and the certificate of public convenience at A-00109648, F. 2 be and are hereby cancelled and all rights, powers and privileges granted hereby shall forthwith cease and terminate.

IT IS FURTHER ORDERED: That a copy of this supplemental order at A-00109648, F. 2 be forwarded to Ms. Katherine L. Zeigler, Audit Program Manager, Department of Revenue, 10th Floor, Strawberry Square, Harrisburg, Pennsylvania.

BY THE COMMISSION,


John G. Afford
Secretary

(SEAL)

ORDER ADOPTED: October 13, 1994

ORDER ENTERED:

JAN 13 1995

LAW OFFICES

VUONO, LAVELLE & GRAY

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PITTSBURGH, PA. 15219-2383

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TELECOPIER
(412) 471-4477

December 22, 1994

* ALSO MEMBER OF FLORIDA BAR

Re: Valley Lines, Inc.--Purchase
--Marianne Industries, Inc.
Docket No. A-00104027, F. 5, Am-B
Our File 3749-5-1

Mr. John G. Alford
Secretary
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Mr. Alford:

We represent Marianne Industries, Inc., the transferor.

By Order adopted on October 13, 1994 and entered on October 21, 1994, the Commission approved the transfer of the operating authority of Marianne Industries, Inc. at Docket No. A-00109648 to Valley Lines, Inc. at Docket No. A-00104027, F. 5, Am-B. In view of the federal preemption of state regulation of the rates, routes and service of motor carriers of property, except household goods, which is to become effective on January 1, 1995, the parties have agreed to terminate the transaction in accordance with the provisions of the Agreement of Sale dated May 27, 1994, specifically paragraph 3.4(c). A Termination Agreement giving effect to that intent was signed by all of the parties on December 5, 1994.

In accordance with the instructions and authorizations set forth in paragraph 6 of the Termination Agreement, I am hereby notifying the Commission of the termination of the transaction, and requesting that the proceeding be discontinued and that all of the operating authority involved in the transaction remain in the name of Marianne Industries, Inc. and that it not be

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transferred to Valley Lines, Inc. Accordingly, I request that the application be dismissed without further proceedings. If any additional information is required, please advise us.

Sincerely yours,

VUONO, LAVELLE & GRAY

William J. Lavelle

mm

cc: Marianne Industries, Inc.
Valley Lines, Inc.