

In re: Application of The Pure Oil Company,  
Producers and Refiners Pipe Line Com-  
pany and Pure Oil Pipe Line Company,  
for approval of the sale of certain  
facilities and property by the Producers  
and Refiners Pipe Line Company and the  
Pure Oil Pipe Line Company to the South  
West Pennsylvania Pipe Lines. A.17524.

Application of The Pure Oil Company and  
the Producers and Refiners Pipe Line  
Company and Pure Oil Company for approval  
of the sale of certain property and  
facilities by the Producers and Refiners  
Pipe Line Company to the National Transit  
Company. A.17525.

- - - - -

TO Cook, Nathan & Lehman,  
Attorneys at Law,  
111 Broadway,  
New York.  
Attention: F.F. Greenman.

You are hereby notified that the con-  
tinued hearings in the above matters will be held in  
Room on the Seventh Floor of the City-County Building,  
Pittsburgh, Pa., on Wednesday, October 26th, at 9:30 A.M.

Signed -

*H.C. Darworth*  
*Breene & Jackson*  
Attorneys for National Transit  
Company, et al., applicants.

Oil City, Penna.  
October 19th, 1927.

STATE OF PENNSYLVANIA, )  
                                  ) ss:  
COUNTY OF VENANGO.     )

Before me, a notary public in and for said county and state, personally appeared Beatrice M. Harper, who upon being duly and legally sworn says that she is of lawful age; that on the 19th day of October, 1927, she sent a copy of the foregoing notice by registered mail addressed to Cook, Nathan & Lehman, Attorneys at Law, 111 Broadway, New York, Attention: F.F. Greenman.

Witness my hand and notarial seal this  
19<sup>th</sup> day of October, 1927.

Margaret A. Quirk  
Notary Public

MY COMMISSION EXPIRES  
JANUARY 6, 1929.

In re: Application of the Pure Oil Company, Producers and Refiners Pipe Line Company and Pure Oil Pipe Line Company, for approval of the sale of certain facilities and property by the Producers and Refiners Pipe Line Company and the Pure Oil Pipe Line Company to the South West Pennsylvania Pipe Lines. A.17524.

Application of The Pure Oil Company and the Producers and Refiners Pipe Line Company and Pure Oil Company for approval of the sale of certain property and facilities by the Producers and Refiners Pipe Line Company to the National Transit Company. A.17525.

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TO White, Parry, Schnader & Mavis,  
Attorneys at Law,  
1930 Land Title Building,  
Philadelphia, Penna.

You are hereby notified that the continued hearings in the above matters will be held in Room on the Seventh Floor of the City-County Building, Pittsburgh, Penna., on Wednesday, October 26th, at 9:30 A.M.

Signed — *H.C. Howarth*  
*Greene & Johnson*  
Attorneys for National Transit  
Company, et al., Applicants.

Oil City, Penna.  
October 19th, 1927.

STATE OF PENNSYLVANIA, )  
COUNTY OF VENANGO. ) ss:

Before me, a notary public in and for said county and state, personally appeared Beatrice M. Harper, who upon being duly and legally sworn says that she is of lawful age; that on the 19th day of October, 1927, she sent a copy of the foregoing notice by registered mail addressed to White, Parry, Schnader & Mavis, Attorneys at Law, 1930 Land Title Building, Philadelphia, Penna.

Witness my hand and notarial seal this  
19<sup>th</sup> day of October, 1927.

*Margaret A. Quirk*  
Notary Public

MY COMMISSION EXPIRES  
JANUARY 6, 1928

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

Application Docket  
No. 17,525-1927.

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APPLICATION of THE PURE OIL  
COMPANY, et al for a certifi-  
cate of Public Convenience,  
etc.

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PROTEST OF  
BENJAMIN GRAHAM, ET AL

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WHITE, PARRY, SCHNADER & MARIS,  
COOK, NATHAN & LEHMAN,

Attorneys for Protestants.

Before  
THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

FILE No. A 17525  
NOV 16 1927  
OFFICE OF SECRETARY  
THE PUBLIC SERVICE COMMISSION

Application of THE PURE OIL COMPANY, :  
an Ohio corporation, and PRODUCERS AND :  
REFINERS PIPE LINE COMPANY, a Penn- :  
sylvania corporation, and PURE OIL :  
PIPE LINE COMPANY, an Ohio corporation, :  
for a certificate of Public Convenience : Application Docket  
under Article III Section 3-c and :  
Articles V Sections 18 and 19 of the : No. 17525, 1927.  
Public Service Company Law for approval :  
of the sale of that portion of a pipe :  
line owned by Producers and Refiners :  
Pipe Line Company in the Commonwealth :  
of Pennsylvania north of the southerly :  
line of Butler County to NATIONAL TRANSIT :  
COMPANY, a Pennsylvania corporation. :

PROTEST

TO THE PUBLIC SERVICE COMMISSION OF THE  
COMMONWEALTH OF PENNSYLVANIA:

Now come BENJAMIN GRAHAM, R. J. MARONY, R. E. BARUCH,  
J. ARON, A. E. NEWMARK, LOUIS BOEHM and STEINER, ROUSE & STROOCK,  
and by White, Parry, Schnader & Maris and Cook, Nathan & Lehman,  
their attorneys, protest against the issue by your Honorable  
Commission of a certificate as prayed for in the Petition filed  
in the above entitled matter, verified September 1, 1927, and  
show unto your Honorable Commission as follows:

1. That protestants are holders in the aggregate of  
at least 16,000 shares of the capital stock of National Transit  
Company; that protestants severally hold the number of shares  
of stock of said Company set opposite their respective names  
as follows:

DOCKETED  
APPLICATION DOCKET  
NOV 16 1927

RECORD  
FOLDER

<u>Name</u>	<u>Number of Shares</u>
Benjamin Graham	4,500
R. J. Marony	4,000
R. E. Baruch	2,000
J. Aron	5,000
A. E. Newmark	500
Louis Boehm	400
Steiner, Rouse & Stracck	2,100

2. That protestants in this proceeding are represented by Messrs. White, Parry, Schnader & Maris, whose post office address is Land Title Building, Philadelphia, Pa., and Messrs. Cook, Nathan & Lehman, whose post office address is 111 Broadway, in the City and State of New York.

3. That the granting or approval of the application herein is not necessary or proper for the service, accommodation, convenience or safety of the public.

4. That applicants have not complied with the requirements of this Commission in that the Petition does not give in detail, in Paragraph 9 thereof, reasons why the sale for which the approval of your Honorable Commission is sought is necessary and proper for the service, accommodation, convenience or safety of the public.

5. That if in Paragraph 9 of said Petition, petitioners sought to give in detail the reasons why such sale is necessary and proper for the service, accommodation, convenience or safety of the public, the reasons so disclosed

are insufficient to authorize your Honorable Commission to grant such application.

6. That the Petition does not disclose the earnings of the properties which, pursuant to the application, are to be sold to National Transit Company, nor does said Petition disclose facts sufficient to enable protestants to determine what the income and expenses showing the results of operations of such properties for the preceding fiscal year are; that while the balance sheets and statements of income and expenses of Pure Oil Company, Producers and Refiners Pipe Line Company and The Pure Oil Pipe Line Company, annexed as Exhibits to said Petition, may be a technical compliance with the requirements of this Commission in respect of the application herein, they are not a substantial compliance because it is not possible to determine the income and expenses showing the results of operations during the preceding fiscal year of the properties sought to be sold.

7. That from the allegations of Paragraphs 5 and 9 of the Petition, it would appear that the properties sought to be sold to National Transit Company, for which the approval of your Honorable Commission is sought, are not being operated profitably, but on the contrary that the operation thereof has resulted in deficits.

8. That the Petition does not with sufficient accuracy disclose the character of the assets and properties of National Transit Company, the proposed purchaser. Assets of the National Transit Company aggregating over \$10,000,000 in amount are listed simply as "Investments in Subsidiary Companies" and "Other Investments". This method of listing the assets gives no information whatever regarding the character of these investments or basis for judging their value, and it is impossible for the public or the stockholders of the proposed purchaser to gain any intelligent idea regarding the financial strength of the purchasing company and whether it is in position to operate advantageously the property purchased.

9. That protestants are advised and believe that the pipe line properties of the National Transit Company are represented on said balance sheet (Exhibit D to the Petition) by the item on the asset side "Plant and Equipment - \$8,445,422.03" and on the liability side by "Accrued Depreciation - \$5,434,364.61", leaving a net present value on said balance sheet applicable to said pipe lines of \$3,011,058. Protestants are advised and believe and they therefore allege that the operation of said pipe lines has been conducted with increasingly disastrous financial results; that the gross earnings arising from such operations have been decreasing gradually, and that the net earnings from such operations have likewise gradually decreased until they were, as appears from the Petition, for the year ended December 31, 1926 operated at a loss of \$48,309; that the gross earnings of said pipe line business

and the net income from the operation of said pipe lines for the years 1921 to 1926, both inclusive, are as follows:

	<u>Gross Earnings</u>	<u>Net Earnings or Def.</u>
1921	\$2,096,129	\$ 468,275
1922	2,101,905	444,758
1923	1,917,491	285,341
1924	1,689,722	152,257
1925	1,615,266	25,660
1926	1,481,591	Deficit 48,309

10. That the pipe lines of the National Transit Company are partly trunk lines and partly gathering lines, 795 miles thereof being trunk lines and 2,675 miles being gathering lines, and that approximately one-half of the business of the pipe lines is trunk line business and such business is business which is subject to the whim and caprice of the principal patron or patrons of the National Transit Company using such trunk lines. Such patrons use principally so-called tankers and use pipe lines only when it serves their particular purpose or when for any reason whatever they choose to ship oil over the pipe lines of National Transit Company.

11. That it does not appear from said Petition that the addition to the pipe line business of the National Transit Company of additional unprofitable pipe lines would advance the interests of the National Pipe Line Company or of its stockholders, but on the contrary it appears that the acquisition of such additional pipe lines may result in increased

deficits; that the additional deficits which may arise from the operation of said additional pipe lines may be reflected in applications to this Commission for increase in rates both on the gathering and on the trunk lines but more likely upon the gathering lines because there would be no competition in gathering lines, whereas the trunk lines are subject to the competition of other means of transportation of oil and the National Transit Company has little control over rates thereon, or if such deficits should grow very large the Company may apply to this Commission for leave to discontinue the pipe lines entirely because the same are unprofitable and do not yield a fair return upon the investment.

WHEREFORE, protestants pray that your Honorable Commission deny the application herein.

Dated, October 22, 1927.

BENJAMIN GRAHAM  
R. J. MARONY  
R. E. BARUCH  
J. ARON  
A. E. NEWMARK  
LOUIS BOEHM  
STEINER, ROUSE & STROOCK

By White, Pary, Schmalz & Allan  
Cook, Baehner & Lehman  
Attorneys for protestants.

THOMAS RABBURN WHITE  
ALFRED A. COOK  
F. F. GREENMAN

STATE OF NEW YORK, )  
                                  ; ss.:  
COUNTY OF NEW YORK, )

BENJAMIN GRAHAM, being duly sworn, deposes and says: That he is one of the protestants herein; that he has read the foregoing Protest and knows the contents thereof, and that all of the matters set forth in said Protest are true to the best of his knowledge, information and belief.

Sworn to before me, this  
October 24, 1927.

*Benj. Graham*

*Samuel Black*

NOTARY PUBLIC, BRONX COUNTY, No. 56  
BRONX COUNTY REGISTER'S OFFICE, 2024  
CERTIFICATE FILED IN N. Y. COUNTY No. 1  
N. Y. COUNTY REGISTER'S OFFICE No. 9279  
CERTIFICATE FILED IN KINGS COUNTY No. 28  
KINGS COUNTY REGISTER'S OFFICE No. 9230  
CERTIFICATE FILED IN QUEENS COUNTY No. 1738  
QUEENS COUNTY REGISTER'S OFFICE No. 1999  
CERTIFICATE FILED IN OFFICES OF  
COUNTY CLERK & REGISTER OF WESTCHESTER CO.  
COMMISSION EXPIRES MARCH 30, 1929

FILE NO. 96441  
FILE NO. Q-17525  
NOV. DEC 10 1927

BEFORE

# The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA.

Application of THE PURE OIL COMPANY, an Ohio corporation, and PRODUCERS AND REFINERS PIPE LINE COMPANY, a Pennsylvania corporation, and PURE OIL PIPE LINE COMPANY, an Ohio corporation, for a certificate of Public Convenience under Article III Section 3-c and Article V Sections 18 and 19 of the Public Service Company Law for approval of the sale of that portion of a pipe line owned by Producers and Refiners Pipe Line Company in the Commonwealth of Pennsylvania north of the southerly line of Butler County to NATIONAL TRANSIT COMPANY, a Pennsylvania corporation.

Application Docket  
No. 17,525, 1927.

The Protest of Benjamin Graham, *et al.*, as stockholders of National Transit Company (hereinafter called the Transit Company) was primarily based on the lack of information given by the

**DOCKETED**  
**APPLICATION DOCKET**  
DEC 13 1927  
Entry No. \_\_\_\_\_

**RECORD**

Transit Company in the Application to this Commission with respect to the character of its assets and with respect to the financial benefit arising from the acquisition by the Transit Company (which was carrying on its own pipe line business with a deficiency) of additional pipe lines operated at a loss.

The Application was filed on August 10, 1927, and on September 28, 1927, counsel for the Protestants appeared and notified the Commission orally of the failure of the Transit Company to acquaint its stockholders with the facts. The hearing was then adjourned to October 27, 1927.

On October 25, 1927, two days before the adjourned hearing, the stockholders of the Transit Company received a statement of the assets of the Transit Company which showed an essentially different state of affairs from that set forth in the balance sheet attached to the Application. A copy of such statement is as follows:

NATIONAL TRANSIT COMPANY AND AFFILIATED COMPANIES  
 CONSOLIDATED GENERAL BALANCE SHEET

June 30, 1927

ASSETS

Real Estate Plant and Equipment...	\$11,271,323.98	
Less Depreciation and Obsolescence .....	7,551,213.15	
		\$3,720,110.83
Investments in Companies not Consolidated Herein (Reserve Funds) .....		8,943,530.63
Cash .....		1,015,178.54
Accounts Receivable .....		895,112.84
Inventories of Merchandise and Other Working and Trading Assets.....		2,903,480.19
Deferred Assets and Unadjusted Debits.....		93,906.28
		<u>\$17,571,319.31</u>

LIABILITIES

Capital Stock.....		\$6,363,350.00
Accounts Payable.....		42,523.02
Reserved for Taxes.....		289,316.86
Insurance, Annuity and Casualty Reserves.....		1,563,671.62
Miscellaneous Reserves for Operations and Contingencies .....		2,767,222.03
Corporate Surplus.....		6,545,235.78
Appropriated .....	\$6,041,317.63	
Unappropriated .....	503,918.15	
		<u>\$17,571,319.31</u>

The publication of such statement, inaccurate though it is believed to be, has in a measure met the objection raised as to the lack of information of the assets of the Transit Company, although a very considerable amount of information ought, in addition, to be furnished.

It developed at the hearing that the Transit Company claimed it was purchasing the pipe lines of The Pure Oil Company in order to prevent the abandonment of such lines and to make its own pipe line business profitable. Sworn testimony was given before the Commission by the officers of the Transit Company to the effect that by the expenditure of \$660,000 in cash for the pipe lines of The Pure Oil Company, the Transit Company would obtain additional annual net income of \$174,545, and that thereafter the Transit Company could conduct its pipe line business at a profit. The calculation upon which this was based was as follows:

Gross income from pipe lines to be acquired .....	\$194,545
Additional operating expense in connection with pipe lines to be acquired .....	20,000
Annual net income.....	<u>\$174,545</u>

The officers estimated that the operation of 700 additional miles of pipe line would result in additional operating expenses of only \$20,000. They are positive and emphatic in their assurances that this annual net income of \$174,545 will be realized. While Protestants believe that the acquisition of these about to be abandoned pipe lines for the sum of \$660,000 will prove unprofitable and

result in an improvident and wasteful use of the funds of the Transit Company, Protestants appreciate that the Commission has the sworn testimony before it of the officers of the Transit Company and that the responsibility of making performance square with the promise rests with such officers.

We recognize that the Commission has a limited jurisdiction in dealing with matters which, though in some aspects affecting public interests, are primarily injurious to the interests of stockholders, and in view of this limited jurisdiction that stockholders entitled to relief must urge same in another forum.

It also developed at the hearing that the Transit Company was engaged in the manufacturing business as well as in the transportation business, a clear violation of the provisions of Section 5 of Article XVII of the Constitution of Pennsylvania, which reads as follows:

“Sec. 5. *Limitation of powers*—No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works; *nor shall such company directly or indirectly engage in any other business than that of common carriers* or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the prod-

uct of its mines and manufactories on its railroad or canal not exceeding fifty miles any month."

It was intimated at the hearing that the fact that the Transit Company carried on its manufacturing business through the ownership of all of the capital stock of the National Transit Pump & Machinery Company avoided the prohibitions of the Constitution. A similar condition existed in the proposed ownership by the Philadelphia & Reading Railway Company of all of the shares of stock of the Reading Iron Company which would have resulted from the carrying out of the plan for the segregation of the Reading coal and railway properties. *Continental Company v. U. S.*, 259 U. S. 156.

The question as to the legality of such stock holding by a common carrier having been raised in that case for the first time in the Supreme Court, the Court, in remanding the case to the District Court, submitted the legality of such stock ownership to the District Court. *Continental Company v. U. S.*, 259 U. S. 156, 181, 182. Recognizing that such stock ownership by a common carrier was in conflict with the provisions of the Constitution of Pennsylvania, the plan subsequently approved by the District Court provided that all of the capital stock of the Reading Iron Company should not be held by the Philadelphia & Reading Railway Company, but should be trans-

ferred to the Philadelphia & Reading Coal and Iron Company, an industrial company.

The Pennsylvania Constitution provides that common carriers shall not directly or indirectly engage in any other business than that of common carriers. The ownership, however, of all of the capital stock of the business conducted by the same officers who conduct the business of a common carrier must, we respectfully submit, be held to be directly or indirectly engaged in another business.

We have just found that this Commission has held in a previous case (*In the Matter of the Petition of the Lake Shore and Michigan Southern R. R. et al.*, 1 Penn. Public Service Commission Reports 196, 199) that it will not in exercising its discretion, take into consideration the illegal condition arising out of an unlawful holding of shares or an unlawful conduct of business, and therefore whatever rights enure to the Protestants as stockholders must be presented elsewhere.

The filing of the Protest has made it possible for the stockholders of the Transit Company to ascertain facts heretofore withheld from them as well as to bring them to the attention of the Commission and the Protestants do not desire to press their Protest beyond bringing the facts to the attention of the Commission for such action with respect to them as the Commission deems proper. In this view the Protestants ask the Commission

to proceed as though no Protest had been filed with it.

BENJAMIN GRAHAM

R. J. MARONY

R. E. BARUCH

J. ARON

A. E. NEWMARK

LOUIS BOEHM

STEINER, ROUSE & STROCK

by

WHITE, PARRY, SCHNADER &  
MARIS

COOK, NATHAN & LEHMAN,  
Attorneys for protestants.

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

A. 17526-1927

IN THE MATTER OF THE APPLICATION OF

THE PURE OIL COMPANY  
PRODUCERS AND REFINERS PIPE LINE COMPANY  
and the  
PURE OIL PIPE LINE COMPANY  
under Section 3(c) Article III, and  
Sections 18 and 19, Article V, of the  
Public Service Company Law, for the  
approval of the sale of certain  
property and facilities of the  
Producers and Refiners Pipe Line Com-  
pany to the  
NATIONAL TRAMWAY COMPANY.

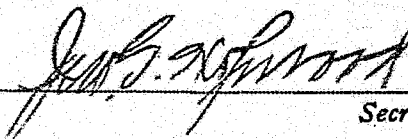
CERTIFICATE  
OF  
PUBLIC CONVENIENCE


The Public Service Commission of the Commonwealth of Pennsylvania, hereby certifies that after an investigation and hearing had on the above entitled application, it has, by its report and order made and entered, a copy of which is hereto attached and made a part hereof, found and determined that the granting of said application is necessary and proper for the service, accommodation, convenience and safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

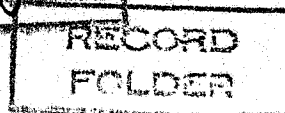
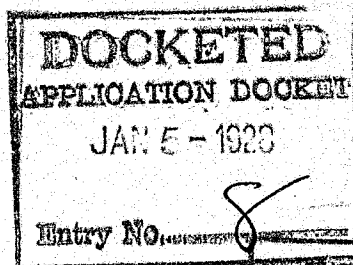
In Testimony Whereof, THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA has caused these presents to be signed and sealed, and duly attested by its Secretary, at its office in the city of Harrisburg, this 12th day of Dec., 1927.

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

Attest:

  
Secretary.

  
Chairman.



THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

APPLICATION DOCKET NO. 17525-27

In re: Application of THE PURE OIL COMPANY, and the PRODUCERS AND REFINERS PIPE LINE COMPANY and PURE OIL PIPE LINE COMPANY for the approval of the sale of certain property and facilities of the Producers and Refiners Pipe Line Company to the NATIONAL TRANSIT COMPANY,

REPORT AND ORDER

BY THE COMMISSION:

This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon petition of THE PURE OIL COMPANY, PURE OIL PIPE LINE COMPANY, PRODUCERS AND REFINERS PIPE LINE COMPANY and NATIONAL TRANSIT COMPANY, dated September 1, 1927, for the approval of the sale of certain property and facilities of the Producers and Refiners Pipe Line Company to the National Transit Company as more fully and at large set forth in the terms and conditions of the agreement duly executed by said The Pure Oil Company and National Transit Company under date of August 10, 1927; and protests of certain refining companies and certain stockholders of the National Transit Company; and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had; and it appearing that the protests have either been withdrawn or not pressed, the Commission finds and determines that the granting of said petition is necessary and proper for the service, accommodation and convenience of the public, and that a certificate of public convenience issue evidencing the Commission's approval thereof:

NOW, to-wit, December 12, 1927, IT IS ORDERED:  
That a certificate of public convenience be issued evidencing the Commission's approval of the sale, as above determined.

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

attest:

*John G. Johnson*  
SECRETARY

*W. D. Aimey*  
CHAIRMAN

RECORD  
FOLDER

17525--1927.

17525--1927.

September 7, 1927.

THE PURE OIL COMPANY AND THE PRODUCERS

AND REFINERS PIPE LINE COMPANY AND PURE OIL  
COMPANY.

For approval of the sale of certain property and facilities by the  
Producers and Refiners Pipe Line Company to the National Transit  
Company.

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|---------------|-------|--|
| 1 - September | 7th,  | Petition and fee filed.  |
| 2 - September | 21st, | Proof of publication filed.  |
| 3 - October   | 21st, | Proof of service upon the various parties at<br>interest of notice of continued hearing to be<br>held October 26, 1927, filed. |
| 4 - November  | 16th, | Protest of Benjamin Graham, et al, filed.  |
| 5 - November  | 21st, | Brief of applicant, filed.   |
| 6 - November  | 25th, | Acceptance of service of copy of brief of<br>applicant by counsel for protestant filed.  |
| 7 - December  | 10th, | Brief of Benjamin Graham, et al protestant,<br>filed.  |
| 8 - December  | 12th, | Report and Order of the Commission and Certi-<br>ficate of Public Convenience issued.  |