

1975 ASSESSMENT REPORTS NOT FILED

NAME AND ADDRESS

APPLICATION CHECK NO.

TRUCK *****

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXX

XXXXXXXX

XXXXXXXXXXXXXXXXXXXX

XX. XXXXXX

FINNEY, JOHN T.
420 THORNE STREET
HOUSTON

PA. 15342



A-00105142

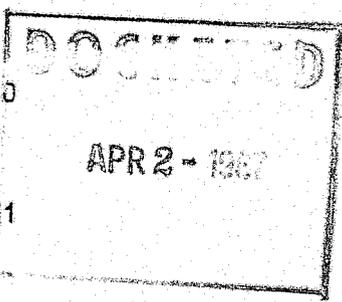
FIRPO & SONS, INC.
T/A FIRPO'S MOVING & STORAGE
111-S TRYENS ROAD
ASTON

PA. 19014

A-00097514

FISCHER, FREDERICK J.
P.O. BOX 112
SEWELL

NJ. 06080



A-00066385

FISCHER-HUGHES TRANSPORT, INC.
450 N. BROAD ST.
DOYLESTOWN

PA. 18901

A-00103976

FITZGERALD, W. H., INC.
73 HIGHLAND AVENUE
YOUNGSVILLE

PA. 16371

A-00139107

FREZZO BROS., INC.
ROUTE 41, BOX 44
AVONDALE

PA. 19311

A-00100744

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

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XXXXXXXXXXXXXXXXXXXX

XXXXXXXX

XXXXXXXXXXXXXXXXXXXX

XX. XXXXXX

GALLAGHER, GERALD
BOX 55
RENEZETTE

PA. 15321

A-00098479

GALLAGHER TRUCKING CO.
P.O. BOX 134
BLUE BELL

PA. 19422

A-00097493

GERNEY, FRANK, TRUCKING, INC.
BOX 201
CAIRNAROCK

PA. 15924

A-00104960

G-FOUR TRUCKING, INC.
P.O. BOX 305
SMITHFIELD

PA. 15473

A-00104482

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120

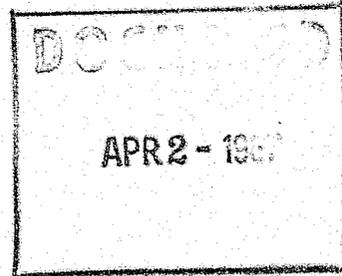
Public Meeting held February 19, 1987

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane

Fischer-Hughes Transport, Inc.
450 N. Broad Street
Doylestown, PA 18901

A-00103976



ORDER TO SHOW CAUSE
FOR FAILURE TO FILE
ASSESSMENT REPORT

BY THE COMMISSION:

The above-named carrier, respondent herein, authorized by this Commission to furnish transportation service, is required under Section 510(b), to file with the Commission, on or before March 31 of each year, a statement under oath showing its gross intrastate operating revenues for the preceding calendar year.

As of this date, respondent has failed to file its assessment report based upon its gross intrastate operating revenues for the 1985 calendar year; THEREFORE,

IT IS ORDERED:

1. That the respondent on the docket and folder(s) above, shall show cause why Respondent's certificate(s) or permit(s) should not be cancelled for failure to file an assessment report based upon gross intrastate operating revenues for the 1985 calendar year.
2. That respondent shall have twenty (20) days from the date on which this order is served to file with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17102, an answer, in writing, under oath, which, as required by 1 Pa. Code §35.35, either affirms or specifically denies the allegations contained in this order.
3. That in lieu of an answer to the order, respondent may submit its assessment report (Assessment Report Form) based upon its gross intrastate operating revenues for the 1985 calendar year, within thirty (30) days hereof, whereupon receipt thereof this matter will be closed.
4. That if respondent fails to file an answer or other responsive pleading in timely fashion within the specified twenty (20) days, respondent will be deemed to have admitted all the allegations in accordance with

the General Rules of Administrative Practice and Procedure, 1 Pa. Code §35.35 and thereupon, this Commission may, without hearing, enter an appropriate order which either revokes and cancels any Certificate or Permit respondent may currently possess, or suspends any Certificate or Permit respondent may currently possess, or enter an order imposing a fine or any other appropriate penalty or forfeiture as authorized by the Public Utility Code, 66 Pa. C.S. §§101, et seq.

5. That if respondent by its answer admits the allegations contained herein, in accordance with 1 Pa. Code §35.35 and 52 Pa. Code §3.122, this Commission will enter an appropriate order which either revokes and cancels any Certificate or Permit respondent may currently possess, or suspends any Certificate or Permit respondent may currently possess, or in lieu thereof imposes a fine or any other appropriate penalty or forfeiture as authorized by the Public Utility Code, 66 Pa. C.S. §§101, et seq.

6. That if the respondent files a timely answer which specifically denies the allegations in this order, or which raises material questions of law or fact, this matter shall be referred to an Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, the respondent is found to have committed any of the violations alleged in this order, the Administrative Law Judge may render a decision which either revokes any certificate held by respondent, or which imposes a fine or any other appropriate penalty authorized by the Public Utility Code, 66 Pa. C.S. §§101, et seq.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: February 19, 1987

ORDER ENTERED: March 17, 1987

2 March 87

SUBJECT: Monthly Report on Outstanding Cases

TO: Wayne Wilkie, Supervisor
Information Control

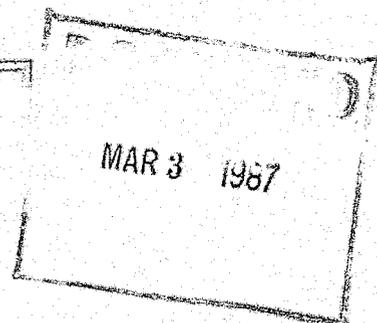
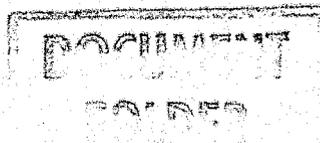
FROM: Janice M. Zurat

According to the Bureau of Transportation-Tariff Division the tariffs have been filed in the following proceedings:

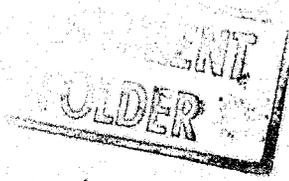
- A. 00068795, F. 5, Am-P - Ward Trucking
- A. 00071220, F. 1, Am-B - Seaboard Tank Lines, Inc.
- A. 00078535, F. 4, Am-G - Bob Young Trucking, Inc.
- A. 00082022, F. 2, Am-I - NTC of America, Inc.
- A. 00086272, F. 3, Am-C
and F. 3, Am-D - Frame's Motor Freight, Inc.
- A. 00087691, F. 2, Am-O - Leffler Transportation Co.
- A. 00095171, F. 2, Am-B - West Shore Taxi Company
- A. 00095429, F. 1, Am-AAB - Milton Transportation, Inc.
- A. 00097255, F. 1, Am-I - Dennis Trucking Company, Inc.
- A. 00099853, F. 1, Am-J - Eaborn Truck Service, Inc.
- A. 00099919, F. 2, Am-F - F. T. Silfies, Inc.
- A. 00100968, F. 1, Am-D - Passieu-Stewart Trucking, Inc.
- A. 00102072, F. 1, Am-B - R.J. Trucking, Inc.
- A. 00102471, F. 1, Am-F - Pitt-Ohio Express, Inc.
- A. 00102546, F. 1, Am-A - Scott Webster Trucking Company
- A. 00103084, F. 1, Am-B - Transportation Services, Inc.
- A. 00103236, F. 1, Am-A - Goodway Transport, Inc.
- A. 00103976, F. 1, Am-A - Fischer-Hughes Transport, Inc.
- A. 00104857, F. 1, Am-B - Ralph G. Lingle, Jr.
- A. 00105412, F. 1, Am-A - McIlwain Charters, Inc.
- A. 00105980, F. 1, Am-A - Gary Lindemuth, t/a Lindy's Auto

Would you kindly remove them from the monthly report of outstanding cases.

JZ:emd



1. <u>REPORT DATE:</u> April 29, 1987	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u> Transportation	:	MAY-87-T-479
4. <u>SECTION(S):</u> Financial Review	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>	:	May 14, 1987
Director: B. L. Ernst 7-2154	:	
Supervisor: S. M. Butcher 7-6872	:	
7. <u>MONITOR:</u>	:	
8. <u>PERSON IN CHARGE:</u>	:	
9. <u>DOCKET NO:</u>	:	



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

(a) MOTOR CARRIER RATE INCREASES OF MORE THAN 1%, FOR CARRIERS WITH GROSS ANNUAL REVENUES OF \$200,000, OR MORE.

Cressona Trucking Co.	A. 95309
Fischer-Hughes Transport, Inc.	A. 103976
James C. Logan, Inc.	A. 97635
D. K. Fershey, Inc.	A. 102185

(b) Proposed rate increases are to offset increases in motor carriers' general operating expenses.

(c) The staff recommends that the Commission ratify the acceptance of the tariffs under the prescribed rules.

lpw

11. MOTION BY:	Commissioner Chm.	Commissioner	Fischl - Yes
	Taliaferro	Commissioner	
SECONDED:	Commissioner Shane	Commissioner	

CONTENT OF MOTION: Staff recommendation adopted.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheets

1. <u>REPORT DATE:</u>	June 28, 1989	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u>	Transportation	:	JUL-89-T-775
4. <u>SECTION</u>	Financial Review	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>		:	
Director:	B.L. Ernst 7-2154	:	
Supervisor:	S.M. Butcher 7-6872	:	July 20, 1989
7. <u>MONITOR:</u>		:	
8. <u>PERSON IN CHARGE:</u>	J. F. Hensel 7-2974	:	
9. <u>DOCKET NO.:</u>		:	

DOCUMENT
FOLDER

10. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation
- (a) MOTOR CARRIER RATE INCREASE OF MORE THAN 1%, FOR CARRIERS WITH GROSS ANNUAL REVENUES OF \$500,000, OR MORE.
- Fischer-Hughes Transport, Inc. A. 103976 /
- (b) Proposed rate increases are to offset increases in motor carrier's general operating expenses.
- (c) The staff recommends that the Commission approve the acceptance of the tariff under the prescribed rules.

JFH:kmb

11. MOTION BY:	Commissioner Chm. Shane	Commissioner Rhodes - Yes
		Commissioner Smith - Yes
SECONDED:	Commissioner Fischl	Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held AUG 3 1989

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice Chairman
Joseph Rhodes, Jr.
Frank Fischl

Pennsylvania Public Utility Commission

A-00103976C892

v.

Fischer-Hughes Transport, Inc.
450 N. Broad Street
Doylestown, PA 18901

ORDER TO SHOW CAUSE

BY THE COMMISSION:

This Commission, as the duly constituted agency of the Commonwealth of Pennsylvania, empowered to regulate common carriers within this Commonwealth, represents as follows:

1. Respondent holds a certificate of public convenience issued by this Commission at Application Docket No. A-00103976.

2. Respondent is required by the Public Utility Code, 66 Pa. C.S. §510(b), and by the regulations of the Commission, 52 Pa. Code §29.43 or §31.10, to file with the Commission, on or before March 31 of each year, an Assessment Report, consisting of a statement, under oath, showing its gross intrastate operating revenues for the preceding calendar year.

3. As of the date of this order to show cause, which is after March 31, 1989, respondent has not filed its Assessment Report for 1988 revenues.

4. By failing to file its Assessment Report for 1988 revenues, respondent is in violation of 52 Pas. Code §29.43 or §31.10, THEREFORE,

IT IS ORDERED:

1. That respondent show cause why the certificate of public convenience at Application Docket No. A-00103976 should not be revoked for failure to file respondent's Assessment Report for 1988 revenues.

2. That respondent has twenty (20) days from the date on which this order is served to file with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17120, an answer, in writing, under oath, which as required by the Rules of Administrative Practice and Procedure, 52 Pa. Code §5.64, either affirms or specifically denies the allegations in this order.

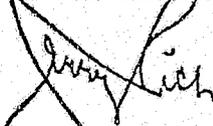
3. That in lieu of an answer to this order, respondent may file its Assessment Report for 1988 revenues within the time specified for filing an answer to this order. If the respondent so files its Assessment Report for 1988 revenues, this Order will be discharged without further proceedings.

4. That if respondent fails to file an answer or other responsive pleading, and if respondent does not file its Assessment Report for 1988 revenues within twenty (20) days, respondent will be deemed to have admitted all the allegations in this Order, in accordance with the Rules of Administrative Practice and Procedure, 52 Pa. Code §5.64. In that event, this Commission may, without hearing, enter an appropriate order which either revokes suspends the certificate of public convenience held by respondent, and which imposes a fine or any other appropriate penalty or forfeiture as authorized by the Public Utility Code, 66 Pa. C.S. §§101, et seq.

5. That if respondent files an answer which admits the allegations contained in this order, and does not file its Assessment Report for 1988 revenues, this Commission will enter an order which either revokes or suspends the certificate of public convenience held by respondent and which imposes a fine or any other appropriate penalty or forfeiture as authorized by the Public Utility Code, 66 Pa. C.S. §§101, et seq.

6. That if the respondent files a timely answer which specifically denies the allegations in this order, or which raises material questions of law for fact, and does not file its Assessment Report for 1988 revenues, this matter shall be referred to an Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, the respondent is found to have committed any of the violations alleged in this order, the Administrative Law Judge may render a decision which either revokes or suspends the certificate of public convenience held by respondent, and which imposes a fine or any other appropriate penalty authorized by the Public Utility Code, 66 Pa. C.S. §§101, et seq.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: August 3, 1989

ORDER ENTERED: August 31, 1989

LAW OFFICES

VUONO, LAVELLE & GRAY

2310 GRANT BUILDING
PITTSBURGH, PA. 15219

October 9, 1989

JOHN A. VUONO
WILLIAM J. LAVELLE
WILLIAM A. GRAY
MARK T. VUONO
RICHARD R. WILSON
DENNIS J. KUSTURISS



Re: Fischer-Hughes Transport, Inc.
Docket No. A-00103976
Our File 3582-1 *, FIAM-3*

RECEIVED

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
P. O. Box 3265
Harrisburg, PA 17120

OCT 10 1989
SECRETARY'S OFFICE
Public Utility Commission

Dear Mr. Rich:

We enclose for filing with the Commission the signed original and two copies of the application of the above carrier.

We are enclosing a check in the amount of \$350.00 to cover the filing fee. This will confirm that our law firm will guarantee collection of the funds evidenced by the check.

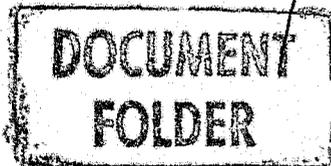
Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to us in the self-addressed, stamped envelope provided for that purpose.

Sincerely yours,

VUONO, LAVELLE & GRAY

[Signature]
John A. Vuono

Enclosures
cc: Fischer-Hughes Transport, Inc.



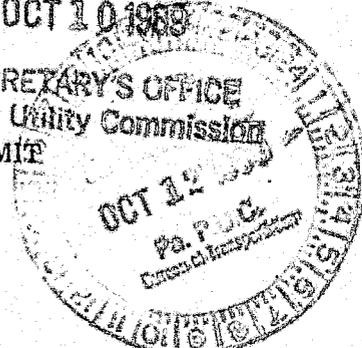
RECEIVED

BEFORE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

OCT 10 1989

SECRETARY'S OFFICE
Public Utility Commission

APPLICATION FOR MOTOR CARRIER CERTIFICATE OR PERMIT



(SEE INSTRUCTIONS BEFORE PREPARING APPLICATION)

In re: Application of Fischer-Hughes Transport, Inc. APPLICATION DOCKET

No. A-00103976

Folder No. 1, AM-B

FX-749290

for a certificate of public convenience or a permit evidencing the Commission's approval of the right and privilege of operating motor vehicles as a motor carrier for the transportation of PROPERTY.

TO PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. Fischer-Hughes Transport, Inc.
(Full and correct name of applicant)

2. (Not Applicable)
(Trade name, if any)

The trade name _____ been registered with the Secretary of the
(has or has not)

Commonwealth on _____ (attach copy of stamped registration form).
(date)

3. 450 North Broad Street _____ (P.O. Box, if any)
(Business Street Address)
Doylestown Bucks PA 18901 215-345-0234
(City) (County) (State) (Zip) (Telephone)

4. Applicant's attorney (for this application) is:
John A. Vuono, Esq. 2310 Grant Building
Vuono, Lavelle & Gray Pittsburgh, PA 15219 412-471-1800
(Name) (Address) (Telephone)

5. Any notice, process or order of the PUC should be served upon:
John A. Vuono, Esq. 2310 Grant Building
Vuono, Lavelle & Gray Pittsburgh, PA 15219
(Name) (Address)

6. Applicant does hold Pa. PUC authority under Docket No. A-00103976
(does or does not)

DOCUMENT
and operates as a
FOLDER

common carrier.
(common or contract)
F. AMENDMENT B

DOCKETED
APPLICATION DOCKET
OCT 13 1989
ENTRY No. fav

at Docket No. MC-35750

8. Applicant is (check one):

Individual.

Partnership. Attach copy of partnership agreement and list names and addresses of partners below (use additional sheet if necessary).

(Name)	(Address)

Corporation. Organized, under the laws of the State of Pennsylvania and qualified to do business in Pennsylvania by registering with the Secretary of the Commonwealth on January 18, 1982 (Attach copy of Certificate of Incorporation or Authority and statement of charter purpose). Include as an attachment a list of corporate officers and their titles and the names, addresses and number of shares held by each stockholder.

(See Supplement to Paragraphs 8 and 9)

9. Attach the following, as appropriate (check those attached):

A Partnership Agreement.

B Trade Name registration certificate.

C Certificate of Incorporation or Authority. (See Supplement to Paragraphs 8 and 9)

D Statement of corporate charter purpose. " "

E List of corporate officers and stockholders. " "

10. That the nature and character of the service to be rendered by applicant is the transportation of property as a Common Contract carrier by means of motor vehicles as follows:

(See Supplement to Paragraph 10)

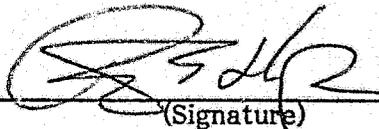
11. Applicant is not now engaged in any intrastate transportation of property for compensation in Pennsylvania (except as authorized by the certificates of public convenience or permits specified in Paragraph 6) and will not engage in the transportation for which approval is herein sought unless and until authorization for such transportation shall be received.

CORPORATE SEAL

FISCHER-HUGHES TRANSPORT, INC.

(Print Name of Corporation, Partnership, Trade-Name
or Individual)*

By:



(Signature)

Robert M. Hughes

(Signature)

President

(Signature)

*If a partnership, each partner must sign; if a corporation, at least one officer must sign, and corporate seal affixed.

AFFIDAVIT OF APPLICANT (Natural Person)

COMMONWEALTH OF PENNSYLVANIA :

_____ County : ss:

_____, being duly sworn (affirmed) according to law, deposes and says that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects to be able to prove the same at the hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____

day of _____ 19 _____

My Commission Expires _____

Signature of Official Administering Oath

AFFIDAVIT OF APPLICANT (Corporation)

COMMONWEALTH OF PENNSYLVANIA :

Bucks County : ss:

Robert M. Hughes, being duly sworn (affirmed) according to law, deposes and says that he is President of Fischer-Hughes
(Office of Affiant)

Transport, Inc.; that he is authorized to and does make this
(Name of Corporation)

affidavit for it; and that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and that he expects the said Fischer-Hughes Transport, Inc. to be able to prove the same
(Name of Corporation)

at the hearing hereof.

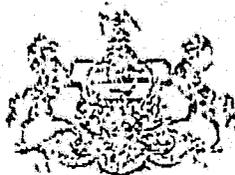
Signature of Affiant

Robert M. Hughes, President

Sworn and subscribed before me this 20

day of SEPT 1989

Commonwealth of Pennsylvania
Department of State



CERTIFICATE OF INCORPORATION

Office of the Secretary of the Commonwealth

To All to Whom These Presents Shall Come, Greeting:

Whereas, Under the provisions of the Laws of the Commonwealth, the Secretary of the Commonwealth is authorized and required to issue a "Certificate of Incorporation" evidencing the incorporation of an entity.

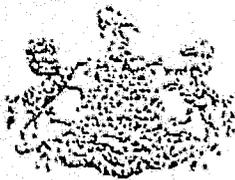
Whereas, The stipulations and conditions of the Law have been fully complied with by

FISCHER-HUGHES TRANSPORT, INC.

Therefore, Know Ye, That subject to the Constitution of this Commonwealth, and under the authority of the Laws thereof, I do by these presents, which I have caused to be sealed with the Great Seal of the Commonwealth, declare and certify the creation, erection and incorporation of the above in deed and in law by the name chosen hereinbefore specified.

Such corporation shall have and enjoy and shall be subject to all the powers, duties, requirements, and restrictions, specified and enjoined in and by the applicable laws of this Commonwealth.

Given under my Hand and the Great Seal of the Commonwealth, at the City of Harrisburg, this 19th day of January in the year of our Lord one thousand nine hundred and twenty-two and of the Commonwealth the two hundred sixth



William L. Davis
Secretary of the Commonwealth

APPLICATION OF
FISCHER-HUGHES TRANSPORT, INC.

SUPPLEMENT TO PARAGRAPHS 8 AND 9

CORPORATE DATA

1. Name, Title and Address of Corporate Officer:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Robert M. Hughes	President, Sec. & Treas.	450 North Broad Street Doylestown, PA 18901

2. Name and Address of Corporate Director:

<u>Name</u>	<u>Address</u>
Robert M. Hughes	450 North Broad Street Doylestown, PA 18901

3. Amount of Stock Authorized:

One Thousand (1,000) shares common stock having a par value of One (\$1.00) Dollar.

4. Name, Address and Number of Shares Held by Each Shareholder:

<u>Name</u>	<u>Address</u>	<u>Number of Shares</u>
Robert M. Hughes	450 North Broad St. Doylestown, PA 18901	100

5. Corporate Purpose Clause:

To have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of Pennsylvania of May 5, 1933, as amended and revised (P.L. 364).

APPLICATION OF
FISCHER-HUGHES TRANSPORT, INC.

SUPPLEMENT TO PARAGRAPH 10

SCOPE OF AUTHORITY SOUGHT

The nature and character of the service to be rendered by applicant as a common carrier is as follows:

To transport, as a Class D carrier, tabulating machines; calculating machines; computers; copying machines; electronic equipment; and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith, (1) between points in the Borough of Doylestown, Bucks County, and within an airline distance of ten (10) statute miles of said borough, and from points in the said borough and territory, to points within fifty (50) miles by the usually travelled highways of the limits of said borough, and vice versa; and (2) between points in the Counties of Philadelphia, Delaware, Chester, Montgomery and Bucks, included within a line which connects the municipal boundaries of Chester, West Chester, Paoli, Norristown, Doylestown and Morrisville, but not including said places, to other points in Pennsylvania, and vice versa.

APPLICATION OF
FISCHER-HUGHES TRANSPORT, INC.

SUPPLEMENT TO PARAGRAPH 10

SCOPE OF AUTHORITY SOUGHT

The nature and character of the service to be rendered by applicant as a common carrier is as follows:

To transport, as a Class D carrier, tabulating machines; calculating machines; computers; copying machines; electronic equipment; and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith, (1) between points in the Borough of Doylestown, Bucks County, and within an airline distance of ten (10) statute miles of said borough, and from points in the said borough and territory, to points within fifty (50) miles by the usually travelled highways of the limits of said borough, and vice versa; and (2) between points in the Counties of Philadelphia, Delaware, Chester, Montgomery and Bucks, included within a line which connects the municipal boundaries of Chester, West Chester, Paoli, Norristown, Doylestown and Morrisville, but not including said places, to other points in Pennsylvania, and vice versa.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

SERVICE OF NOTICE OF MOTOR CARRIER APPLICATIONS

DATE _____

SERVICE _____

OCT 28 1989

BUREAU OF TRANSPORTATION
COMMON CARRIER
OCTOBER 1989

A-00103976
F. 1
Am-B

Application of Fischer-Hughes Transport, Inc., a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate, which grants the right, inter alia, to transport, by motor vehicle, property usual to use in a household when a part of such household equipment or supply, in connection with a removal by a householder from one house or dwelling to another; furniture, fixtures, equipment and the property usual in a store, office, museum, institution, hospital or other establishment, when a part of the stock, equipment or supply of such store, office, museum, institution, hospital or other establishment, in connection with a removal from one location to another; and works of art, furniture, musical instruments, displays, exhibits and articles requiring specialized handling and equipment usually employed in moving household goods between points in the borough of Doylestown, Bucks County, and within an airline distance of ten (10) statute miles of the limits of said borough and from points in the said borough and territory to points within fifty (50) miles by the usually traveled highways of the limits of said borough, and vice versa: SO AS TO PERMIT the transportation of tabulating machines; calculating machines; computers; copying machines; electronic equipment; and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith: (1) between points in the borough of Doylestown, Bucks County, and within an airline distance of ten (10) statute miles of said borough, and from points in the said borough and territory, to points within fifty (50) miles by the usually traveled highways of the limits of said borough, and vice versa; (2) between points in the counties of Philadelphia, Delaware, Chester, Montgomery and Bucks, included within a line which connects the municipal boundaries of Chester, West Chester, Paoli, Norristown, Doylestown and Morrisville, but not including said places, to other places in Pennsylvania, and vice versa.

FW:kmb
10/16/89

Application received: 10/10/89
Application docketed: 10/13/89

NOV 20 1989

Protests due on No Hearings _____
Protests due on Hearings - (5 days prior to date of hearing)
Notice of the above application was mailed to all certificate holders and railroad companies in the service area as noted above.

DOCUMENT
FOLDER

DOCKETED
APPLICATION DOCKET
OCT 31 1989
ENTRY No. _____ *Nu*

October 27, 1989

IN REPLY PLEASE
REFER TO OUR FILE

John A. Vuono
Attorney at Law
2310 Grant Building
Pittsburgh, PA 15219

In re: A-00103976, F. 1, Am-B - Application of Fischer-Hughes
Transport, Inc.

Dear Sir:

The application of Fischer-Hughes Transport, Inc. has been captioned as attached and will be submitted for review provided no protests are filed on or before November 20, 1989. If protests are filed, you will be advised as to further procedure.

You are further advised that the above application will be published in the Pennsylvania Bulletin of October 28, 1989.

Very truly yours,

David Ehrhart
Supervisor - Application Section
Bureau of Transportation

DE:RP:np

cc: Applicant
450 North Broad Street
Doylestown, PA 18901

DOCUMENT
FOLDER

DOCKETED
APPLICATION DOCKET
OCT 31 1989
ENTRY No. <u> </u>

A-00103976, Folder 1, Am-B FISCHER-HUGHES TRANSPORT, INC. (450 North Broad Street, Doylestown, Bucks County, PA 18901), a corporation of the Commonwealth of Pennsylvania, inter alia - property usual to use in a household when a part of such household equipment or supply, in connection with a removal by a householder from one house or dwelling to another; furniture, fixtures, equipment and the property usual in a store, office, museum, institution, hospital or other establishment, when a part of the stock, equipment or supply of such store, office, museum, institution, hospital or other establishment, in connection with a removal from one location to another; and works of art, furniture, musical instruments, displays, exhibits and articles requiring specialized handling and equipment usually employed in moving household goods between points in the borough of Doylestown, Bucks County, and within an airline distance of ten (10) statute miles of the limits of said borough and from points in the said borough and territory to points within fifty (50) miles by the usually traveled highways of the limits of said borough, and vice versa: SO AS TO PERMIT the transportation of tabulating machines; calculating machines; computers; copying machines; electronic equipment; and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith: (1) between points in the borough of Doylestown, Bucks County, and within an airline distance of ten (10) statute miles of said borough, and from points in the said borough and territory, to points within fifty (50) miles by the usually traveled highways of the limits of said borough, and vice versa; (2) between points in the counties of Philadelphia, Delaware, Chester, Montgomery and Bucks, included within a line which connects the municipal boundaries of Chester, West Chester, Paoli, Norristown, Doylestown and Morrisville, but not including said places, to other places in Pennsylvania, and vice versa.
Attorney: John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219.

LAW OFFICES

LIEDERBACH, HAHN, FOY & PETRI

A PROFESSIONAL CORPORATION

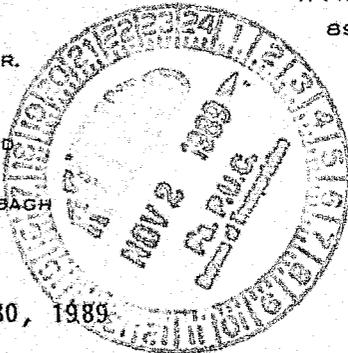
892 SECOND STREET PIKE

RICHBORO, PA. 18954

EDWARD D. FOY, JR.
CARL G. HAHN
SCOTT A. PETRI

DENNIS R. DENARD
RICHARD F. BETZ

HARRY J. LIEDERBACH
1916-1982



October 30, 1989

RECEIVED

NOV - 2 1989

SECRETARY'S OFFICE
Public Utility Commission

RICHBORO LINE
322-8300
PHILADELPHIA LINE
677-0919
DOYLESTOWN LINE
343-9310
FAX 215-322-7646

Secretary Jerry Rich
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

FILE

RE: Application of Fischer-Hughes Transport, Inc.
Docket No.: A-00103976, Folder 1, Am-B

Dear Secretary Rich:

Please be advised that this represents J.C. Services, a protestant in reference to the above captioned application. Enclosed please find an original and two (2) copies of our Notice of Appearance and Protest which I ask be filed in connection with the above captioned application.

Copies of said Notice and Protest are being served upon counsel for the applicant, namely, John A. Vuono, Esquire, and upon Administrative Law Judge Allison K. Turner.

Thank you for your assistance in this matter.

Sincerely yours,

LIEDERBACH, HAHN, FOY & PETRI

Scott A. Petri
By: Scott A. Petri

SAP:dhh

Enclosures

cc: Administrative Law Judge Allison K. Turner
John A. Vuono, Esquire
J.C. Services, Inc.

DOCUMENT
FOLDER

RECEIVED

NOV - 2 1989

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S OFFICE
Public Utility Commission

In the Matter of:

Application of FISCHER-HUGHES TRANSPORT, INC.

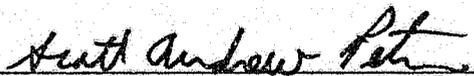
PUC Docket No.: A-00103976, Folder 1, Am-B

NOTICE OF APPEARANCE

Please enter my appearance as counsel for Protestant, J.C. SERVICES, INC., to the above captioned application.

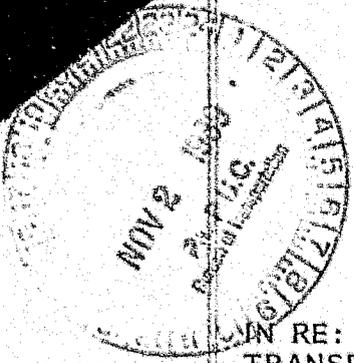
I am hereby authorized to accept service for said participant in this matter.

On the basis of this Notice, I request a copy of all documents hereafter issued by the Commission in this matter.


SCOTT ANDREW PETRI, ESQUIRE

LIEDERBACH, HAHN, FOY & PETRI
892 Second Street Pike
Richboro, Pennsylvania 18954
(215) 322-8300

Dated: Oct. 31, 1989



NOV - 2 1989

BEFORE THE
SECRETARY'S OFFICE
Public Utility Commission
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: Application of A-00103976, Folder 1, Am-B, FISCHER-HUGHES TRANSPORT, INC. (450 North Broad Street, Doylestown, Bucks County, Pennsylvania 18901), property usual to use in a household when a part of such household equipment or supply, in connection with a removal by a householder from one house or dwelling to another, (1) between points in the borough of Doylestown and (2) between points in the counties of Philadelphia, Delaware, Chester, Montgomery and Bucks, as more particularly described in Pennsylvania Bulletin, Vol. 19, No. 43, Saturday, October 28, 1989.

PROTEST OF

J.C. SERVICES, INC.
10475 Drummond Road
Philadelphia, PA 19154

The Protestant above-named supplying common carrier services for the transportation of property within the territory covered by the above-entitled application, by means of motor vehicle, hereby protests approval of the application above referred to, among others, for the following reasons:

1. The application prayed for is not necessary or proper for the service, accommodation, convenience or safety of the public.
2. The application prayed for, if granted, would authorize a service which would be unnecessary and destructively competitive with rights, powers and privileges now being exercised by Protestant or which Protestant authorized to exercise.

A restriction to the application would be acceptable if transportation within the respective areas of the protestant's rights were eliminated.

WHEREFORE, Protestant respectfully prays that the application be dismissed.

DOCKETED
APPLICATION DOCKET
NOV 0 3 1989
ENTRY No. 11

DOCUMENT FOLDER
LIEDERBACH, HAHN, FOY & PETRI

By: Scott Andrew Petri
SCOTT ANDREW PETRI, ESQUIRE
Attorney for Protestant
J.C. SERVICES, INC.

Liederbach, Hahn, Foy & Petri
892 Second Street Pike
Richboro, PA 18954
(215) 322-8300

Dated: October 30, 1989

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

A. 96738

IN THE MATTER OF THE APPLICATION OF

J. C. SERVICES, INC., a corporation
of the Commonwealth of Pennsylvania

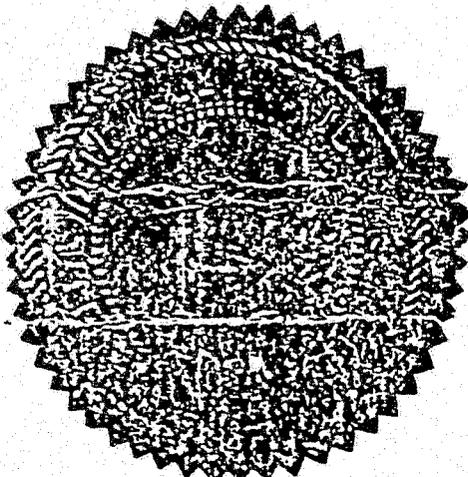
CERTIFICATE
OF
PUBLIC CONVENIENCE

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing had on the above entitled application, it has, by its report and order made and entered, a copy of which is attached hereto and made a part hereof, found and determined that the granting of said application is necessary or 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 PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 14th day of March, 1972.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Attest:



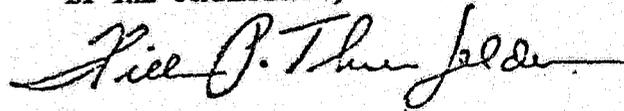
George L. Bloom

Chairman

It appearing that the holder of the certificate of public convenience in this proceeding requests that said certificate be amended to stand in the name or J. C. SERVICES, INC., trading and doing business as J. C. VAN SERVICE and it further appearing that the said certificate holder has properly filed with the Secretary of the Commonwealth and the Prothonotary of Philadelphia County to amend its name;

NOW, to wit, July 5, 1979, IT IS ORDERED:
That the certificate issued to J. C. SERVICES, INC., be and is hereby modified and amended to stand in the name of J. C. SERVICES, INC., trading and doing business as J. C. VAN SERVICE.

BY THE COMMISSION,



WILLIAM P. THIERFELDER
SECRETARY

J. C. SERVICES, INC.

c/d/b/a

J. C. VAN SERVICE

SCOPE OF CARRIER'S OPERATING AUTHORITYITEM 5

Rates and provisions named in this tariff, or as amended, are limited in their application on Pennsylvania Intrastate commerce to the extent of the operating rights set forth below. Unless specifically provided, the provisions are to be interpreted in the same manner as the Pennsylvania Public Utility Commission interprets the certificate from which the following is quoted.

CERTIFICATE NO. A-96738

To transport, as a Class D carrier, uncrated office equipment and machines, from the warehouse of J. C. Services, Inc., in the Village of Feasterville, Lower Southampton Township, Bucks County, to points in the counties of Philadelphia, Delaware, Montgomery, Bucks and Chester, and the return of damaged, used or refused office equipment and machines to the said warehouse.

To transport, as a Class D carrier, uncrated mechanical and electronic office equipment and machines between points in the counties of Philadelphia, Delaware, Bucks, Montgomery and Chester.

To transport, as a Class D carrier, household goods and office furnishings, in use, fixtures and contents of stores and equipment, in case of movings, between points in the city and county of Philadelphia;

To transport, as a Class D carrier, household goods and office furnishings, in use, fixtures and contents of stores and equipment, in case of movings from points in the city and county of Philadelphia, to other points in Pennsylvania and vice versa, provided that the rights, powers and privileges hereby granted shall be limited and restricted to ten (10) trips per month, and subject to the filing of a monthly statement describing such trips with the Commission.

Abbreviations and reference marks are explained on last page of tariff.

ISSUED: May 11, 1981

EFFECTIVE: June 10, 1981

Issued By:
Julius Cristinzio, President
J. C. Van Service
7350 Wissinoming Street
Philadelphia, Pennsylvania 19136

J. C. SERVICES, INC.
t/d/b/a
J. C. VAN LINES

RULES AND REGULATIONS

ITEM	SCOPE OF CARRIER'S OPERATING AUTHORITY	ITEM
	<p>Rates and provisions named in this tariff, or as amended, are limited in their application on Pennsylvania Intrastate commerce to the extent of the operating rights set forth below. Unless specifically provided, the provisions are to be interpreted in the same manner as the Pennsylvania Public Utility Commission interprets the certificate from which the following is quoted.</p>	

CERTIFICATE NO. A-96738

To transport, as a Class D carrier, uncrated office equipment and machines, from the warehouse of J. C. Services, Inc., in the Village of Feasterville, Lower Southampton Township, Bucks County, to points in the counties of Philadelphia, Delaware, Montgomery, Bucks and Chester, and the return of damaged, used or refused office equipment and machines to the said warehouse.

To transport, as a Class D carrier, uncrated mechanical and electronic office equipment and machines between points in the counties of Philadelphia, Delaware, Bucks, Montgomery and Chester.

To transport, as a Class D carrier, household goods and office furnishings, in use, fixtures and contents of stores and equipment, in case of movings, between points in the city and county of Philadelphia;

To transport, as a Class D carrier, household goods and office furnishings, in use, fixtures and contents of stores and equipment, in case of movings from points in the city and county of Philadelphia, to other points in Pennsylvania and vice versa, provided that the rights, powers and privileges hereby granted shall be limited and restricted to ten (10) trips per month, and subject to the filing of a monthly statement describing such trips with the Commission.

Abbreviations and reference marks are explained on last page of tariff.

ISSUED:

EFFECTIVE:

Issued By: --
Steven J. McGary, President
J. C. Van Lines
7350 Wissinoming Street
Philadelphia, Pennsylvania 19136

ORIGINAL PAGE

FREIGHT PA. P.U.C. NO.

J. C. SERVICES, INC.

t/d/b/a

J. C. VAN LINES

RULES AND REGULATIONS

ITEM _____

SCOPE OF CARRIER'S OPERATING AUTHORITY

Rates and provisions named in this tariff, or as amended, are limited in their application on Pennsylvania Intrastate Commerce to the extent of the operating rights set forth below. Unless specifically provided, the provisions are to be interpreted in the same manner as the Pennsylvania Public Utility Commission interprets the certificate from which the following is quoted.

Certificate No. A-00096738

Folder 1, Am-E

To transport, as a Class D carrier, crated mechanical and electronic office equipment and machines, between points in the counties of Philadelphia, Delaware, Bucks, Montgomery and Chester, and from points in said counties, to points in Pennsylvania, and vice versa.

Abbreviations and reference marks are explained on last page of tariff.

ISSUED:

EFFECTIVE:

ISSUED BY:

Steven J. McGary President
7350 Wissinoming Street
Philadelphia, Pennsylvania 19136

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held June 10, 1983

Commissioners Present:

Linda C. Taliaferro, Chairman
Michael Johnson
James H. Cawley

Application of J. C. Services, Inc., t/d/b/a J. C. Van Service, a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate, which grants the right, inter alia, to transport, by motor vehicle, household goods and office furnishings, in use, fixtures and contents of stores and equipment, in case of movings, between points in the city and county of Philadelphia: SO AS TO PERMIT the transportation of mechanical and electronic office equipment and machines between points in the counties of Philadelphia, Delaware, Bucks, Montgomery and Chester and from said counties, to points in Pennsylvania, and vice versa; and household goods and office furnishings, in use, fixtures and contents of stores and equipment, in case of movings, from points in the city and county of Philadelphia, to points in Pennsylvania, and vice versa.

A-00096738
F. 1
Am-E

Rutenberg, Rutenberg, Rutenberg and Rutenberg, by Michael J. Rutenberg for the applicant.

Rubin, Quinn & Moss, by James W. Patterson for protestant, National Electronic Transit South Corp.

John F. Christie, III, for protestants: Ryan & Christie Transit Corp., Quaker Transit Co., Inc., Germantown Fireproof Storage Co., Shelly Moving & Storage, Inc., Louderback North American, Bekins Moving & Storage, Clemmer Moving & Storage, Inc., Hammer's Moving & Storage, Inc. and Advance Storage Co.

Margolis, Edelstein, Scherlis and Kraemer, by Edwin L. Scherlis for protestant, Domenic Cristinzio, Inc.

Liederbach, Rossi, Hahn, Casey & Foy, by William H. R. Casey for protestants: Read's Van Service, Inc., Clemmer Moving & Storage, Inc., Hammer's Moving & Storage, Inc. and All-Ways Moving & Storage, Inc.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Public Meeting held August 11, 1976
-Harrisburg, PA. 17120

COMMISSIONERS PRESENT:

Chairman Carter
Commissioner Kelly
Commissioner Bloom
Commissioner O'Bannon
Commissioner Johnson

Application Docket No. 96738, Folder 1, Am-B - Application of
J.C. SERVICES, INC., a corporation of the Commonwealth of
Pennsylvania

SUPPLEMENTAL REPORT AND ORDER
MODIFYING CERTIFICATE OF PUBLIC CONVENIENCE

BY THE COMMISSION:

This matter being before the Pennsylvania Public Utility Commission upon application of J.C. SERVICES, INC., a corporation of the Commonwealth of Pennsylvania, dated March 16, 1976, for modification of the report and order issued under date of October 18, 1971, and the certificate of public convenience issued thereunder, and having been duly presented in accordance with the rules of the Commission and full investigation of the matters and things involved having been had, and it appearing that the rights granted herein are in effect a transfer of the rights which have been held by ELIZABETH LUCERA, under report and order issued at A. 98068 on September 10, 1973 and the certificate of public convenience issued thereunder, which certificate will be subsequently cancelled, as of the date of this order, upon compliance with the tariff requirements of the Commission by J.C. SERVICES, INC., a corporation of the Commonwealth of Pennsylvania the Commission finds and determines that approval of the proposed modification is necessary or proper for the service, accommodation or convenience of the public; THEREFORE,

NOW, to wit, August 11, 1976, IT IS ORDERED: That the report and order issued under date of October 18, 1971 and the certificate of public convenience issued thereunder, be and is hereby modified and amended so as to include the following rights:

To transport, as a Class D carrier, household goods and office furnishings, in use, fixtures and contents of stores and equipment, in case of movings, between points in the city and county of Philadelphia.

To transport, as a Class D carrier, household goods and office furnishings, in use, fixtures and contents of stores and equipment, in case of movings, from points in the city and county of Philadelphia, to other points in Pennsylvania, and vice versa, provided that the rights, powers and privileges hereby granted shall be limited and restricted to ten (10) trips per month, and subject to the filing of a monthly statement describing such trips with the Commission;

subject to the following conditions:

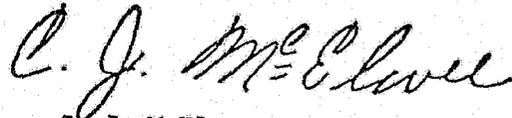
FIRST: That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on the rights to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by applicant, or to approve or prescribe rates sufficient to yield a return thereon.

SECOND: That applicant shall not record in its utility accounts any amount representing the rights herein granted, in excess of the actual cost of such rights to the original holder thereof.

THIRD: That the applicant charge to Account 1550, Other Intangible Property, \$3,000, being the amount of the consideration payable by it for the rights and going concern value attributable thereto; less any amount recorded under condition 2 above.

IT IS FURTHER ORDERED: That the applicant will not be permitted to operate or engage in any transportation granted herein until compliance with the requirements of the Public Utility Law relative to the filing and acceptance of a tariff establishing just and reasonable rates.

BY THE COMMISSION,



C. J. McElwee
Secretary

(SEAL)

ORDER ADOPTED: August 11, 1976

ORDER ENTERED: August 26, 1976

ORIGINAL

LAW OFFICES

LOUIS J. CARTER

7300 CITY LINE AVENUE
PHILADELPHIA, PA. 19151-2291
(215) 879-8665

LOUIS J. CARTER*

JOEL E. MAZOR**

JILL EISEMAN BRONSON***

* PENNA. & D.C. BAR

** PENNA. & N.Y. BAR

***NEW YORK BAR ONLY

TELECOPIER # (215) 877-0955

IN REPLY PLEASE
REFER TO FILE NO

November 7, 1989

Office of the Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265, North Office Building
Harrisburg, PA 17120

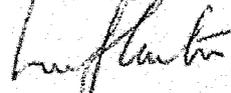
Re: Docket No. A-00103976, F.1, Am-B
Application of Fischer-Hughes Transport, Inc.

To the Secretary:

Would you kindly place my name on the docket in the
above-captioned matter as an interested party to receive copies of
all notices and orders.

With appreciation for your assistance, I am

Sincerely,



LOUIS J. CARTER

DOCKETED

NOV 13 1989

LJC/kmd

DOCKETED

RECEIVED
NOV 13 1989
SECRETARYS OFFICE
Public Utility Commission

PENNSYLVANIA PUBLIC UTILITY COMMISSION



RECEIPT

The addressee named hereunder has paid Pennsylvania Public Utility Commission for the following bill, subject to final collection of check or money order rendered for such payment.

Fischer-Hughes Transport, Inc.
450 N. Broad St.
Doylestown, PA 15211

Date November 8, 1989

INDEXED
NOV 13 1989

CR 135286 A

DOCUMENT
FOLDER

In re application of Fischer-Hughes Transport, Inc.
A-00103976, F.L, Am-B.....\$350.00

Revenue account 001780-017601-102 (ck)

ck 10217 Checks \$350.00 Currency _____

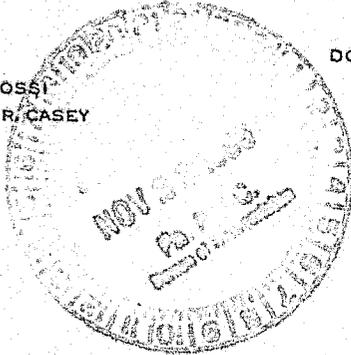
Utility account 50126

C. Joseph Meisigner
For Department of Revenue

CASEY AND ROSSI
ATTORNEYS AT LAW
99 EAST COURT STREET
DOYLESTOWN, PENNSYLVANIA 18901

HARRY L. ROSSI
WILLIAM H. R. CASEY

(215) 348-7300
FAX (215) 348-1456



November 16, 1989

RECEIVED

NOV 22 1989

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Commonwealth of Pennsylvania
PA PUBLIC UTILITY COMMISSION
P.O. Box 3265
Harrisburg, PA 17120

RE: Application of Fischer-Hughes Transport, Inc.
A-00103976, Folder 1, Am-B

Dear Secretary Rich:

FILE

Enclosed please find an original and three copies of a Protest pertaining to the above-captioned Application on behalf of my client, Domenic Cristinzio, Inc. A copy of this Protest is being sent to the Applicant's attorney on this date by copy of this letter.

Thank you for your cooperation in this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William H.R. Casey".

WILLIAM H.R. CASEY

WHRC:tf

Enclosures

cc: Domenic Cristinzio, Inc.
John A. Vuono, Esquire

DOCUMENT
FOLDER

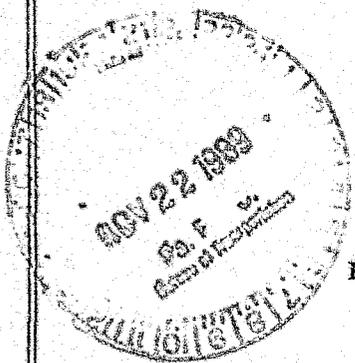
RECEIVED

NOV 22 1989

SECRETARY'S OFFICE

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION



IN RE: Application of Fischer-Hughes Transport Inc. (450 North Broad Street, Doylestown, Bucks County, Pennsylvania, 18901), a corporation of the Commonwealth of Pennsylvania - inter alia - so as to permit the transportation of tabulating machines; calculating machines; computers; copying machines; electronic equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith: (1) between points in the borough of Doylestown, Bucks County, and within an airline distance of 10 statute miles of said borough and from points in the said borough and territory, to points within 50 miles by the usually traveled highways of the limits of said borough, and vice versa: (2) between points in the counties of Philadelphia, Delaware, Chester, Montgomery and Bucks, included within a line which connects the municipal boundaries of Chester, West Chester, Paoli, Norristown, Doylestown and Morrisville, but not including said places, to other places in Pennsylvania, and vice versa, as more particularly described in Pennsylvania Bulletin, Volume 19, Number 43, dated October 28, 1989. A-00103976, Folder 1, Am-B.

PROTEST OF

FILE

DOMENIC CRISTINZIO, INC.
1700 TOMLINSON ROAD
PHILADELPHIA, PA 19116-3848

The Protestant above named, supplying common carrier services for the transportation of property within the territory covered by the above-entitled Application, by means of motor vehicles, hereby protests approval of the Application above referred to, among others, for the following reasons:

1. The Application prayed for is not necessary or proper for the service, accommodation, convenience or safety of the public.

DOCUMENT
FOLDER

DOCKETED
APPLICATION DOCKET
NOV 24 1989
ENTRY No. *NR*

2. The Application prayed for, if granted, would authorize a service which would be unnecessary and destructively competitive with rights, powers and privileges now being exercised by Protestants or which Protestants are authorized to exercise.

PROPOSED AMENDMENT

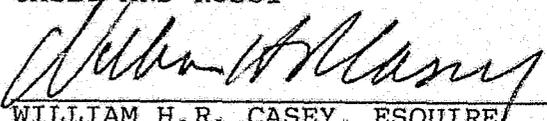
A RESTRICTION TO THE APPLICATION WOULD BE ACCEPTABLE IF TRANSPORTATION WITHIN THE RESPECTIVE AREAS OF THE PROTESTANT'S RIGHTS WERE ELIMINATED.

WHEREFORE, the Protestant respectfully prays that the Application be dismissed.

Respectfully Submitted,

CASEY AND ROSSI

Date: November 16, 1989 BY:


WILLIAM H.R. CASEY, ESQUIRE
Attorney for Protestant
99 East Court Street
Doylestown, PA 18901
Phone: (215) 348-7300

IT IS ORDERED: That the application, as amended, be and is hereby approved, and that the certificate issued to the applicant on April 30, 1965, as amended, be further amended to include the following right:

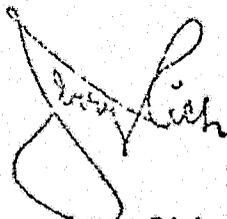
To transport, as a Class D carrier, business and office machines and electronic or mechanical equipment, including, but not limited to, copiers, computers, x-ray machines, and inserting machines, and new office furniture, between points in the counties of Luzerne, Lackawanna, Monroe, Carbon, Northampton, Lehigh, Berks, Schuylkill, Columbia and Montour, and from points in said counties, to points in Pennsylvania, and vice versa.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted herein until it shall have complied with the requirements of the Public Utility Code and the rules and regulations of this Commission relative to the filing and acceptance of a tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of 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 carrier, shall not be construed as conferring more than one operating right.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: January 29, 1988

FEB 05 1988

ORDER ENTERED:

LAW OFFICES

VUONO, LAVELLE & GRAY

2310 GRANT BUILDING

PITTSBURGH, PA. 15219-2388

March 1, 1990

JOHN A. VUONO
WILLIAM J. LAVELLE
WILLIAM A. GRAY
MARK T. VUCNO*
RICHARD R. WILSON
DENNIS J. KUSTURISS
CHRISTINE M. DOLFI
PAUL J. STELIOTES

(412) 471-1800

TELECOPIER
(412) 471-4477

FILE

RECEIVED
MAR 05 1990
Office of A. L. J.
Public Utility Commission

*ALSO MEMBER OF FLORIDA BAR

Re: Fischer-Hughes Transport, Inc.
Docket No. A-00103976, F. 1, Am-B
Our File 3582-1

Mr. Bud Huntington
Office of Administrative Law Judges
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Dear Mr. Huntington:

In accordance with our telephone conversation in which we indicated to you that we were in the process of negotiating a possible amendment that may eliminate the opposition to the application, applicant hereby voluntarily waives its right pursuant to Act 194 of 1978 to have the hearing commenced within 90 days after the proceeding is initiated.

We appreciate your consideration.

Sincerely yours,

VUONO, LAVELLE & GRAY

[Signature]
John A. Vuono

DOCKETED

MAR 14 1990

nd

FILED

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120
April 9, 1990

In Re: A-00103976, F001, Am-B

(See attached list)

Application of Fischer-Hughes Transport, Inc.

For amendment so as to permit the transportation of tabulating machines, calculating machines, computers, copying machines, electronic equipment, and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith, (1) between points in the Borough of Doylestown, Bucks County, and as more specifically described therein.

NOTICE

This is to inform you that an initial hearing on the above captioned case will be held Thursday, June 7, 1990, at 10:00 a.m., in Room 1306, Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania.

The presiding officer in this proceeding is Administrative Law Judge Herbert Smolen. Judge Smolen can be contacted at 1302 Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania 19130; telephone (215) 560-2105.

If you intend to file exhibits, please be advised that two copies of all hearing exhibits to be presented into evidence must be submitted to the Reporter and an additional copy should be furnished to the presiding officer and each party of record.

cc: Judge Smolen
Mr. Bramson
Mrs. Kelly
Mrs. Howell
File Room

DOCKETED

APR 12 1990

A-00103976, F001, Am-B Parties of Record

William J. Lavelle, Esquire
Vuono, Lavelle & Gray
2310 Grant Building
Pittsburgh, PA 15219

Fischer-Hughes Transport, Inc.
450 North Broad Street
Doylestown, PA 18901

Scott A. Petri, Esquire
Liederbach, Hahn, Foy & Petri, P.C.
892 Second Street Pike
Richboro, PA 18954

William H. R. Casey, Esquire
Casey and Rossi
99 East Court Street
Doylestown, PA 18901

Louis J. Carter, Esquire
7300 City Line Avenue
Suite 120
Philadelphia, PA 19151-2291

Party of Interest

APPEARANCE SHEET

ALJ HEARING REPORT

DOCKET NO. A-00103976, F001, Am-B

CASE NAME Fischer-Hughes Transport,
Inc.

HEARING LOCATION Philadelphia, PA.

HEARING DATE June 7, 1990

ALJ Smolen

CHECK THOSE BLOCKS WHICH APPLY:

PRE Hearing held YES NO

Testimony taken YES NO

PRE Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days 2 DAYS

RECORD CLOSED YES NO

Briefs to be filed YES NO

BENCH DECISION YES NO

REMARKS: 8/7/90 + 8/8/90

RECEIVED
JUN 15 1990
Office of A.L.J.
Public Utility Commission

DOCKETED

DOCKETED
JUN 2 1990

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
William J. Laville Telephone No. (412) 471-7850	2310 Grant Bldg. City Pittsburgh Pa. Zip 15219	Fischer-Hughes Transport, Inc.
Scott Andrew Petri Liederbach, Hahn, Fay & Petri 892 Second Street Pike, Richboro, PA 18954 Telephone No. (215) 322-8300	City State Zip	J.C. Services, Inc. t/a J.C. Van Lines
WILLIAM H.D. CASEY CASEY + ROSSI Telephone No. (215) 3487300	99 E COLIET ST City Doylestown Pa Zip 18901	D. CRISTANZO INC.

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

Carol [Signature]
Reporter

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120
June 14, 1990

In Re: A-00103976, F001, Am-B

(See letter of 4/9/90)

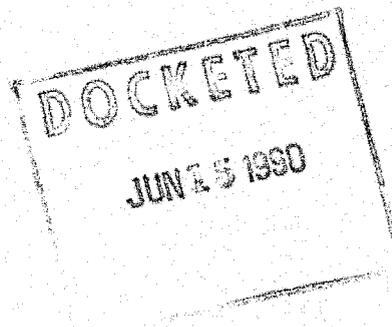
Application of Fischer-Hughes Transport, Inc.

For amendment so as to permit the transportation of tabulating machines, calculating machines, computers, copying machines, electronic equipment, and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith, (1) between points in the Borough of Doylestown, Bucks County, and as more specifically described therein.

NOTICE

This is to inform you that further hearings on the above captioned case will be held Tuesday and Wednesday, August 7 and 8, 1990, at 10:00 a.m., in Room 1306, Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania.

cc: Judge Smolen
Mr. Bramson
Mrs. Kelly
Mrs. Howell
File Room



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120
July 20, 1990

In Re: A-00103976, F001, Am-B

(See letter of 6/14/90)

Application of Fischer-Hughes Transport, Inc.

For amendment so as to permit the transportation of tabulating machines, calculating machines, computers, copying machines, electronic equipment, and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith, (1) between points in the Borough of Doylestown, Bucks County, and as more specifically described therein.

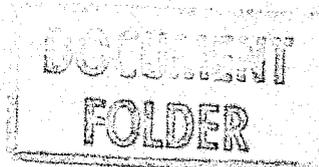
NOTICE

This is to inform you that the further hearings now scheduled to be held on Tuesday and Wednesday, August 7 and 8, 1990, in Philadelphia, in the subject proceeding has been changed to Thursday and Friday, October 25 and 26, 1990, at 10:00 a.m., in Room 1306, Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania.

Please change your records accordingly.

cc: Judge Smolen
Mr. Bramson
Mrs. Kelly
Mrs. Howell
File Room

AUG 01 1990



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120
August 7, 1990

In Re: A-00103976, F001, Am-B

(See letter of 7/20/90)

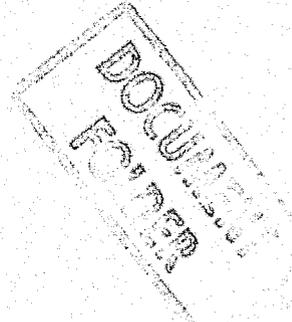
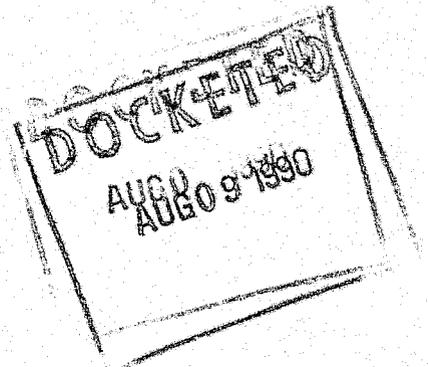
Application of Fischer-Hughes Transport, Inc.

For amendment so as to permit the transportation of tabulating machines, calculating machines, computers, copying machines, electronic equipment, and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith, (1) between points in the Borough of Doylestown, Bucks County, and as more specifically described therein.

NOTICE

This is to inform you that the further hearings now scheduled to be held on Thursday and Friday, October 25 and 26, 1990, in the subject proceeding has been postponed to Tuesday and Wednesday, October 30 and 31, 1990, at 10:00 a.m., in Philadelphia.

cc: Judge Smolen
Mr. Bramson
Mrs. Kelly
Mrs. Howell
File Room



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17120
September 6, 1990

In Re: A-00103976, F001, Am-B

(See letter of 8/7/90)

Application of Fischer-Hughes Transport, Inc.

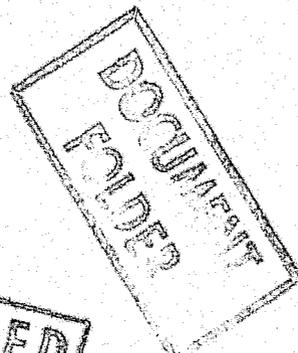
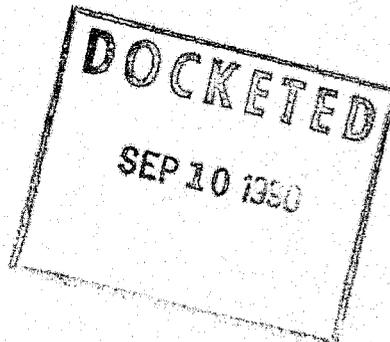
For amendment so as to permit the transportation of tabulating machines, calculating machines, computers, copying machines, electronic equipment, and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith, (1) between points in the Borough of Doylestown, Bucks County, and as more specifically described therein.

NOTICE

This is to inform you that at the request of counsel for the applicant, the further hearings now scheduled to be held on Tuesday and Wednesday, October 30 and 31, 1990, in the subject proceeding has been postponed to Tuesday and Wednesday, November 13 and 14, 1990, at 10:00 a.m., in Philadelphia.

Please change your records accordingly.

cc: Judge Smolen
Mr. Bramson
Mrs. Kelly
Mrs. Howell
File Room



APPEARANCE SHEET

BTL

ALJ HEARING REPORT

DOCKET NO. A-00103976, F001, Am-B
 CASE NAME Fischer-Hughes Transport, Inc.

 HEARING LOCATION Philadelphia, PA
 HEARING DATE November 13 & 14, 1990
 ALJ Smolen

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES NO
 Testimony taken YES NO
 Hearing concluded YES NO
 Further hearing needed YES NO
 Estimated add'l days _____
 RECORD CLOSED YES NO 1/25/91
Date
 Briefs to be filed YES NO 1/25/91
Date
 BENCH DECISION YES NO

REMARKS: _____

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
 PLEASE PRINT CLEARLY
 INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
WILLIAM J. LAVELLE Telephone No. (412) 471-1800	2310 Grant Bldg. City Pittsburgh Pa. Zip Pa.	Fischer-Hughes Transport, Inc.
Scott A. Petri, Esq. Telephone No. (215) 322-8300	Liederbach, Hahn, Foy & Petri 892 Second Street Pike City Richboro PA Zip 18954	J.C. Services, Inc.
William H. R. Casey, Esq. Telephone No. (215) 348-7300	99 E. COURT ST. City Dayles town PA Zip	D. Cristinzio, Inc.

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

1/13/91 Tanya Alexander
 Reporter
 COMMONWEALTH REPORTING

LAW OFFICES
LIEDERBACH, HAHN, FOY & PETRI
A PROFESSIONAL CORPORATION
892 SECOND STREET PIKE
RICHBORO, PA. 18954

ORIGINAL
AMH

EDWARD D. FOY, JR.
CARL G. HAHN
SCOTT A. PETRI
DENNIS R. DENARD
RICHARD F. BÉTZ
HARRY J. LIEDERBACH
1916-1982

RICHBORO LINE
322-8300
PHILADELPHIA LINE
677-0919
DOYLESTOWN LINE
343-9310
FAX 215-322-7646

December 20, 1990

Pennsylvania Public Utility Commission
Attn: Lydia
P.O. Box 3265
Harrisburg, PA 17120

A103976 F1 Am B

RE: Application of
Fischer-Hughes Transport, Inc.

Dear Lydia:

Per your request, enclosed please find an additional seven (7) copies of the Initial Brief of Protestant in the above-captioned matter.

Sincerely yours,

LIEDERBACH, HAHN, FOY & PETRI

Scott A. Petri

By: Scott A. Petri

SAP/ccm

Enclosures

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DEC 24 1990
SECRETARYS OFFICE
Public Utility Commission

ORIGINAL

LAW OFFICES
LIEDERBACH, HAHN, FOY & PETRI
A PROFESSIONAL CORPORATION
892 SECOND STREET PIKE
RICHBORO, PA. 18954

EDWARD D. FOY, JR.
CARL G. HAHN
SCOTT A. PETRI
DENNIS F. DENARD
RICHARD F. BETZ
HARRY J. LIEDERBACH
1916-1982

RICHBORO LINE
322-8300
PHILADELPHIA LINE
677-0919
DOYLESTOWN LINE
343-9310
FAX 215-322-7646

December 17, 1990

A103976 F.A.M.B.

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

RE: Application of
Fischer-Hughes Transport, Inc.

Dear Secretary Rich:

Enclosed please find an original and two(2) copies of the
Initial Brief of Protestant in the above-captioned matter.

Sincerely yours,

LIEDERBACH, HAHN, FOY & PETRI

Scott A. Petri

By: Scott A. Petri

SAP/ccm

Enclosures

cc: Administrative Law Judge Allison K. Turner w/enclosures
William H.R. Casey, Esquire w/enclosures
William J. Lavelle, Esquire w/enclosures
Administrative Law Judge Smolen w/enclosures
Steve McGary, J.C. Services w/enclosures

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DEC 19 1990

SECRETARY'S OFFICE
Public Utility Commission

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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DEC 19 1990

SECRETARYS OFFICE
Public Utility Commission

APPLICATION OF:

FISCHER-HUGHES
TRANSPORT INC.

: DOCKET NO. A-00103976,
F.001, Am-B

INITIAL
BRIEF OF PROTESTANT
J.C. SERVICES, INC.

DOCKETED

JAN 9 - 1991

I. Facts:

The application filed in this matter seeks authority to transport tabulating machines, calculating machines, computers, copying machines, electronic equipment and other business machines and equipment in a geographic area in which the applicant serves as a household and office relocation mover.

The applicant has ascertained, essentially, that the distinction made by the Pennsylvania Public Utility Commission with respect to electronic goods and equipment is confusing. The record contains numerous instances where the applicant admitted to performing services with the knowledge that the applicant carried no authority. Rather than recite those provisions here, protestant will provide references to the record in the discussion which follows.

Paragraph 11 of the applicant's application states that "Applicant is not now engaged in any intrastate transportation of property for compensation in Pennsylvania

DOCUMENT
FOLDER

(except as authorized by the certificates of public convenience or permits specified in paragraph 6 and will not engage in the transportation for which approval is herein sought unless and until authorization for such transportation shall be received."

II. Discussion:

A. Unlawful shipments:

The Applicant comes before this administrative body having admittedly performed services which he understood to be unlawful and, apparently, intends to continue to perform the unlawful shipments, with or without authority from the Commission.

"Q: With that in mind, would you explain for us why Fischer-Hughes Transport filed this application with the commission?

A: Well, I had always assumed that the wording required the specialized handling equipment usually employed in moving household goods, because it was broad enough to include that third proviso range of equipment. Particularly since the Interstate Commerce Commission allows us to do it, and we are engaged so extensively in that. I had assumed that the Public Utility Commission had the same interpretation of that proviso, but I recently discovered that they do not. A change in commission thinking, I'm not sure why, but we felt that in order to continue providing this service to our customers that we should get this included and make sure we are doing everything right.

(R.23, line 23-24, line 12)

"Q: And it is strictly related to the commodities in a clarification if it is the proper word for your third proviso type traffic?

A: That's correct.

Q: Have you, in fact, been transporting that type of traffic within Pennsylvania?

A: Yes, we have.

Q: And for approximately how long?

A: Since probably 1982.

Q: Is that when the company was formed?

A: When the company was formed.

Q: And have you brought with you a brief exhibit showing representative shipments of this traffic within the scope of your geographical company?

A: Yes.

Q: Your Honor, if we might have that marked as applicant's exhibit number five; I believe it is?

Judge Smolen: So marked, applicant's number five.

Q: Now looking at exhibit number five, does this show some representative shipments over the last five to six months transported by your company within the scope of your geographical company of which you are president?

A: Yes.

Q: And did it all consist of electronic equipment, computers or whatever?

A: Yes.

(R. 24, line 21-25, line 23)

"Q: Now, you have stated that you recently discovered that the Household Rights of Pennsylvania did not include the electronic, when was that recently discovered?

A: Approximately nine months ago.

Q: But the transportation that you performed under A5 has been since that time?

A: Yes.

Q: So after you found out you continued to perform

the service?

A: Well, I would submit that it is a confusing issue. We are allowed to transport this stuff interstate; we are allowed to transport it as part of a relocation of a business or establishment. It is very confusing for my people to make interpretations like that. We didn't want to let our customers down, pending this application.

Q: Is your answer, yes?

A: Yes.

(R. 32, line 14-33, line 5)
(emphasis added)

"Q: And did you file in the application and affidavit that you would not perform such services until the rights had been approved in your application?

A: I don't recall.

Q: You don't recall your application?

A: I don't recall filing that application.

Q: Did you participate in the preparation of the application?

A: Yes.

Q: Returning your attention to section -- paragraph eleven?

A: Yes.

Q: Is that your signature?

A: Yes, it is.

Q: And this was filed on October of '89?

A: No response

(R. 33, line 14-34, line 3)

"Q: Was it filed in October of '89?

A: Yes.

Q: At the time that you filed it, were you aware of it?

A: Aware of what?

Q: Aware of the fact that the household rights that you held did not include electronics?

A: Yes.

Q: So it was more than nine months, it was over a year ago?

A: Yes.

Q: Nevertheless, you kept performing this service?

A: Yes.

(R. 34, line 9-20)
(emphasis added)

"Q: When you discovered that you might have to file an application, did you contact your customers and alert them to the problem?

A: Customers became aware of the problems.

Q: All the customers were informed that there was a question as to whether you had the right?

A: Well, the ones with significance, the ones with volume were informed, yes.

Q: And who would they be?

A: Bell and Howell.

Q: Bell and Howell was told at that time that you may not have the authority to do the transportation; is that right?

A: Right.

Q: Anyone else informed?

A: Yes, I would say in the course of generating this witness support, we informed everyone of those issues and why we needed to do this.

(R. 43, line 14-44, line 5)
(emphasis added)

"Q: Let me ask you, do you intend to continue making

transportation of electronic equipment intrastate, during these proceedings?

A: No.

Q: Do you intend to cease as of this moment?

A: Yes. Honestly, when we were asked to provide shipper, examples of shipments, we did this ten days ago when I asked my people to review the files, and this is what they discovered. I was not exactly aware that these were taking place.

(R. 44, line 19-45, line 9)
(emphasis added)

"Q: So as a result of that enforcement problem you are determined to go seek the rights and at the same time determined to continue to transport those items while you were seeking rights?

A: I did not deliberately tell my people to ignore the issue. We discussed the issue; we discussed the ramifications of it, the confusion of it...I have instructed my people to -- I told them what the rules were; I told them we were going for this authority, and I went ahead and tried to operate my business.

(R. 49, line 7-21)
(emphasis added)

"A: ...It is very difficult to instruct people when and where to transport these things and, you know, we're probably wrong in what we have done, but I'm only trying to service my customers; and the fact that I'm here before this judge to get the authority, I think it shows what my real intentions are.

(R. 50, line 20-24)
(emphasis added)

"Q: There is nothing in the current PUC authority that Fischer-Hughes has that would give you the authority to move electronics goods intrastate?

A: No.

(R. 51, line 19-22)
(emphasis added)

"Q: And the answer to the question, I guess, is yes, you do not have any controls to make sure that that doesn't

happen. In fact, you disagree with it. You agree to accept the transportation as requested, isn't that correct?

A: Well, I would say that I agreed to accept the transportation as requested because we're not sure whether we need the authority for it. It seems to me that the authority the Commission has authorized me to have covers a lot of this."

(R. 123, line 1-9)
(emphasis added)

The above statements made by the President, Sole Director and Sole Shareholder of the applicant are inconsistent. He ascertains a confusion, yet admits that he is wrong in having made the transportation, but continues to perform the transportations knowing he is without authority. He states that he did not know the services were being performed, and that his people made mistakes; however, he also states that he discussed the necessity of filing an application with his clients, such as Bell and Howell. He could not discuss the circumstance with the customers if he did not know that the services were being performed. The application was filed over a year ago and the Applicant continues to perform services without regard to its authority. The Applicant has violated paragraph 11 of the application. The application contains an affidavit signed by Robert M. Hughes, President as an Affiant. At the time that Mr. Hughes submitted his application, he knew he did not have the authority, and he continued to transport electronic goods without authority and in contravention of the affidavit.

Throughout the hearing, Mr. Hughes testified that he became aware that he is not authorized to perform movement of electronic goods nine months or one year prior to the hearing, apparently as a result of having been named in a complaint.

It is this protestant's belief that the record establishes that the applicant was advised in May of 1986 through correspondence received from the Pennsylvania Moving & Storage Association, if not sooner, that household authority does not include the right to move electronic equipment. Mr. Hughes attempts to characterize this as a change "in commission thinking". There has been no change in position by the Pennsylvania Public Utility Commission. The Bekins decision was made in January of 1978.

The document admitted as P-4 was transmitted to all members of Pennsylvania Moving & Storage Association referenced the Bekins and J.C. Services, Inc. v. Centurion decisions. Norman Clemmer, a member of the Pennsylvania Moving & Storage Association testified as follows:

"A: I was a member of the association since its inception, a charter member.

Q: And when was that?

A: That goes back maybe ten years or more.

Q: And what's the date of P-4, the letter?

A: May 15, 1986.

Q: Did you hold a position with the association at that time?

A: I was the director.

Q: Is your name stated on P-4?

A: Yes.

Q: Was the Applicant a member of the association at that time?

A: I believe so.

Q: And this letter clarifies that you require separate rights for that kind of carriage?

A: Yes.

Q: And as a director, did you participate in that decision to disseminate that information to all the carriers?

A: Yes.

(R. 174, line 10-175, line 11)

Mr. Casey: No further questions. I would offer P-4."

There is no confusion by the Applicant. Rather, there is a willfull disregard for the authority of the Commission and this application must be dismissed.

B. Need:

The essential element of an amendment in authority

is need. The Applicant did not establish need.

The Applicant testified that 10% of his business or \$100,000 constitutes intrastate electronic shipments. (R. 32, line 7-9). Included in this figure are shipments which the applicant states are subject to the warehousemen's exemption; such shipments constituting 1/2 or \$50,000 (R. 56-57).

The Applicant's first supporting shipper, being Joanne W. Iverson, of Iverson Associates, testified that her company's need is currently handled in-house and that any future need depends upon whether her company receives a contract with IBM to service Philadelphia (R. 69). This need is speculative and does not support the granting of the authority requested.

Karen A. Herzog, testified on behalf of Bell & Howell in Allentown, Pennsylvania. Ms. Herzog testified that her company utilizes D. Cristinzio as a rigger (R. 77). It is ascertained by Protestant, J.C. Services, Inc. that D. Cristinzio has authority to perform the moves and the use of D. Cristinzio for shipments and rigging would probably be more cost effective than the use of Applicant since D. Cristinzio performs the rigging. The witness indicated that excluding shipments to the applicant's warehouse, only 5% of

Bell & Howell's total need would be intrastate movements (R. 83). Based upon this witness' testimony, this constitutes 1-2 shipments per month (R. 75). Both protestants are capable to perform this work and J.C. Services has solicited this work (R.142)

Linda Roth of Carolinch Company testified that she had no intrastate Pennsylvania movements during 1990, but hoped that two (2) shipments would be going to Scranton (R. 91). It is interesting to note that while the Applicant has testified under oath that he does not intend to perform additional electronic moves until the application is granted, Linda Roth testified that a salesman from Fischer-Hughes has surveyed the equipment which she hopes to move. This witnesses needs are speculative.

The remaining witnesses, Cheryl Doris Card for Insertech and Galen Bold for HPI Plastics, have minimal needs which can be serviced by either Protestant. Both witnesses testified to needs in interstate transportation, but did not particularize a need with respect to intrastate movements.

C. Warehousemen's Exemption:

The Applicant has ascertained that transportations performed by it fall within the purviews of the

warehousemen's exemption. Protestant J.C. Services, Inc. ascertains that based upon testimony from the Applicants sole shareholder, director and President, this application is not necessary in that much of the service is claimed to be subject to the warehousemen's exemption. Mr. Hughes testified as follows:

Q: Your interpretation or understanding of that case in the commission's position; would those kind of moves to and from the warehouse be exempt from commission regulations?

A: Yes, that is my understanding.

Q: So to the extent that that is exempt traffic, you don't need authority from this commission in the first place?

A: That is what I've been lead to believe.

Q: Is there much of that traffic going to and from your warehouse as opposed to traffic moving direct from your customer to one of its customers?

A: Yes. That is considerable.

(R. 55, line 9-19)

WHEREFORE, Protestant J.C. Services, Inc. requests that the application for amendment be dismissed.

Respectfully submitted,

LIEDERBACH, HAHN, FOY & PETRI, P.C.

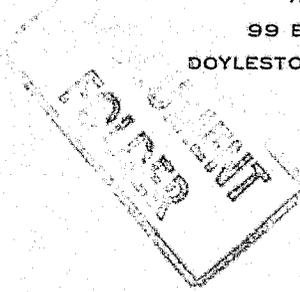
By: Scott Andrew Petri
SCOTT ANDREW PETRI
Attorney for Protestant
J.C. Services, Inc.

CASEY AND ROSSI
ATTORNEYS AT LAW
99 EAST COURT STREET
DOYLESTOWN, PENNSYLVANIA 18901

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HARRY L. ROSSI
WILLIAM H. R. CASEY

(215) 348-7300
FAX (215) 348-1456



January 7, 1991

RECEIVED BTL

JAN 9 1991
SECRETARY'S OFFICE
Public Utility Commission

Secretary Jerry Rich
Commonwealth of Pennsylvania
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. Box 3265
Harrisburg, PA 17120

RE: Application of Fischer-Hughes Transport, Inc.
A-00103976, F001, Am-B

Dear Secretary Rich:

Enclosed please find an original and eight (8) copies of the Brief of Protestant, Domenic Cristinzio, Inc., in the above-captioned matter.

Thank you for your attention in this matter.

Sincerely,

WILLIAM H.R. CASEY

WHRC:tf

cc: Scott A. Petri, Esquire
William J. Lavelle, Esquire
Administrative Law Judge Smolen
Russell Taddei, Domenic Cristinzio, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF : DOCKET NO.
FISCHER-HUGHES TRANSPORT, INC. : A-00103976, F001, Am-B

RECEIVED
JAN 10 1991

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JAN 10 1991
SECRETARY'S OFFICE
Public Utility Commission

BRIEF OF PROTESTANT
DOMENIC CRISTINZIO, INC.

DOCUMENT
FOLDER

DOMENIC CRISTINZIO, INC.

BY: William H. Casey
WILLIAM H.R. CASEY, ESQUIRE

CASEY AND ROSSI
99 EAST COURT STREET
DOYLESTOWN, PA 18901
(215) 348-7300

I. STATEMENT OF THE CASE

By Application published in the Pennsylvania Bulletin of October 28, 1989, Fischer-Hughes Transport, Inc. (Applicant) sought the following common carrier operating authority:

Tabulating machines; calculating machines; computers; copying machines; electronic equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith: (1) between points in the borough of Doylestown, Bucks County, and within an airline distance of 10 statute miles of said borough, and from points in the said borough and territory, to points within 50 miles by the usually traveled highways of the limits of said borough, and vice versa; (2) between points in the counties of Philadelphia, Delaware, Chester, Montgomery and Bucks, included within a line which connects the municipal boundaries of Chester, West Chester, Paoli, Norristown, Doylestown and Morrisville, but not including said places, to other places in Pennsylvania, and vice versa.

Several protests were filed in opposition to the Application, none of which have been withdrawn.

Hearings were held in this matter before Administrative Law Judge Herbert Smolen on November 13, 1990 and November 14, 1990. Applicant presented testimony of one (1) operating witness and five (5) supporting shipper witnesses. J.C. Services, Inc. offered the testimony of Steven McGary while Russell Taddei, President of Domenic Cristinzio, Inc. testified on its behalf. In addition, testimony of Norman Clemmer was offered as rebuttal testimony.

At the conclusion of the final hearing, the parties were directed to file briefs in this proceeding. This constitutes the

Main Brief of Protestant, Domenic Cristinzio, Inc.

II. SUMMARY OF TESTIMONY

Attached hereto as Appendix A is a Digest of Testimony which summarizes the testimony presented in this proceeding. The Digest of Testimony will be referred to throughout the Argument portion of this Brief.

III. SUMMARY OF ARGUMENT

Cristinzio submits that the undisputed evidence of record establishes unequivocally that the Applicant has provided unauthorized intrastate service beyond the scope of its existing P.U.C. authority. Moreover, such service was provided knowingly; Applicant was aware that its actions violated the Pennsylvania Public Utility Code, but because of its disagreement with the Public Utility Commission ruling requiring separate authority to transport electronic equipment, went ahead to provide the service despite that awareness. In fact, Applicant offered evidence indicating it was continuing to provide such service at the time of the hearings on this application and afterward. Cristinzio submits that the record in this proceeding must lead to a finding that the Applicant is unfit to receive the authority requested in this proceeding.

Cristinzio also contends that close scrutiny of the supporting shipper witnesses fails to establish that approval of this Application "will serve a useful public purpose, responsive to a public demand or need." This is particularly true in light of

the fact that several of the supporting shippers utilized Applicants' unlawful service and consequently, their testimony can not be considered in support of this Application.

Evaluation of the Application with respect to the third criteria is also significant, not, however, regarding competition. Aside from the fact that Applicant has already "entered the field", albeit without authority, Cristinzio believes that approval of this Application would be contrary to the public interest. The legislature has determined that regulation of transportation service is desirable and in the public interest. Applicants' actions undermine the fabric of regulation. Grant of this Application would send the wrong message to the dozens of existing carriers, including Cristinzio, who operate within the scope of the law.

IV. ARGUMENT

A. Applicable Evidentiary Standards

The instant Application was filed after January 1, 1983. Therefore, the evidentiary standards by which it is to be judged are found in the provisions of Section 41.14 of Title 52 of the Pennsylvania Code (52 Pa. Code Section 41.14). This Section provides as follows:

Section 41.14 Evidentiary Criteria Used to Decide Motor Common Carrier Applications

(a) An Applicant seeking motor common carrier authority has a burden of demonstrating that approval of the Application will serve a useful public purpose,

responsive to a public demand or need.

(b) An Applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and, in addition, authority may be withheld if the record demonstrates that the Applicant lacks a propensity to operate safely and legally.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest. (52 Pa. Code Section 41.14)

In accordance with this Section, it is Applicants' burden to establish that its proposed service will serve a useful public purpose, responsive to a public demand or need and that it possesses the technical and financial ability to provide the proposed service. If the Commission determines that the Applicant has satisfied its burden, the Application is to be granted commensurate with the demonstrated public need unless the record indicates that Applicant lacks a propensity to operate safely and legally or that the entry of Applicant into the field would endanger the operation of existing common carriers, contrary to the public interest.

B. Applicant Has Failed to Establish Its Ability to Operate in a Lawful Manner

The Commission, in considering whether to grant the instant Application, must scrutinize the fitness of the Applicant. Byhana v. Pennsylvania Public Utility Commission, 165 Pa. Super. 253, 258, 67 A.2d 646 (1949); Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission, 6 Pa. Cmwlth.Ct. 229, 235, 293 A.2d 895 (1972). It is respectfully submitted that Applicant is unfit to receive additional authority from this Commission. Armour Transportation v. Pennsylvania Public Utility Commission, 154 Pa. Super. 21, 23, 34 A.2d 821 (1943).

Evidence presented throughout this proceeding reveals that Applicant has and continues to provide service beyond the existing scope of its authority. It is respectfully submitted that Applicants' testimony regarding "confusion" between the ICC household authority and the intrastate authority governed by the Commission is merely an attempt to give some color of right to Applicants' continuing disregard of the law.

"Q. In other words, you accept the transportation requests from these shippers without regard to your authority for electronics intrastate Pennsylvania, don't you?

A. (Applicant) Well, its my opinion, sir, that this is a confused matter, that we don't understand whether or not I need the authority. And when I look at my interstate commerce commodity description tariffs, you know, we are confused about it.

Q. And the answer to the question, I guess, is yes, you do not have any controls to make sure that that doesn't happen. In fact, you disagree with it. You agree to accept the transportation as requested, isn't that

correct?

- A. (Applicant) Well, I would say that I agreed to accept the transportation as requested because we're not sure whether we need the authority for it. It seems to me that the authority the Commission has authorized me to have covers a lot of this. But, you know, I recognize there's a question about it and that's why I'm here, to get this clarified." (T.122,123; Digest P.3)

Applicant presents himself as "confused" which therefore allows his company to accept and perform requests for unauthorized transportation even during the Application period. The Application itself, he describes, as a request for "clarification" of the issue. Actually, however, it is an Application for additional intrastate rights, which he does not presently hold, and which he certified to the Commission in his Application that he would not perform until authorization was received. (Digest, P.2)

At the hearing on November 13, 1990, one of the Applicants' shipper witnesses, Linda Roth, representing the Carolinch Co. of Ivyland, Bucks County, a manufacturer of electronic equipment, testified that the witness not only has used the Applicant for both interstate and intrastate, but that they were presently working with Applicant on an intrastate shipment going to Scranton before the end of 1990. (T.94; Digest, P.2)

This uncontroverted evidence places Applicant in the position of willful disregard of Commission authority, as, for example, in the case of D.F. Bast, Inc. v. Pennsylvania Public Utility Commission, 397 Pa. 246, 154 A.2d 505 (1959) where a carrier was found to have acted in bad faith when it indicated that it would continue illegal operations even if its Application for

authority was disapproved.

In addition, the Commission has stated that it "cannot adopt a policy of approving Applications of carriers which admittedly render illegal service." Application of Broes Trucking Co., Inc., A.99888, Order entered June 1, 1977, p.6.

C. Applicant Has Failed to Present Substantial Evidence of a Need For Its Proposed Service

It is well established in Pennsylvania law that an Applicant for a Certificate of Public Convenience has the burden of proving a need for the additional service. 52 Pa. Code Section 41.14; Fallmer Trucking Company v. Pennsylvania Public Utility Commission, 189 Pa. Super. 204, 215, 150 A.2d 163 (1959); Motor Freight Express v. Pennsylvania Public Utility Commission, 188 Pa. Super. 80, 85, 146 A.2d 323 (1958). While recognizing that it is not necessary for an Applicant to present proof of need relating to every point in the territory requested, the Commission is still duty-bound to withhold issuing a favorable order "without a basis in evidence having rational probative force." Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197 (1938), cited in Leauran Transportation Corporation v. Pennsylvania Public Utility Commission, 153 Pa. Super. 303, 708, 33 A.2d 221 (1943). Therefore, before a Certificate of Public Convenience may be issued by the Commission, the Applicant must present substantial evidence that a need for the proposed service exists in the Application territory. Dutchland Tours, Inc. vs. Pennsylvania Public Utility

Commission, 19 Pa. Cmwlth. 1, 7, 337 A.2d 922 (1975).

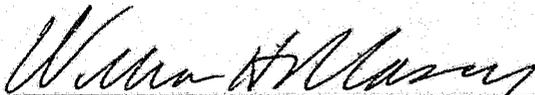
Applicant has fallen short of producing sufficient evidence upon which to base a conclusion that the additional services it proposes is reasonably required by the shipping public.

As discussed in Section B above, three (3) of the Applicants' supporting shippers testified that they had utilized Applicants' unauthorized service. Cristinzio submits that the evidence is clear that such illegal service was rendered in bad faith. The testimony of these shippers can therefore not be considered in support of this Application in accordance with the principles enunciated in D.F. Bast, Inc., supra. and Bunting-Bristol Transfer, Inc. v. Pennsylvania Public Utility Commission, 418 Pa. 286, 210 A.2d 201 (1965). Cristinzio submits that the evidence of the remaining two (2) shippers in either prospective only (Iverson) or interstate only (Card).

V. CONCLUSION

For the foregoing reasons, Domenic Cristinzio, Inc. requests the issuance of an Order denying the Application of Fischer-Hughes Transport, Inc. at A-00103976, F001, Am-B in its entirety.

Respectfully submitted,

BY: 
WILLIAM H.R. CASEY, ESQUIRE
ATTORNEY FOR DOMENIC CRISTINZIO,
INC.

DIGEST OF TESTIMONY

OPERATING WITNESS:

ROBERT HUGHES
PRESIDENT
FISCHER-HUGHES TRANSPORT INC.

Fischer-Hughes Transport specializes in household goods in use service in Doylestown and within ten (10) miles to points within fifty (50) miles and vice versa and in the Philadelphia area "diamond zone", within a line from Morrisville in Bucks County to Doylestown to Norristown to West Chester and to Chester and from any point within the diamond to any point in Pennsylvania and vice versa (Exhibit A-1). Applicant is also an agent for United Van Lines performing household goods in use service and electronic equipment transportation interstate in the continental United States and Canada (T.6,7). Finally, applicant holds Interstate Commerce Commission Authority for household goods in the United States east of Wisconsin, Illinois, Kentucky, Tennessee, Missouri and Louisiana (Exhibit A-7). This authority permits interstate transportation of household goods in use, offices and commercial establishments and electronic equipment in that area (T.14,15).

Applicant testified on direct that it had a main office and facility in Doylestown and Fogelsville, Pennsylvania (T.10,11). Testimony of one of the supporting witnesses, Cheryl Card of Insertech, indicated an additional warehouse in Lansdale, Montgomery County (T.99,100). Applicant has from forty-five (45) to eighty (80) field men including movers, drivers, loaders and

packers (T.14).

At present, applicant operates a total of thirty-four (34) trucks and trailers either owned or leased and also accessory equipment including fork lifts, ramps and jacks (T.18). Applicant performs most of its vehicle and equipment maintenance in its own shop and operates a safety program which includes a daily dispatch meeting at which compliance is discussed (T.22,23) (T.49,50).

Applicant filed this application because he discovered his intrastate rights did not permit electronic equipment transportation (T.23,24). Mr. Hughes admitted he had provided service beyond the scope of his existing intrastate authority (T.24,25). In addition, he admitted and offered an exhibit (Exhibit A-5) describing intrastate moves in violation of his authority after he knew it was not permitted (T.25,32,33). He also admitted that he was aware he did not have authority to transport electronic equipment at the time he executed this application in October, 1989 in which he signed an affidavit that he would not perform such services until the rights had been approved by the Public Utility Commission (T.33,34). He also stated he intended to cease making intrastate transportation of electronic equipment during these proceedings (T.44) but later offered witness testimony indicating additional intrastate transportation of electronic equipment by the end of 1990 by his company was in process (T.91,94).

Applicant offered an in-house balance sheet indicating net

income from March through September of 1990 as \$130,000.00 (Exhibit A-6). He testified further that eighty (80%) percent of the transportation income on Page 2 of \$1,057,000.00 (Exhibit A-6) was from intrastate operators and that ten (10%) percent of that figure was from transportation of electronic equipment. He later testified that one-half (1/2) of that transportation income was from non-regulated transportation under the warehouse exemption (T.56,57).

Applicant testified that a Complaint had been filed against his company for improper transportation resulting in a letter from the Public Utility Commission stating it was a lawful movement.

The following day, the applicant testified that net revenue from the electronic equipment shipments described on Exhibit A-5 was \$3,388.50 (T.120). The witness again admitted, however, that his company accepts intrastate transportation requests for electronic equipment without regard to its authority (T.122,123).

The applicant also testified he was a member of the Pennsylvania Moving and Storage Association for two (2) or three (3) years or possibly since 1984 and that he receives regular mailings from the Association (T.130,131). He denied, however, receiving Protestants' Exhibit P-4, a document that clarified the need for separate intrastate electronic rights addressed to all members of the Association in 1986.

SUPPORTING SHIPPER WITNESS:

1. JOANNE W. IVERSON
PRESIDENT
IVERSON ASSOCIATES

Ms. Iverson testified her company writes software for micro and mini computers. They have not used a certificated carrier and their transportation need is predicated on the hope that they will receive a contract through the City of Philadelphia. She testified she would not use Domenic Cristinzio, Inc. as she had experience with that company at Girard Bank, her former employer, and was not impressed (T.68,69). Mr. Taddei, President of Domenic Cristinzio, Inc. testified later however, that he did not recall her and that his company continues to serve Girard Bank (now Mellon) to this date. (T.162). She also testified she would consider service from J.C. Services, Inc. (T.71).

2. KAREN A. HERZOG
TRAFFIC SUPERVISOR
BELL AND HOWELL

Ms. Herzog testified that applicant performs electronic equipment transportation for her company intrastate, and that the applicants' authority is of no concern to her (T.83,84,85). She acknowledged that her company has used Domenic Cristinzio, Inc. for rigger services but she would not utilize them for intrastate electronic transportation because she is happy with the applicants' service (T.84). She would consider using both of the protestants for these transportation requirements (T.95).

4. CHERYL DORIS CARD
ADMINISTRATIVE ASSISTANT
INSERTECH

Ms. Card testified her company has transportation needs that are entirely interstate (T.103).

5. GALEN BOLD
MANAGER
HPI PLASTICS

Mr. Bold testified his company manufactures plastic equipment and print circuit boards for electronic companies (T.104, 105). Their transportation needs for shipping this electronic equipment average a truckload four (4) or five (5) times per year intrastate (T.107). Mr. Bold testified that he had used the Applicant for two (2) years for interstate transportation and that he was satisfied with the service (T.108) but he couldn't recall whether he had used them for intrastate transportation in that two (2) year period (T.111,112). He testified he had used Clemmer Moving and Storage, Inc. for the intrastate electronic moves, but that two (2) years ago the price went up and the service diminished (T.110). Later testimony by Norman Clemmer, President of Clemmer Moving and Storage, Inc. confirmed a tariff increase to HPI Plastics for intrastate electronic transportation had occurred two (2) years ago (T.170) but also testified that the loss of HPI Plastics as a customer also coincided with his salesman who had handled this account leaving his company and going to work for Applicant (T.171). He also had no knowledge of any service

complaints from HPI Plastics at that time about his companys' service (T.171).

Mr. Bold testified he would not consider using either Domenic Cristinzio, Inc. (T.110) or J.C. Services, Inc. because he was loyal to his present carrier (Applicant) (T.112).

PROTESTANT TESTIMONY:

RUSSELL TADDEI
PRESIDENT
DOMENIC CRISTINZIO, INC.

Domenic Cristinzio, Inc., an agent for Allied Van Lines, holds significant intrastate electronics authority and household goods in use authority (T.157,158). These electronic rights include Philadelphia, Bucks, Montgomery, Chester, Delaware, Northampton, Lehigh, Berks, Schuylkill, Columbia, Montour, Monroe, Carbon, Luzerne and Lackawanna Counties and from those counties to points in Pennsylvania and vice versa. The company maintains a large facility in Philadelphia and another in Northern New Jersey (T.158).

They operate twelve (12) tractors and eighteen (18) trailers including five (5) 48 x 102 feet large transtar (T.159). They employ seventy-five (75) to eighty (80) people and their services are not being fully utilized at this time (T.160).

Mr. Taddei also testified his company has performed "rigger" services for Bell and Howell, one of the shipper witnesses and that he had authority to perform all of Bell and Howell's electronic

transportation requirements (T.160,161).

Mr. Taddei also testified that in his experience in this industry, there was no confusion regarding intrastate electronics equipment moves. Separate Public Utility Commission authority is required and such authority is not part of ordinary household goods in use authority (T.162,163).

2. NORMAN CLEMMER
PRESIDENT
CLEMMER MOVING AND STORAGE, INC.

Mr. Clemmer, not a protestant in this case, testified on rebuttal regarding the testimony about his companys' service to a shipper witness, HPI Plastics, Inc. (T.170,171). Mr. Clemmer also testified he was a director of the Pennsylvania Moving and Storage Association and identified P-4 as a mailing sent to members of the Association regarding the need for separate electronics rights (T.174,175).

3. LINDA ROTH
SALES ADMINISTRATOR
CAROLINCH COMPANY

Ms. Roth testified her company uses the applicant for intrastate electronic equipment transportation including a prospective delivery at the end of the year, 1990 (T.94).

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 1991, I did serve a copy of the foregoing Brief of Protestant for Domenic Cristinzio, Inc. upon the following by regular first class mail:

William J. Lavelle, Esquire
2310 Grant Building
Pittsburgh, PA 15129

Scott A. Petri, Esquire
892 Second Street Pike
Richboro, PA 18954

CASEY AND ROSSI

BY:


WILLIAM H.R. CASEY, ESQUIRE

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January 8, 1991

TELECOPIER
(412) 471-4477

RECEIVED

JAN 8 1991

SECRETARYS OFFICE
Public Utility Commission

*ALSO MEMBER OF FLORIDA BAR

Re: Fischer-Hughes Transport, Inc.
Docket No. A-00103976, F. 1, Am-B
Our File 3582-1

MAILED WITH U.S. POSTAL SERVICE
CERTIFICATE OF MAILING FORM 3817

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
P. O. Box 3265
Harrisburg, PA 17120

Dear Mr. Rich:

We enclose for filing with the Commission the original and nine copies of Main Brief of Fischer-Hughes Transport, Inc. in Support of the Application.

Copies of the Main Brief have been served on all parties of record.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to us in the self-addressed, stamped envelope provided for that purpose.

Sincerely yours,

VUONO, LAVELLE & GRAY

William J. Lavelle
William J. Lavelle

pz

Enclosure

cc: Honorable Herbert Smolen, Administrative Law Judge
(w/Certificate of Mailing)
William H. R. Casey, Esquire (w/Certificate of Mailing)
Scott A. Petri, Esquire (w/Certificate of Mailing)
Fischer-Hughes Transport, Inc.

BTL

BEFORE THE
Pennsylvania Public Utility Commission

DOCKET NO. A-00103976, F. 1, Am-B

APPLICATION OF
FISCHER-HUGHES TRANSPORT, INC.

MAIN BRIEF OF
FISCHER-HUGHES TRANSPORT, INC.
IN SUPPORT OF THE APPLIATION

FILED
JAN 8 1991

FILED
JAN 8 1991

RECEIVED

JAN 8 1991

SECRETARYS OFFICE
Public Utility Commission

WILLIAM J. LAVELLE, ESQ.
Attorney for
FISCHER-HUGHES TRANSPORT, INC.
Applicant

Of Counsel:
VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, Pennsylvania 15219

Due Date: January 8, 1991

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00103976, F. 1, Am-B

APPLICATION OF
FISCHER-HUGHES TRANSPORT, INC.

MAIN BRIEF OF
FISCHER-HUGHES TRANSPORT, INC.
IN SUPPORT OF THE APPLICATION

I. STATEMENT OF THE CASE

By application published in the Pennsylvania Bulletin on October 28, 1989, Fischer-Hughes Transport, Inc. (Fischer-Hughes or Applicant) seeks motor common carrier authority as follows:

To transport, as a Class D carrier, tabulating machines; calculating machines; computers; copying machines; electronic equipment; and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith,

- (1) Between points in the borough of Doylestown, Bucks County, and within an airline distance of ten (10) statute miles of said borough, and from points in the said borough and territory to points within fifty (50) miles by the usually traveled highways of the limits of said borough and vice versa; and
- (2) Between points in the counties of Philadelphia, Delaware, Chester, Montgomery and Bucks, included within a line which connects the municipal boundaries of Chester, West Chester, Paoli, Norristown, Doylestown and Morrisville, but not including said places, to other points in Pennsylvania and vice versa.

Protests were filed to the application by J.C. Services, Inc. (J.C. Services) and D. Cristinzio, Inc. (Cristinzio) (herein jointly called Protestants). The application was assigned to Administrative Law Judge Herbert Smolen. A pre-hearing conference was held in Philadelphia on June 7, 1990. Subsequently, a hearing was held in Philadelphia on November 13 and 14, 1990. At the conclusion of the hearing, Judge Smolen granted the parties an opportunity to submit briefs. This Main Brief is being submitted on behalf of Fischer-Hughes in support of the application.

II. STATEMENT OF THE QUESTIONS INVOLVED AND
THE POSITION OF APPLICANT

Applicant submits that the following questions are presented by this application:

1. Does the record contain proof of a demand/need by the supporting shippers for Applicant's proposed service between those portions of Pennsylvania in which it already holds operating authority to transport household goods?

Answer: Yes.

2. Has the Applicant demonstrated that it possesses the technical expertise and financial ability to provide the proposed service?

Answer: Yes.

3. Is there evidence to demonstrate that the Applicant lacks a propensity to operate legally?

Answer: No.

4. Will approval of the application endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest?

Answer: No.

5. Has the Applicant proven that its proposed service is reasonably necessary for the service, accommodation, convenience or safety of the public?

Answer: Yes.

As will be developed in greater detail below, this application requests a very modest expansion of the Applicant's

present operating authority and is intended to fill a minor gap in its present authority concerning the commodities that can be transported. It is already authorized to transport all of the involved commodities, which will be designated herein by the shorthand terminology "electronic equipment", between all points in the United States on an interstate basis and within Pennsylvania to the extent that the commodities are part of a residential or business relocation or are transported pursuant to the warehouseman's exemption. Having provided such service under its existing operating authority, Applicant is experienced in this type of transportation and has the equipment, facilities and personnel to provide this service in intrastate commerce in Pennsylvania. Its financial ability to conduct the service is beyond question.

To a limited extent, Fischer-Hughes has transported electronic equipment within Pennsylvania in the past as a result of a combination of factors. Foremost is the confusion created by the different interpretations rendered by the Interstate Commerce Commission (ICC) and the Pennsylvania Public Utility Commission (PUC) of the commodity description "household goods, in use" (both short form and broad form). Furthermore, the PUC has not maintained a consistent position through the years with respect to the interpretation of that commodity description, thereby creating further ambiguity and confusion. Under the circumstances, to the extent that the Applicant may have transported shipments of electronic equipment within

Pennsylvania contrary to the terms of its operating authority, that service was performed inadvertently and in good faith and does not rise to the level of constituting a flagrant disregard for the jurisdiction of this Commission which would justify denial of the application on the grounds of fitness.

Finally, Protestants have failed to present any evidence to establish that approval of this application would in any way endanger or impair their operations, or those of any other common carriers, to such an extent that it would be contrary to the public interest.

For all of these reasons, we request that the application be granted in its entirety.

III. SUMMARY OF THE TESTIMONY

1. APPLICANT'S WITNESSES.

A. ROBERT M. HUGHES (Fischer-Hughes Transport, Inc.).

(1) Direct Examination. Robert M. Hughes is the President, Secretary-Treasurer, sole director and sole shareholder of Fischer-Hughes. (4)* In addition to his administrative duties, Mr. Hughes is involved in the day-to-day operations of the company and is familiar with its authority, facilities, equipment and operations. (4)

Fischer-Hughes is a Pennsylvania corporation domiciled at 450 North Broad Street, Doylestown, PA. (3-5) The company is an agent for United Van Lines throughout the continental United States and Canada. It is not affiliated with any other carrier. (5-6)

The authority sought by this application covers the same territory in which the Applicant is authorized to transport household goods under Docket No. A-00103976, F. 1, Am-A and Am-B. (A-1) (10) That authority permits transportation between points in Doylestown and within an airline distance of ten miles of Doylestown, and from points in that area to points within a 50 highway mile radius of Doylestown, and vice versa; and between points in the Counties of Philadelphia, Delaware, Chester, Montgomery and Bucks within the so-called Diamond, and

*Numbers in parentheses preceded by "A" refer to Applicant's exhibits; and numbers in parentheses preceded by "P" refer to Protestants' exhibits. All other numbers in parentheses refer to pages of the transcript.

from points within that region to other points in Pennsylvania, and vice versa. (A-1, A-2) (6-10) Approval of this application will result in duplicating authority to the extent that the present rights authorize the transportation of the same commodities when they are part of residential or business relocations. (A-1) (15)

Applicant holds interstate operating authority at Docket No. MC-35750 (Sub-2) to transport household goods between points in the eastern half of the United States. (A-3) (13-14) It has transported the involved commodities on an interstate basis for Iverson Associates, HPI Plastics, Bell & Howell, Insertech, AEL, Merrill Lynch Company, General Electric Company, Greater Philadelphia Company, Frank E. Group, and Kulicke and Soffa. (6)

The company has facilities located in Doylestown and Fogelsville. The Doylestown facility consists of a recently constructed 22,000 square foot building located on a 7-1/2 acre lot. The building has four loading docks, a three acre parking garage for trucks, and approximately 4,000 square feet of office space. The building is equipped with fire and burglar alarms. The warehouse also has steel racking systems for storing products and devices to ease the unloading of trucks. (10-11)

The Fogelsville facility is similarly equipped except that it has two loading docks and approximately 16,000 square feet of space. Both facilities are open from 7:00 a.m. until 7:00 p.m., Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturdays. (11)

Communications between the driver and the dispatch center are maintained by telephone. The drivers call in to Doylestown after making each delivery and are equipped with pagers so that they can be contacted whenever necessary. (12) Customers place orders for service through 800 watts numbers and telephone-fax communications. (12-13)

The company's work force varies due to the seasonal nature of its business, but generally it has 15 sales and administrative employees, four full-time warehouse employees, and between 45 and 80 field men (including movers, drivers, loaders and packers). (14)

Applicant operates seven packing vans, five straight trucks, seven tractors and 15 trailers. (A-4) Three of the tractors are leased from White Circle, Inc. and two of the trailers are leased from United Leasing, a subsidiary of United Van Lines. Other equipment is leased by the company from owner-operators. (20-22) Special features of the equipment include power lift gates (17), drop frames to accommodate extra large pieces (21), side doors at strategic points on the truck (21), air-ride suspension systems to provide smoother rides and reduce damages (19), 48-foot long trailers, some up to 102 inches in width, to handle larger loads (18-19), and "E-track" which allows for the strapping of machinery and equipment into place to prevent shifting during transit (19). To assist with loading and unloading, Fischer-Hughes utilizes forklifts, jacks, dollies, stair crawlers, roller lifts and hand trucks. (18-20)

Approximately 80% of the equipment maintenance is performed by the company's in house mechanics. The drivers inspect their equipment each day and any equipment deficiencies are immediately corrected. The company also performs a thorough inspection of the vehicles every 90 days. (22)

The company makes an extensive background check of all prospective employees before hiring. (22) Periodic safety meetings are held with employees. (22-23)

The company's services are available six days a week during normal business hours and on Sunday when needed. (11, 28) When necessary, customers are provided exclusive use of a truck. Otherwise, when scheduling permits, shipments from various customers may be comingled on a single vehicle.

Intrastate traffic is generally delivered on a same day or next day basis. Inside pickups and deliveries, as well as split pickups and deliveries, are fundamental to the company's business. (20, 29)

For the six-month period ended September 30, 1990, the company had net income before taxes of \$130,694 on gross revenues of \$3,366,276. (A-6) (29-30) As of September 30, 1990, Applicant had stockholder's equity of \$427,395, and its current assets exceeded its current liabilities by \$171,499. (A-6)

The company has been transporting electronic equipment since its formation in 1982. (25) During the first ten months of 1990 it handled a total of 12 such shipments in Pennsylvania

which apparently were not within the first or second proviso authority or exempt. (A-5) (25-26) The shipments of electronic equipment were handled due to the Applicant's belief that they were authorized under the third proviso of its authority. (24)

(2) Cross-Examination. Approximately nine to twelve months prior to the November 13, 1990 hearing, Fischer-Hughes transported a mail-inserting machine from the warehouse of Clemmer Moving & Storage to the warehouse of Dominic Cristinzio. An unknown party filed some type of complaint with the PUC which, after investigation, declared the movement to be lawful. (41) Within approximately one week, Applicant contacted legal counsel to file the application in order to eliminate any confusion concerning the extent of its operating authority. (41-42)

Approximately ten days prior to the hearing, in preparation therefor, a review of its files disclosed that the twelve shipments shown on Applicant's Exhibit 5 had been transported during the pendency of the application. Prior thereto, Mr. Hughes did not know that such shipments had been handled. (44-45) Customers with such traffic had been advised of the question concerning the operating authority. (43-44)

Mr. Hughes testified that no further intrastate transportation of questionable electronic equipment shipments would be performed pending the outcome of the application proceeding. The transportation of the 12 shipments was unknown to him but apparently the result of error by employees due to

the inconsistent interpretation of similar operating authority by the ICC and the PUC. (32-33, 37-38, 45)

Of the \$1,057,814 in transportation revenue realized during the six month period ended September 30, 1990, approximately 80% was the result of handling intrastate traffic. About 10% of the intrastate traffic involved the movement of electronic equipment. (32)

Applicant was not aware of any information disseminated by Tri State Tariff Bureau regarding the interpretation of the so-called third proviso authority. (42-43)

(3) Redirect Examination. The Applicant has not been advised by counsel to discontinue transporting electronic equipment. (45)

The electronic equipment movement that was investigated was made approximately one year before the hearing. (47) Mr. Hughes testified that he believed the investigation was the result of a formal complaint filed by a competitor. The company was not fined and did not receive a cease and desist order, but received a copy of the letter written to the complainant describing the transaction and declaring that it was a lawful movement. (46-47) Despite this favorable result, the company filed the application to avoid future problems. (47-48)

(4) Recross-Examination. Part of the confusion regarding whether or not Applicant can transport electronic equipment arises from the fact that the company is allowed to transport electronic equipment in intrastate commerce to and from its

warehouse under an exemption, as part of a relocation, and in interstate commerce. (49-51)

(5) Further Redirect Examination. The company's existing authority from this Commission permits the transportation of electronic equipment as part of a residential movement [first proviso] or a relocation of a commercial establishment [second proviso]. (53) Mr. Hughes also believed that the transportation of electronic equipment was covered by the third proviso commodity description "articles requiring specialized handling and equipment usually employed in moving household goods." (53)

Exempt transportation to and from the company's warehouses makes up a considerable portion of the company's operations. (55) The movements listed on Exhibit A-5 dated September 15 and June 11, 1990 were within the warehousemen's exemption. (119) Total revenue for the other ten shipments listed on Exhibit A-5 amounted to \$3,388.50, which are the only questionable shipments handled during 1990. (119-120)

B. JOANNE W. IVERSON (Iverson Associates).

(1) Direct Examination. Joanne W. Iverson is the President and owner of Iverson Associates, of 29 Bala Avenue, Suite 207, Bala Cynwvd, PA 19044. The company has been in business for six years. (58)

Iverson writes software for micro and mini computers, installs computer networks and performs computer repairs. (58-59) The company is a sub-contractor for IBM, installing and

servicing all of the mid-range PC's and mini computers that IBM sells to the City of Philadelphia. (59) Under a proposed five-year contract, IBM will ship computers to Iverson Associates' office. Iverson Associates will then set up the computers and load the software in its office before shipping the computer system to the user. (59-60)

A single shipment ranges in weight from 25 pounds to between 500 and 1,000 pounds. (62) In the past, Iverson employees transported the computers in their own cars and vans, but it now has a need for professional help to move its traffic. (60)

Ms. Iverson testified that she has customers located in Philadelphia Center City, Greencastle, Harrisburg, Levittown, New Town Square, and Swedesford. (64)

She testified that she had used the services of the Applicant for a residential move and several office moves, and the service was excellent. (65-66) Ms. Iverson has contacted several smaller household goods movers but was advised that they did not handle computer equipment. (66)

If the application is approved, Ms. Iverson would tender her traffic to the Applicant. (66-67)

She has never been contacted by nor has she ever used the services of J.C. Services, Inc. or Cristinzio. (67)

(2) Cross-Examination. Ms. Iverson had experience with Cristinzio between 1976 and 1980 when she worked at Gerard Bank. (68) Ms. Iverson was aware that Cristinzio has the

authority to move electronic equipment, but did not consider using it because she was not impressed with its services in the past. (68)

Iverson Associates has not used a PUC carrier to move computers in the past. (69) Ms. Iverson has never heard of J.C. Services and is not aware whether it has the authority to move electronic goods. (70)

Ms. Iverson's major concerns in hiring a carrier are the cost and the care of her equipment. (70) When Ms. Iverson contacted Fischer-Hughes, she was quoted a price but was told that it did not have the authority to move electronic equipment. (70) Ms. Iverson did not compare prices, but thought that the price was reasonable. (70-71) Ms. Iverson would consider getting a competitive bid from J. C. Services. (71)

C. KAREN A. HERTZOG (Bell & Howell).

(1) Direct Testimony. Karen Hertzog testified on behalf of Bell & Howell, whose facilities are located in Allentown, PA. (72) As Traffic Supervisor, Ms. Hertzog is responsible for contacting motor carriers to arrange transportation services for Bell & Howell. (72)

Bell & Howell manufactures machines which sort and stamp mail, and also machines which insert paper items (such as bills) into envelopes. (72) Bell & Howell's customers include banks, telephone companies, and any other businesses which have a need for high-volume mailing machines. (73)

A complete machine weighs approximately 10,000 pounds. (73) A machine, when broken down into ten or twelve pieces, takes up an entire truck by itself. (74) Ms. Hertzog testified that each year customers in Philadelphia, Pittsburgh and Harrisburg each receive 40,000 pounds of freight. (75, 79). Approximately 200,000 to 300,000 pounds is shipped each year from Allentown to the Applicant's Fogelsville warehouse. (79)

At the end of the month Bell & Howell ships between 20 and 40 machines, often on Friday, Saturday and Sunday in the "wee hours of the morning". (76) Shipments move to customers, riggers and warehouses. (77-79)

Bell & Howell often requires trucks as large as 48 feet long and 102 inches wide to accommodate its large machines. (77) It requires the exclusive use of its carrier's vehicles, that is, it does not want its equipment mixed with the freight of other shippers. (74)

The services of a rigger are arranged by either the customer or by Bell & Howell's salesmen. (78) While Cristinzio has been used to install Bell & Howell's equipment, Bell & Howell does not use Cristinzio to transport its equipment from the Allentown facility. (79)

Bell & Howell wants to be able to use the Applicant's service from its plant to customers, from the plant to the Fogelsville warehouse and from the warehouse to customers. (78)

(2) Cross-Examination. The Manager of Materials for Bell & Howell, authorized Ms. Hertzog to testify. (80-81)

Bell & Howell has a contract to use 5,000 square feet of the Applicant's Fogelsville warehouse. (81-82)

At the end of the month, space becomes scarce at the Bell & Howell plant and the equipment must be shipped. (82)

Shipments to riggers located within Pennsylvania are usually handled by Fischer-Hughes. Shipments going to riggers outside Pennsylvania are often handled by C.H. Robinson. (83)

Aside from the warehousing operations, approximately five percent of Bell & Howell's traffic is handled by Fischer-Hughes. (83)

Ms. Hertzog testified that she would not consider using the services of Cristinzio because she is happy with the service she has received from United Van Lines and Fischer-Hughes. (84-85) Ms. Hertzog has compared the Applicant's prices with the prices charged by other carriers. (85)

Ms. Hertzog has never heard of J. C. Services. (85) Ms. Hertzog is not aware of any contact between J. C. Services and Bell & Howell. (86)

Ms. Hertzog reiterated that between 20 and 40 machines are shipped out every month. (87)

D. LINDA ROTH (Carolinch).

(1) Direct Testimony. Linda Roth testified on behalf of Carolinch Company, located at 47 Richard Road, Ivyland, PA 18974.

Ms. Roth has been employed by Carolinch since 1974 and has been the Sales Administrator for approximately nine years. She

works with the customers to move Carolinch's product directly from Carolinch's facility to the customer's facilities. The company controls the routing of approximately one-half of its outbound shipments. (89-90)

Carolinch manufactures customized electronic equipment according to customer specifications. The systems it creates are approximately 100 feet long and range in weight from 2,000 to 12,000 pounds. (90)

Carolinch requires the exclusive use of a vehicle for each shipment as each system fills an entire truck. (90)

During 1989 the company had four shipments of systems within the state of Pennsylvania and anticipate two intrastate shipments in 1990. (91) Shipments from Ivyland move to customers in Harrisburg, Allentown, Bethlehem and Scranton. (91)

Carolinch has always required 48 foot long trailers which are 102 inches wide due to the size of its systems. One of its systems was specifically designed to fit on a 102 inch wide trailer. (92)

Carolinch requires air-ride suspension for the transportation of its equipment since it is very susceptible to damage. (92-93) Many of the machine parts are as fragile as glass and will shatter if they are twisted or dropped. The equipment is also accompanied with fragile computer coprocessors such as PC's or modules which run the equipment. (93)

Carolinch has never used the services of J.C. Services or Cristinzio, and neither company has ever solicited Carolinch's business. (92)

(2) Cross-Examination. Whether the transportation costs are paid by Carolinch or by Carolinch's customer depends on the individual contract. (93-94)

Carolinch uses the services of Fischer-Hughes both intrastate and interstate. (94)

Ms. Roth would consider using the services of Cristinzio and J. C. Services if their service is as good as Fischer-Hughes. (94-95)

E. CHERYL DORIS CARD (Insertech).

(1) Direct Testimony. Cheryl Doris Card testified on behalf of Insertech, which is located in Bedminster, Bucks County. Ms. Card has been employed by Insertech as an Administrative Assistant for over two years. (97) Ms. Card makes all transportation arrangements for the company. (97)

Insertech buys used automatic and electronic equipment, refurbishes the equipment and then resells it. (98) The equipment is purchased from manufacturing companies located all over the world. (98) The machines are very large, and weigh between 400 and 4,000 pounds. (99)

Insertech rents warehouse space from the Applicant in Doylestown and Lansdale. (99) Insertech has one or more shipments each month from its Bedminster facility to the Lansdale warehouse, and constantly has machines going in and out of the Doylestown warehouse. (100) When the machines leave the Doylestown warehouse, they move either to customers or to the Bedminster facility for refurbishing. (100)

Ms. Card had never heard of J.C. Services or Cristinzio and has never used their services. (101) Insertech has found the services of Fischer-Hughes Transport to be excellent. (101)

(2) Cross-Examination. Insertech leases from Fischer-Hughes a portion of the Lansdale warehouse. (101-102) Insertech is not required to use the transportation services of Fischer-Hughes to move equipment to the Lansdale facility. (102) Fischer-Hughes does not make any deliveries within Pennsylvania for Insertech other than to the warehouses. (103)

F. GALEN BULL (HPI Plastics, Inc.).

(1) Direct Testimony. Galen Bull testified on behalf of HPI Plastics which is located at 228 Amber Drive, Hatfield, PA 19440. (104) Mr. Bull has been employed by HPI for ten years and holds the position of Engineering Manager, Operations Manager and Traffic Manager. He arranges the inbound and outbound transportation for the company. (102)

HPI designs and manufactures plating equipment and processing equipment for the manufacturers, print circuit boards for electronic companies and defense companies. (104-105) Its customers include McDonnell Douglas, Digital Equipment, government facilities and the National Security Agency. (105) The systems are very fragile, especially in the winter time. (106-107)

Outbound shipments of finished products range in weight from 500 pounds up to a full truckload which weighs

approximately 5,000 pounds. (106) The company requires larger trailers, such as 48 foot long trailers due to the size and shape its the finished products. (106)

Outbound shipments within Pennsylvania have destinations such as Willow Grove, York, and the Delaware Water Gap near Scranton. (107) The company makes approximately four or five shipments to each of these locations each year. (107)

The company also has inbound shipments of electronic equipment and piping systems which weigh anywhere from 5,000 to 10,000 pounds. (105-106) Inbound shipments originate in the Philadelphia and Harrisburg areas. (105)

The company ships on both a less-than-truckload and truckload basis. (106) HPI requires shipments to be made on a timely basis so that installation crews are not sitting idle awaiting shipment. (108-109) Due to the fragile nature of the products shipped, HPI requires its carrier to handle the products delicately. (107, 109)

HPI is attempting to obtain other customers in the Philadelphia area such as General Electric, RCA and the Navy Government Center. (108)

HPI has used the services of Fischer-Hughes Transport for interstate movements to New England, Baltimore and Washington. (108) It has done a very good job for HPI, making pickups and deliveries on schedule. (108, 109)

(2) Cross-Examination.

HPI has used the services of Clemmer and another common carrier for moves within Pennsylvania. (110) HPI is not

satisfied with the service provided by Clemmer because of price increases, late deliveries, and damaged merchandise. (110)

HPI has not used Fischer-Hughes for intrastate movements because of the question about its operating authority. (111)

Mr. Bull would hesitate to consider using the services of Cristinzio or J. C. Services since neither company has solicited his business in the past. Furthermore, Mr. Bull wants to use the services of a proven carrier that is familiar with HPI's products and which has done a good job in the past. (110-112)

2. PROTESTANT'S TESTIMONY.

A. STEVEN MCGARY (J. C. Services, Inc.).

(1) Direct Testimony. Steven McGary testified on behalf of Protestant J. C. Services, Inc., a Pennsylvania corporation. The company is located at 3015 Darnell Road, Philadelphia, PA 19154. Mr. McGary and his wife are co-owners of the company. (138)

J. C. Services holds operating authority from the Interstate Commerce Commission and the Pennsylvania Public Utility Commission. (137) The company has ICC household goods authority for five states and ICC electronic equipment authority to serve 13 states. (137) J. C. Services holds electronic equipment authority from the PUC. (138) The authority was not offered into evidence.

The company is an agent for Bekins Van Lines. (137) As an agent, J. C. Services can use Bekins interstate authority throughout the continental United States for both electronic equipment and household goods. (138)

The company transports electronic goods within Pennsylvania for such companies as Pitney Bowes, Kodak, A.B. Dick, I-Tech, Sabin Corporation and AT&T. (140) The company operates tractors and trailers, some of which are 102 inches wide. (140) The company provides next day service and end of the month dock sweep service. (140-141)

Mr. McGary testified that his sales people have turned in reports stating that they have contacted the shipper witnesses who testified in support of the application. (141) From a list, Mr. McGary was able to identify only Bell & Howell as a company which testified in support of the application and which his representatives had contacted. (142) Mr. McGary testified that the company could perform the services required by Bell & Howell. (144)

The company has been a member of the Tristate Tariff Bureau since 1971. (144)

Mr. McGary testified that he believed the warehousemen's exemption applies to the situation where a carrier picks up a commodity from a shipper's manufacturing facility and transports it to the carrier's warehouse, and then later transports the commodity to the same shipper's warehouse or another warehouse designated by that shipper. (147) Mr. McGary testified that he does not believe that the warehousemen's exemption applies if the shipment goes from the carrier's warehouse to a customer. (148)

(2) Cross-Examination. Mr. McGary admitted that he is not certain about the application of the warehousemen's exemption.

(148) He reluctantly admitted that the definition of Class 1 and Class 2 shipments in the Tristate PUC Tariff 50 (P-3) is equivalent to the definition of first proviso and second proviso shipments in the Household Goods Carrier's Bureau ICC Tariff 400-F. (P-1) (148-150)

J. C. Services has been an agent of Bekins Van Lines since March of 1990. (150-151) Mr. McGary did not know whether Bekins has specific interstate authority to handle electronic equipment or whether Bekins' authority to do so is under an interpretation of the third proviso of Bekins household goods authority issued by the ICC. (151)

J. C. Services has two trailers which are 48 feet long and 102 inches wide. (152)

Mr. McGary had no evidence of the company's ability to provide next day delivery service nor did he have a salesman's report, letters, or notes of telephone calls evidencing his company's solicitation of Bell & Howell. (152, 154)

Mr. McGary testified that his salesmen contacted Karen Herzoq of Bell & Howell three or four times over the last year and as recently as two months ago. (153)

(3) Redirect Examination. Mr. McGary explained that the reason why J. C. Services has not utilized Bekins interstate electronic equipment authority is because J. C. Services has its own ICC authority for electronic equipment. (154)

Mr. McGary testified that he has lease arrangements with companies who have available tractor trailers which are 40 feet long and 102 inches wide. (155)

B. RUSSELL P. TADDEI (Dominic Cristinzio, Inc.).

(1) Direct Testimony. Russell P. Taddei testified on behalf of Dominic Christinzio, Incorporated, a Pennsylvania corporation located at 1700 Thomlinson Road, Philadelphia, PA. (157-158)

The company transports electronic equipment and household goods, both interstate and intrastate. It also has PUC authority to transport household goods and electronic equipment. (157) The authority was not offered into evidence.

The company's facilities consist of an 85,000 square foot building with ten back-up bays and approximately 5,000 square feet of office space. (158)

It operates 12 tractors, 18 trailers, straight trucks and packing vans. Five of the trailers are 48 feet by 102 inches, and some of the equipment is equipped with air-ride suspension. (159)

The company has between 75 and 80 employees spread between its Pennsylvania and New Jersey facilities. (159)

Although the company advertises in the phone book and has sales staff, the company facilities and equipment are not being fully utilized. (160)

Christinzio presently does work for Bell and Howell making inside deliveries of Bell and Howell's larger and hard to handle items. (160-161) Mr. Taddei described this service as including rigging as well as normal inside deliveries. (160)

With regard to Ms. Iverson's statement that she was not impressed with Christinzio's past services, Mr. Taddei explained

that Gerard Bank is the successor to Mellon Bank and that Christinzio provided delivery and installation service for Mellon ATM machines. (162) Mr. Christinzio testified that his employees who dealt with Gerard and Mellon did not recall ever dealing with a Ms. Iverson. (162)

Mr. Taddei testified that he has never been confused about the rights of a household goods carrier to transport electronic equipment. Mr. Taddei testified that the phrase "specialized equipment and handling" authorizes the transportation of electronic equipment. (163)

C. NORMAN CLEMMER (Clemmer Moving & Storage).

(1) Direct Testimony. Mr. Clemmer is the President of Clemmer Moving & Storage. The company failed to file a timely protest to this application. (164) Mr. Clemmer's testimony was accepted for the limited purpose of contradicting certain testimony presented by the Applicant. (168)

With regard to Galen Bull's testimony that Clemmer increased the price of transportation for HPI Plastics, Mr. Clemmer testified that there was a tariff increase about the time he lost HPI as a customer. (169-170) The loss of HPI Plastics as a customer also coincided with the movement of one of Mr. Clemmer's salesmen to Fischer-Hughes. (171)

Mr. Clemmer is not aware of any complaints from HPI regarding damaged merchandise or late deliveries. (171) Mr. Clemmer did not know whether or not his company had damaged any of HPI Plastics merchandise or made late deliveries for HPI Plastics. (172)

Mr. Clemmer was a director of the Pennsylvania Moving & Storage Association in May of 1986 when that association sent a letter to its members regarding the PUC's holding that electronic equipment carriage requires separate rights. (174) Mr. Clemmer stated he believed that the Applicant was a member of the Association at that time. (174)

(2) Cross-Examination. Mr. Clemmer clarified that he does not know for certain whether or not Fischer-Hughes was a member of the Pennsylvania Moving & Storage Association in May of 1986. Mr. Clemmer was not personally involved in the actual sending of the May 15, 1986 letter. (175)

IV. ARGUMENT

1. THE APPLICATION IS GOVERNED BY THE STANDARDS SET FORTH IN THE TRANSPORTATION REGULATORY POLICY AS FURTHER DEFINED BY THE BLUE BIRD CASE.

This application, in seeking motor common carrier authority, is governed by the following standards set forth in the Transportation Regulatory Policy, 52 Pa. Code, §41.14:

§41.14. Evidentiary criteria used to decide motor common carrier applications.

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest.

In Application of Blue Bird Coach Lines, Inc., Docket No. A-00088807, F. 2, Am-K (entered April 27, 1990), the Commission explained in some detail the intent, purpose and application of the above standards. On the basis of the evidence presented by the Applicant and supporting shippers, as summarized in the preceding section of this Brief, and which will be reviewed below with respect to the various issues involved in this

proceeding, Applicant submits that it has met its burden of proof and that this application should be granted in its entirety.

2. APPLICANT HAS DEMONSTRATED THAT THERE IS A PUBLIC DEMAND/NEED FOR ITS PROPOSED SERVICE.

A. The Evidence Must Be Evaluated in the Overall Context of the Proceeding.

In applying the above-mentioned standards, the Commission must take into consideration the nature of the application, its purpose and the limited segment of the public to be served. This application does not request broad new commodity and/or territorial authority unrelated to the Applicant's current operations. In fact, it does not request any territorial expansion of its present authority since the geographical scope is identical to that set forth in the Applicant's present authority at paragraph 5 of its Folder 1 certificate and paragraphs 1 and 2 of its Folder 1, Am-A certificate. (A-1) Nor does it request the right to transport commodities which are unrelated to its present intrastate and interstate operations. On the contrary, Fischer-Hughes is presently authorized to transport all of the involved commodities in the following situations:

(1) Between points in Pennsylvania in its present authorized territory when the commodities are part of a residential relocation (the so-called first proviso movements).

(2) Between points in Pennsylvania in its present authorized territory when the commodities are part of a business relocation (the so-called second proviso movements).

(3) Between points in Pennsylvania without regard to any territorial limitations when the commodities are transported pursuant to the warehousemen's exemption.

(4) Between points in the eastern half of the United States under its interstate operating authority when the commodities are part of a first or second proviso movement or when because of their unusual nature or value they require specialized handling and equipment usually employed in moving household goods (the so-called third proviso movements). (A-3)

(5) Between all points in the United States as an agent of United Van Lines under the latter's interstate operating authority when the commodities are part of a first, second or third proviso movement.

In one way or another, Fischer-Hughes is currently able to transport electronic equipment in a number of different circumstances. The purpose of this application is simply to enable Fischer-Hughes to provide its customers with a complete service by permitting it to transport electronic equipment within its present authorized territory in Pennsylvania with respect to third proviso type shipments. A grant of such limited authority will eliminate any confusion caused by the different interpretations of household goods authority by this Commission and the Interstate Commerce Commission, will be of

benefit to the shipping public and will in no way have any adverse impact on the interests of other common carriers including the Protestants.

In considering this application in its proper context, the Commission should also take into consideration several other factors. First, this is a household goods type application for which it has historically been difficult to obtain supporting evidence. The Commission has traditionally recognized that inherent difficulty in these types of application cases. Second, the difficulty is somewhat more pronounced in this proceeding since only a limited category of commodities is involved and the limited segment of the public which ships or receives such commodities has had the services of household goods carriers available in the past and is not fully conversant with the Commission's decisions nor the legal issues which have given rise to the filing of this application. Under those circumstances, the ability to attract a host of supporting witnesses has been impeded.

Third, the Commission has during the last several years granted numerous similar applications filed by other household goods carriers which have likewise been under the impression that the third proviso of their intrastate broad-form household goods authority authorized the transportation of electronic equipment within the existing territorial confines of their operating rights. Attached hereto as Appendix A is a list of such applications personally handled by the undersigned. The

Commission is requested to take official notice of the decisions in each of these cases as public documents pursuant to 52 Pa. Code §5.406. With very few exceptions, each of the applicants presented evidence of shipments of electronic equipment that they had transported under the belief that such transportation was permitted under the third proviso of their household goods operating authority.

B. The Supporting Shippers Have Demonstrated a Public Demand/Need For the Proposed Service.

The supporting shippers ship and/or receive a variety of commodities which come within the broad definition of electronic equipment and other business machines and equipment which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods. Those commodities include micro and mini-computers (58-59), machines which sort and stamp mail and insert documents into envelopes (72), customized electronic equipment which ranges up to 100 feet in length and some of which has been designed to fit on a 102 inch wide, 48 foot long trailer (90, 92), automatic and electronic equipment (98), and plating equipment, processing equipment and print circuit boards used by electronic and defense companies (104-105).

Within the geographical scope of the application, the shippers have various movements of electronic equipment. For example, Iverson Associates is a sub-contractor for IBM and

anticipates working with IBM under a five-year contract with the city of Philadelphia to upgrade the computer systems throughout the city's municipal offices. Those shipments will move from the Bala Cynwyd office of Iverson to points in Philadelphia. Other customers are located in Greencastle, Harrisburg, Levittown, New Town Square and Swedesburg. (59-60, 54)

Bell & Howell provides its machines to banks, telephone companies and many other business that have a need for high-volume mailing machines. (73) Each year it ships about 40,000 pounds from Allentown to its customers in Philadelphia, Pittsburgh and Harrisburg. (75, 79) It also ships about 200,000 to 300,000 pounds a year from its Allentown facility to the Applicant's Fogelsville warehouse, often requiring the movement of between 20 and 40 machines on the last couple of days each month, particularly Friday, Saturday and Sunday. (76, 79)

Carolinch requires the exclusive use of vehicles to transport its electronic systems from its Ivyland facility to customers in such points as Harrisburg, Allentown, Bethlehem and Scranton. (90-91) Insertech has one or more shipments each month moving from its Bedminster manufacturing facility to a Lansdale warehouse, and has continual movements in and out of the Applicant's Doylestown warehouse. There are also movements from the Doylestown warehouse direct to customers, which are not covered by the warehousemen's exemption, or back to the

Bedminster facility. (100) HPI Plastics receives inbound shipments weighing between 5,000 and 10,000 pounds at its Hatfield facility from suppliers in the Philadelphia and Harrisburg areas. (105-106) Its customers include major government facilities and defense contractors and shipments are made to such points as Willow Grove, York and the Delaware Water Gap near Scranton. (104-105, 107)

In addition to the fact that the shippers have a need to move the involved commodities within the scope of the application, they also have certain other service requirements which are provided by household goods carriers such as Fischer-Hughes. Their commodities are in most instances very fragile and easily susceptible to damage. For example, Carolinch manufactures customized electronic equipment in which many of the machine parts are as fragile as glass. The electronic equipment is shipped along with fragile computer coprocessors such as PC's and therefore an air-ride suspension system in the vehicle is necessary. (90, 92-93) Similarly, HPI Plastics manufactures easily damaged plating and processing equipment. (104-107, 109)

Applicant submits that the shippers have demonstrated a need for the proposed service and that Fischer-Hughes has therefore met the first part of its burden of proof.

3. APPLICANT HAS THE TECHNICAL EXPERTISE AND FINANCIAL CAPACITY TO PROVIDE THE PROPOSED SERVICE.

As a motor carrier of household goods, both under its own authority and as an agent for United Van Lines, Fischer-Hughes has had a great deal of experience in transporting electronic equipment and other types of commodities that require special handling and equipment. (A-1 and A-3) (5-10, 13-14) It has transported the involved commodities on an interstate basis for many companies including four of the supporting shippers, namely, Iverson Associates, HPI Plastics, Bell & Howell and Insertech. (6)

It operates a substantial fleet of equipment including 15 trailers which are especially suited to the transportation of these types of commodities. Those trailers are equipped with power lift gates, side doors at strategic points to facilitate loading and unloading, drop frames to accommodate extra large components, air-ride suspension systems to provide smoother rides and reduce the possibility of damage, and E-track system that allows the electronic equipment to be strapped into place to avoid shifting during transit, and all types of accessorial equipment such as jacks, dollies, stair crawlers, roller lifts and hand trucks. (17-21) It also operates several 48 foot long trailers which are 102 inches wide that can handle larger loads or components of electronic equipment. (18-19) That type of equipment is particularly important since Bell & Howell

has certain large machines that require this size equipment (77) and Carolinch has designed several of its electronic systems specifically to be dismantled and fit on a 102 inch wide trailer. (92)

Within its eastern Pennsylvania operating territory, Fischer-Hughes has two warehouse facilities in Doylestown and Fogelsville. These are fully equipped warehouses which are available for temporary storage by the shippers. They are equipped with protective devices as well as steel shelf racking systems. (10-11)

The Applicant makes its service available routinely six days a week during normal business hours and on a seven day per week, 24 hour per day basis if necessary. During the end of month sweep conducted by several of the supporting shippers in order to clear their own facilities of excess inventory, Fischer-Hughes provides this around-the-clock service. (11, 28, 76, 99-100) Within Pennsylvania, same day or next day delivery service is provided. (20) Fischer-Hughes also provides inside pickup and delivery including set up and installation of the business machines when necessary. (29)

Fischer-Hughes is financially capable of providing this service. As of September 30, 1990, it has a stockholder's equity of \$427,395 and its current assets far exceeded its current liabilities. For the six-month period ending September 30, 1990, it had a net income of \$130,694.

Clearly, Fischer-Hughes is financially able to provide this service and has the necessary experience, facilities and equipment to do so.

4. THERE IS NO EVIDENCE TO SUGGEST THAT THE APPLICANT LACKS A PROPENSITY TO OPERATE LEGALLY.

Applicant anticipates that Protestants will attempt to convince the Commission that it is unfit to receive a grant of authority in this proceeding because it transported approximately ten shipments during the pendency of the application that may have been beyond the scope of its present authority. The initial response is that for a carrier that does approximately \$4 million in gross revenue a year, ten wayward shipments that produced \$3,388.50 in revenue is de minimis. (119-120) While such operations, if unauthorized, are not to be condoned, they nevertheless do not indicate a flagrant disregard for the Commission's regulations and jurisdiction.

But in this case there are other extenuating circumstances which diminish the impact of any unauthorized operations. There is considerable testimony by the Applicant's President that Fischer-Hughes was under the impression that under the third part or proviso of its operating authority it had the right to transport the types of commodities involved in this application. That was caused in part by the fact that the Interstate Commerce Commission and the Pennsylvania Public Utility Commission have not adopted consistent interpretations of operating authorities which are virtually identical in language. There is consistency in the interpretation of the first and second proviso traffic but a divergence with respect to third proviso traffic. (53)

The ICC has since the earliest days of transportation recognized the right of a household goods motor carrier to transport the involved types of commodities if because of their unusual nature or value they require specialized handling and equipment usually involved in moving household goods. See, for example, Interstate Commerce Commission v. United Van Lines, Inc., 110 F.Supp. 273, 274-276 (E.D.Mo.); Neptune Storage, Inc., Extension--Tabulating Machines, 67 M.C.C. 319, 327-330 (1956); Neptune Storage, Inc., Extension--X-Ray Machines, 88 M.C.C. 25, 31-32 (1961); and Modification of Part 1056 General Rules & Regulations of Motor Carriers of Household Goods, 113 M.C.C. 687, 698-703, 709-710 (1971).

When virtually identical operating authorities are interpreted differently by the two Commissions, it is understandable that there might be some legitimate misunderstanding on the part of the carrier holding the operating authority. This is particularly true when the motor carrier can transport those same commodities under its intrastate authority when the traffic fits within the first or second proviso categories, or when the same commodities can be transported without operating authority under the warehousemen's exemption. We submit that Fischer-Hughes was not alone in its possible misconception of the rules in view of the fact that at least 23 other motor carriers of household goods filed applications and received grants of authority from this Commission during the last several years to transport the

same commodities based on the same misunderstanding of their operating authorities. (See Appendix A hereto)

It is interesting to note that the witness for Cristinzio appears to share Fischer-Hughes' interpretation of the third proviso authority. On direct examination by its own counsel, when asked about the interpretation of the broad form household goods authority, the following exchange took place (163):

- Q. And this phrase, specialized equipment and handling, does that authorize electronic carriage?
- A. Yes, computers, copiers, duplicators. There is terminology that includes about 15 categories and types of equipment which are listed in that classification.

Finally, innocent misunderstandings of the proper interpretation of operating authorities and/or exemptions can occur even though the carrier has the best of intentions. During this proceeding, the recognized warehousemen's exemption was the focus of attention several times. The witness for J.C. Services on direct examination was asked by its counsel for his understanding of the warehousemen's exemption. The response was as follows (147):

- Q. Mr. McGary, do you have any understanding with regard to the warehousemen's exemption?
- A. I believe I understand it.
- Q. What's your understanding of the warehousemen's exemption?
- A. I believe if you pick up a commodity from a shipper's manufacturing facility and bring it in to your warehouse, it is exempt presuming it goes from your warehouse back to the same shipper's warehouse or another warehouse designated by that shipper.

Mr. McGary later acknowledged that he was not absolutely certain that his interpretation of the warehousemen's exemption was accurate. (148) In fact, he misstated the nature of the exemption. In Harry N. Nicklaus and Albert P. Nicklaus, Copartners, t/d/b/a Nicklaus Transfer & Storage Co., Docket No. 83345, F. 1, Am-A (February 8, 1971), the Commission made its definitive interpretation of the warehousemen's exemption. The exemption permits a warehousemen/carrier, without PUC operating authority, to transport property for its warehouse customer from the customer's facilities to the warehouse, or from the warehouse back to the customer's home or place of business. But it cannot transport property from the warehouse to a customer of the warehouse customer. Mr. McGary's error was in linking an inbound move to the warehouse with an outbound move from the warehouse in order to have the exemption apply. While the warehousemen's exemption is not directly involved in this proceeding except to the extent that the Applicant can already transport these commodities under certain circumstances, this testimony nevertheless points out clearly that legitimate misunderstandings are possible which do not indicate a flagrant disregard for the jurisdiction or regulations of the Commission.

We submit that in this instance Fischer-Hughes, if it indeed transported the ten shipments without appropriate authority, that it did so on the basis of a good faith misunderstanding of the scope of its present authority. In accordance with numerous Commission and court decisions, it

should therefore not be penalized for such inadvertent errors by means of denial of this application.

5. APPROVAL OF THIS APPLICATION WILL NOT HAVE ANY ADVERSE EFFECT ON PROTESTANTS.

Neither protestant produced any evidence that it is presently participating in the traffic of any of the supporting shippers or that they are even transporting any of the involved commodities within the scope of this application. Absent such evidence, there is no basis for concluding that approval of this application would endanger or impair their operations or those of any other carriers. On balance, approval of this application will work to the advantage of the shipping public and the Applicant without in any way interfering with the interests of the Protestants.

V. CONCLUSION

For the reasons set forth herein, we respectfully request that the Administrative Law Judge make findings in accordance with the argument and conclude that the application should be granted in its entirety.

Respectfully submitted,

VUONO, LAVELLE & GRAY

By:

William J. Lavelle
WILLIAM J. LAVELLE, ESQ.

Attorney for
FISCHER-HUGHES TRANSPORT, INC.
Applicant

VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Due Date: January 8, 1990

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Main Brief of Fischer-Hughes Transport, Inc. in Support of the Application upon all parties of record in connection with the Commission's Rules of Practice.

Dated at Pittsburgh, PA this 8th day of January, 1991.

William J. Lavelle
William J. Lavelle

APPENDIX A

ELECTRONIC EQUIPMENT APPLICATIONS
PREVIOUSLY APPROVED BY THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

<u>Name of Carrier</u>	<u>Docket Number</u>
B. F. Fields, Inc. t/d/b/a B. F. Fields Moving & Storage	A-00097902, F. 1, Am-B
Robinson-Ogilvie Moving & Storage, Inc.	A-00101422, F. 1, Am-B
O'Rourke Storage & Transfer	A-00090524, F. 2, Am-A
B. H. Stumpf Co., Inc.	A-00105669, F. 1, Am-A
JoAnne Moore, t/d/b/a Anderson Transfer	A-00099645, F. 1, Am-B
Forest Hills Transfer & Storage, Inc.	A-00088631, F. 2, Am-D
Parks Moving & Storage, Inc.	A-00097208, F. 1, Am-M
Weleski Transfer, Inc.	A-00096502, F. 1, Am-D
Tosh Moving & Storage, Inc.	A-00098380, F. 1, Am-B
Vesely Bros. Moving & Storage, Inc.	A-00102958, F. 1, Am-B
Century III Services, Inc.	A-00094528, F. 1, Am-A
Campbell Transfer & Storage Co.	A-00099334, F. 1, Am-B
McNaughton Bros., Inc.	A-00082096, F. 2, Am-N
Snyder Brothers Moving, Inc., t/d/b/a George Transportation	A-00086452, F. 2, Am-C
Werner-Donaldson Moving Services, Inc.	A-00105287, F. 1, Am-A
Parks Moving Systems, Inc.	A-00104390, F. 1, Am-A
Parks Van & Storage, Inc.	A-00103329, F. 1, Am-A
Best Moving & Storage Co.	A-00107776, F. 1, Am-A
Fife Moving & Storage Co.	A-00094528, F. 1, Am-A
J. H. Bennett Storage & Carting	A-00101944, F. 1, Am-A
Leelease, Inc.	A-00107868, F. 1, Am-A
South Hills Movers, Inc.	A-00099073, F. 2, Am-B
Robert R. Kennedy and Lois J. Kennedy t/d/b/a Kennedy Transfer	A-00089629, F. 1, Am-K



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

January 10, 1991

IN REPLY PLEASE
REFER TO OUR FILE

A-00103976, F. 1,
Am-B

William H. R. Casey
Attorney At Law
99 East Court Street
Doylestown, PA. 18901

BTL

RE: Application of Fischer-Hughes Transport, Inc.

Dear Mr. Casey:

Please be advised that we have received the Original and two copies of the Brief of Protestant.

However, an Original and eight copies are required to be filed.

Upon receipt of the above, filed as requested, same will receive our immediate attention.

Very truly yours,

for Jerry Rich, Secretary

JEP/tw
Enclosure(s)

DOCKETED

JAN 17 1991

BTI

LAW OFFICES

VUONO, LAVELLE & GRAY

2310 GRANT BUILDING

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ORIGINAL 412-471-1800

January 25, 1991

TELECOPIER
(412) 471-4477

*ALSO MEMBER OF FLORIDA BAR

RECEIVED

JAN 25 1991

SECRETARY'S OFFICE
Public Utility Commission

Re: Fischer-Hughes Transport, Inc.
Docket No. A-00103976, F. 1, Am-B
Our File 3582-1

MAILED WITH U.S. POSTAL SERVICE
CERTIFICATE OF MAILING FORM 3817

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
P. O. Box 3265
Harrisburg, PA 17120

Dear Mr. Rich:

We enclose for filing with the Commission the original and nine copies of Reply Brief of Fischer-Hughes Transport, Inc. in support of the Application.

Copies of the Reply Brief have been served on all parties of record.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to us in the self-addressed, stamped envelope provided for that purpose.

Sincerely yours,

VUONO, LAVELLE & GRAY

William J. Lavelle
William J. Lavelle

pz

Enclosure

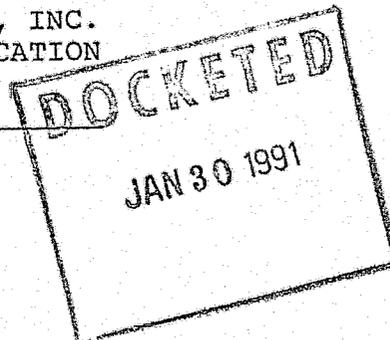
cc: Honorable Herbert Smolen, Administrative Law Judge
(w/Certificate of Mailing)
William H. R. Casey, Esquire (w/Certificate of Mailing)
Scott A. Petri, Esquire (w/Certificate of Mailing)
Fischer-Hughes Transport, Inc.

BEFORE THE
Pennsylvania Public Utility Commission

DOCKET NO. A-00103976, F. 1, Am-B

APPLICATION OF
FISCHER-HUGHES TRANSPORT, INC.

REPLY BRIEF OF
FISCHER-HUGHES TRANSPORT, INC.
IN SUPPORT OF THE APPLICATION



WILLIAM J. LAVELLE, ESQ.
PETER J. SCANLON, ESQ.
Attorneys for
FISCHER-HUGHES TRANSPORT, INC.
Applicant

Of Counsel:
VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, Pennsylvania 15219

Due Date: January 25, 1991

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00103976, F. 1, Am-B

APPLICATION OF
FISCHER-HUGHES TRANSPORT, INC.

REPLY BRIEF OF
FISCHER-HUGHES TRANSPORT, INC.
IN SUPPORT OF THE APPLICATION

I. STATEMENT OF THE CASE

By application published in the Pennsylvania Bulletin on October 28, 1989, Fischer-Hughes Transport, Inc. (Fischer-Hughes or Applicant) seeks motor common carrier authority as follows:

To transport, as a Class D carrier, tabulating machines; calculating machines; computers; copying machines; electronic equipment; and other business machines and equipment, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods; and parts, materials and supplies used in connection therewith,

- (1) Between points in the borough of Doylestown, Bucks County, and within an airline distance of ten (10) statute miles of said borough, and from points in the said borough and territory to points within fifty (50) miles by the usually traveled highways of the limits of said borough and vice versa; and
- (2) Between points in the counties of Philadelphia, Delaware, Chester, Montgomery and Bucks, included within a line which connects the municipal boundaries of Chester, West Chester, Paoli, Norristown, Doylestown and Morrisville, but not including said places, to other points in Pennsylvania and vice versa.

Protests were filed to the application by J.C. Services, Inc. (J.C. Services) and D. Cristinzio, Inc. (Cristinzio) (herein jointly called Protestants). The application was assigned to Administrative Law Judge Herbert Smolen. A pre-hearing conference was held in Philadelphia on June 7, 1990. Subsequently, a hearing was held in Philadelphia on November 13 and 14, 1990.

Main Briefs were submitted by the parties on January 8, 1991. This Reply Brief is now being submitted on behalf of the Applicant, Fischer-Hughes Transport, Inc.

II. ARGUMENT

The Protestants in their Main Briefs contend that the Applicant has knowingly violated the terms of the operating authority issued to it by this Commission and that the application should therefore be denied. They also argue that the testimony of the supporting shippers does not prove a need exists for the proposed service.

Applicant submits that the minimal number of shipments that may have been handled without authority were due to a bona fide misunderstanding by Applicant of its existing authority. Any unauthorized shipments handled during the pendency of this application were the result of inadvertent error and confusion among the Applicant's employees. Furthermore, the shippers have established that a need exists for the service.

1. APPLICANT HAS NOT OPERATED IN WILLFUL DISREGARD OF THE LAW.

At page 8 of its Main Brief, J.C. Services states that the Applicant was advised by the Pennsylvania Moving and Storage Association (the Association) in May of 1986 that household goods authority does not include the right to move electronic equipment. In support of that proposition it cites the testimony of Norman Clemmer. The testimony selected by J.C. Services fails, however, to tell the whole story. In the immediately following cross-examination, Mr. Clemmer demonstrated that he did not know whether or not the Applicant

had received the Association's correspondence. His full testimony on this point was as follows (174-175)*:

Q. Was the Applicant a member of the association at that time?

A. I believe so.

Q. And this letter clarifies that you require separate rights for that kind of carriage?

A. Yes. There was an issue that came up at that time before the Pennsylvania Moving & Storage Association as to the PUC's ruling on it, and the Pennsylvania Moving & Storage Association went to Harrisburg to get a clarification and this was the clarification which was sent out to all members of the association.

Q. And as a director did you participate in that decision to disseminate that information to all the carriers?

A. Yes.

MR. CASEY: No further questions. I would offer P-4.

CROSS-EXAMINATION

BY MR LAVELLE:

Q. Mr. Clemmer, do you know as a matter of your own personal knowledge whether or not Fischer-Hughes was a member of the association on May 15, 1986?

A. I can't say exactly without going back into the records.

Q. You did not personally make the filings to members? That was done by some administrative or clerical person?

A. Executive director.

Q. You were involved in the decision to send such a letter but the physical sending of it was not your function?

A. No. That's true.

*Numbers in parentheses preceded by "A" refer to Applicant's exhibits; and numbers in parentheses preceded by "P" refer to Protestants' exhibits. All other numbers in parentheses refer to pages of the transcript.

Thus, the record does not establish that the Applicant received the May, 1986 mailing of the Association. In fact, the record demonstrates that the Applicant had never seen the Association's correspondence prior to the hearing. When Mr. Hughes was presented with Exhibit P-4, the following exchange took place (131-132):

Q. I'm going to show you a document which has been marked as Protestant's Exhibit P-4.

Looking at Exhibit P-4, can you tell us have you ever received that document?

A. Not to my knowledge. (131, lines 19-23)

* * * *

Q. And it reports two decisions, being Bekins and being the case of J.C. Services, Inc. versus Centurion Transport, Inc.

A. I've never seen these before. But that seems to be what it is.

Q. Since that document, the first cover page of that document is addressed to all members of that association would you presume that you received it?

A. I can't say with any certainty that I received it. I have never read this myself. Perhaps my office received it. I don't know. But I've never read it.

At page 6 of J.C. Service's Main Brief, it again selectively quotes from the record, leaving out pertinent redirect testimony. J.C. Services quotes the following (51):

Q. There is nothing in the current PUC authority that Fischer-Hughes has that would give you the authority to move electronic goods intrastate?

A. No.

The Protestant chose to omit the immediately following clarification of the above exchange (52-53):

FURTHER REDIRECT EXAMINATION

BY MR. LAVELLE:

Q. Sir, look at paragraph number five, authority on exhibit one.

A. Yes.

Q. Under the first proviso, is there any other situation under which you can transport electronic equipment?

A. Yes, there is.

Q. Explain that?

A. Part of the relocation of a commercial establishment, store, office, museum, institution, hospital etc.

Q. Stay with proviso one.

A. Proviso one is part of a residential movement. Certainly this type of equipment could be part of that.

Q. Under proviso two, can you transport under any circumstances electronic equipment?

A. Unquestionably as part of any relocation of a commercial establishment, we can transport that equipment. Additionally, I believe that --

Q. Let me ask you a question under proviso three, do you believe that the transportation of electronic equipment was covered by the description, "Articles requiring specialized handling and equipment usually employed in moving household goods."

A. Yes, I do.

Applicant submits that carefully selected questions and answers do not convey an accurate representation of the testimony. They must all be considered in their full context and in the context of the entire case as described at pages 28-31 and 36-40 of Applicant's Main Brief.

Contrary to Protestants' position, the Applicant did not knowingly disregard the terms of its authority. Rather, the

Applicant transported perhaps ten shipments of electronic equipment based on a bona fide misinterpretation of its authority.

Cristinzio alleges at page 7 of its Main Brief that the Applicant continues to provide unauthorized service. On the contrary, Mr. Hughes testified that he had previously attempted to discontinue any handling of unauthorized shipments by informing his employees (49) and its customers (122) of the possible problem. Mr. Hughes was not actually aware that any unauthorized shipments had been handled until he reviewed his files in preparation for the hearing. (44-45) He candidly advised the Commission of such operations. (A-5)(25-26) He also testified that he would instruct again that no questionable shipments be handled until this application case is decided. (44-45)

Admittedly, prior to the hearing a salesman for the Applicant had discussions with Carolinch regarding a possible intrastate shipment of electronic equipment. (94) However, the contact was made by the salesman with Carolinch prior to the hearing and in view of Mr. Hughes' testimony there is no evidence that the shipment was handled by Applicant.

2. THE TESTIMONY OF THE APPLICANT AND THE SUPPORTING SHIPPERS
DEMONSTRATES THAT A NEED EXISTS FOR APPLICANT'S PROPOSED
SERVICE.

Protestants argue that the Applicant failed to demonstrate a need for the proposed service. At page 9 of its Main Brief

Cristinzio argues that the testimony of three of the Applicant's supporting shippers cannot be considered because they testified that they utilized Applicant's unauthorized service.

Cristinzio is apparently referring to Bell & Howell, Carolinch and HPI Plastics. However, a review of the testimony of Mr. Bold reveals that HPI Plastics never used the Applicant's services for intrastate shipments. (110-111) Thus, only two of the supporting shippers utilized the services of the Applicant. Furthermore, any unauthorized service was not rendered in bad faith, but rather resulted from the misinterpretation of the authority and the confusion caused by the differing interpretations of third proviso authority by the Pennsylvania Public Utility Commission and the Interstate Commerce Commission. (See pages 36-40 of Applicant's Main Brief)

Applicant fully recognizes that evidence of allegedly unlawful operations cannot be used to support an application for new authority unless the violation is based on a bona fide misunderstanding of the authority it holds or the service it is providing. In an early leading case dealing with this issue, the Superior Court of Pennsylvania stated in Lancaster Transportation Company, 181 Pa.Super. 129, 124 A.2d 380, 385 (Super.Ct., 1956):

The mere fact of prior operation without commission approval, is not per se equivalent to an offense which will prohibit absolutely the acquisition of proper authority when application is subsequently made. The distinction between those violations which are prohibitive and those which will

be accepted as competent evidence is, to a large degree, dependent upon the existence of good faith. If the violation is the result of a bona fide misunderstanding of the service authorized by the commission, there is no substantial basis, either legally or morally, to object to its use in a certification proceeding. [Cases omitted] On the other hand, where the violation is one resulting from a deliberate disregard of the certificate limitations or the law, then, of course, the wrongdoer should not profit from his own deliberate wrong.

The Lancaster case has been cited frequently by the courts and the Commission for the proposition that unauthorized operations do not, per se, prohibit the use of such operations nor the testimony of shippers who have been so served from being considered as evidence of need, provided there is some good faith reason why the Applicant engaged in such service.

Applicant submits that all of the factors summarized above and in its Main Brief weigh heavily in favor of a finding that Applicant has performed this service in good faith and that all of the evidence presented should be considered by the Commission in determining whether or not a need for this service continues to exist.

In each case which the Lancaster principle was used to exclude testimony, there was strong evidence indicating a lack of good faith on the part of the Applicant. For example, in D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 397 Pa. 246, 154 A.2d 505, 509 (1959), the Supreme Court of Pennsylvania found that "The record clearly and unmistakably demonstrates that Young operated its transportation service either with a definite knowledge of its lack of authority or with a complete

indifference to the extent of its authority - in either event an attitude of deliberate defiance of the law".

Similar application of the Lancaster principle has been made in Mobilfone of Northeastern Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 397 A.2d 35 (A. Cmwlt. 1979); Dutch Land, Inc. v. Commonwealth, Public Utility Commission, 337 A.2d 922 (Pa. Cmwlt. 1975); and Johnstown-Pittsburgh Express, Inc. v. Pennsylvania Public Utility Commission, 5 Pa. Cmwlt. 521, 291 A.2d 545 (Pa. Cmwlt. 1972). In the Johnstown-Pittsburgh case, the applicant requested authority to serve a portion of Pennsylvania which it had previously served unlawfully under a strained interpretation of its authority prior to the Commission clarifying the interpretation in a complaint proceeding. The court upheld the Commission's reliance on evidence of the unlawfully transported traffic on the ground that the movements by the applicant were undertaken in good faith. In so concluding, the Court stated (291 A.2d 548):

. . . movements made in wilful violation of authority may not be considered by the Commission as evidence of need. [Cases omitted.] However, movements made in good faith, although illegal, may support a grant of rights . . .

Applicant submits that all of the electronic equipment service it has provided to date has been based on a good faith misunderstanding of its present operating authority. The evidence of past traffic handled and the testimony of all of the supporting shippers should be considered as evidence of need

since the movements were not made in willful violation of the law or the Commission's regulations.

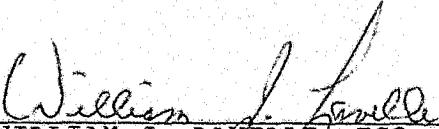
While the proposed shipments make up a small portion of the Applicant's business, the authority to make such shipments is integral to the Applicant's ability to provide efficient service to its customers. In light of the Applicant's authority to transport electronic equipment on an interstate basis, and on an intrastate basis under the warehousemen's exemption and as part of commercial and residential moves, approval of this application is a logical extension of the Applicant's authority. The testimony of the shippers and the few shipments transported show that there is a need for this service. Approval of the application under the circumstances will not send the wrong message to the trucking industry nor will it in any way harm the Protestants or be contrary to the public interests.

III. CONCLUSION

Based on the foregoing, we respectfully request that the Administrative Law Judge conclude that the application should be granted in its entirety.

Respectfully submitted,
VUONO, LAVELLE & GRAY

By:



WILLIAM J. LAVELLE, ESQ.
PETER J. SCANLON, ESQ.
Attorneys for
FISCHER-HUGHES TRANSPORT, INC.
Applicant

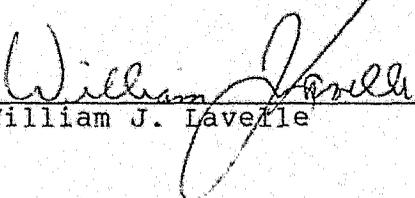
VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Due Date: January 25, 1991

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Reply Brief of Fischer-Hughes Transport, Inc. in support of the Application upon all parties of record in accordance with the Commission's Rules of Practice.

Dated at Pittsburgh, PA this 25th day of January, 1991.



William J. Lavelle

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ORIGINAL

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BTL

January 25, 1991

RECEIVED

JAN 28 1991

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Commonwealth of Pennsylvania
PA PUBLIC UTILITY COMMISSION
P.O. Box 3265
Harrisburg, PA 17120

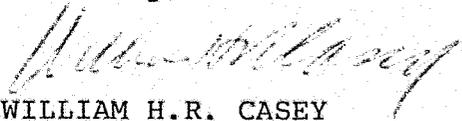
RE: Application of Fischer-Hughes Transport, Inc.
A-00103976, F001, Am-B

Dear Secretary Rich:

Enclosed please find an original and nine (9) copies of the Brief of Protestant, Domenic Cristinzio, Inc., in the above-captioned matter.

Thank you for your attention in this matter.

Sincerely,


WILLIAM H.R. CASEY

WHRC:tf

cc: Scott A. Petri, Esquire
William J. Lavelle, Esquire
Administrative Law Judge Smolen
Russell Taddei, Domenic Cristinzio, Inc.

Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF : DOCKET NO.
FISCHER-HUGHES TRANSPORT, INC. : A-00103976, F001, Am-B

RECEIVED
JAN 28 1991
SECRETARY'S OFFICE
Public Utility Commission

RECEIVED
JAN 28 1991
SECRETARY'S OFFICE
Public Utility Commission

REPLY BRIEF OF PROTESTANT
DOMENIC CRISTINZIO, INC.

DOCKETED
JAN 30 1991

DOMENIC CRISTINZIO, INC.

BY:

William H. Casey
WILLIAM H.R. CASEY, ESQUIRE

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REPLY BRIEF OF PROTESTANT
DOMENIC CRISTINZIO, INC.

Most of what is raised in the Brief of Applicant has been dealt with in Protestant Cristinzio's Main Brief. The argument that warrants further attention is Applicants' Argument No. 4 which states "There is no evidence to suggest that the Applicant lacks a propensity to operate legally." (Applicant's Main Brief, pages 36-40).

There is ample evidence that Applicant does lack a propensity to operate legally, much of it in testimony of Applicants' President and Chief Operating Officer.

In the Brief, Applicant argues that it was a "de minimus" amount of illegality, from a money viewpoint. That may be true, but it was not a minor matter from a propensity viewpoint. A review of the evidence indicates that Applicant would seek and accept any amount of this transportation it could get, even as this application proceeds.

The fact that some shippers may have declined to utilize a carrier without rights does not justify the grant of authority.

Applicants' major argument to justify the illegal transportation, however, is the "red herring" of "misconception" of its authority and confusion between Applicants' PUC and ICC authority. Protestants rely on the evidence, especially testimony, a reading of which indicates the mind set of Applicant. Applicant disagrees with the PUC rule and flouts it saying all the while he

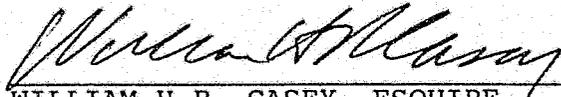
doesn't understand it. Protestants rely on the Commission to gain the true impression from the testimony and evidence.

For these reasons, Protestant respectfully requests that the Application be denied.

Respectfully Submitted,

CASEY AND ROSSI

BY:


WILLIAM H.R. CASEY, ESQUIRE

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 1991, I did serve a copy of the foregoing Reply Brief of Protestant for Domenic Cristinzio, Inc., upon the following by regular first class mail:

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Pittsburgh, PA 15129

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BY:



WILLIAM H.R. CASEY, ESQUIRE

