



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

ISSUED: May 17, 1991.

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

IN REPLY PLEASE  
REFER TO OUR FILE

A-00103976  
F001, Am-B

Application of Fischer-Hughes Transport, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Herbert Smolen. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120, within twenty (20) days of the issuance date of this letter.** The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

cc:ALJ Smolen/Office of ALJ/Law Bureau/Mr. Bramson/Bureau of Trans./OSA/Chairman/Commissioners/Correspondence/our file

Very truly yours,

*Allison K. Turner*

Allison K. Turner  
Chief Administrative Law Judge

lg  
Encls.  
Certified Mail  
Receipt Requested

Similar letter to: See attached list.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF :  
: DOCKET NUMBER A-00103976  
FISCHER-HUGHES TRANSPORT, INC. : F001, Am-B

INITIAL DECISION

Before  
HERBERT SMOLEN  
Administrative Law Judge

DOCUMENT  
FOLDER

FILED  
MAY 23 1991

TABLE OF CONTENTS

I.	HISTORY OF THE PROCEEDING . . . . .	1
II.	SUMMARY OF TESTIMONY . . . . .	3
	A. Applicant's Case . . . . .	3
	B. Protestant's Case . . . . .	22
III.	FINDINGS OF FACT . . . . .	28
IV.	DISCUSSION . . . . .	34
	A. Useful Public Purpose Responsive to Public Demand or Need [41.14(a)] . . . . .	44
	B. Fitness [\$41.14(b)] . . . . .	53
V.	CONCLUSIONS OF LAW . . . . .	56
VI.	ORDER . . . . .	56

## I. HISTORY OF THE PROCEEDING

By Application received October 10, 1989, docketed October 13, 1989, and published in the Pennsylvania Bulletin on October 28, 1989, Fischer-Hughes Transport, Inc. (Applicant) seeks an 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.

Protests were duly filed to the Application by J. C. Services, Inc. (J. C. Services) and D. Cristinzio, Inc. (Cristinzio) (herein jointly called Protestants).

The matter was assigned to Administrative Law Judge Herbert Smolen. A pre-hearing conference was held in Philadelphia on June 7, 1990. Subsequently, hearings were held in Philadelphia on November 13 and 14, 1990. Applicant presented the testimony of one (1) operating witness and five (5) supporting shipper witnesses. In addition, Applicant introduced six (6) exhibits. Protestant J. C. Services, Inc. presented the testimony of one (1) witness and introduced four (4) exhibits

during cross-examination of Applicant's operating witness. Protestant D. Cristinzio presented one (1) rebuttal witness. The record consists of 178 pages of transcript and the aforesaid exhibits. All parties filed Main Briefs, and Applicant and Protestant Cristinzio filed Reply Briefs.

## II. SUMMARY OF TESTIMONY

### A. Applicant's Case

Robert Hughes, the President, Secretary-Treasurer, sole director and sole shareholder of Applicant (N.T. 4) testified, inter alia, that in addition to his administrative duties, he is involved in the day-to-day operations of the company; is familiar with its authority, facilities, equipment and operations (N.T. 4); that Fischer-Hughes is a Pennsylvania corporation with offices at 450 North Broad Street, Doylestown, Pennsylvania (N.T. 3-5); that the company is an agent for United Van Lines throughout the continental United States and Canada; that it is not affiliated with any other carrier (N.T. 5-6).

The witness further testified that the authority sought encompasses the same territory in which Applicant is authorized to transport household goods under Docket No. A-00103976, F.1, Am-A and Am-B (N.T. 10; Exh. A-1); that the current PUC 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 from points within that region to other points in Pennsylvania and vice versa (N.T. 6-10; Exhs. A-1 and A-2); that approval of the 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 (N.T. 15; Exh. A-1); that 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 (N.T. 13-14; Exh. A-3); that Applicant's ICC authority permits it to haul first, second and third proviso shipments (N.T. 14); that second proviso is the movement of commercial establishments as part of relocation; that third proviso of traffic is product material like electronic equipment requiring special handling employed by movers and is not subject to a condition that it must be part of a relocation (N.T. 14-15); that 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 (N.T. 6).

The witness also testified that Applicant has facilities located in Doylestown and Fogelsville; that the

Doylestown facility consists of a recently constructed 22,000 square foot building located on a 7-1/2 acre lot; that the building has four loading docks, a three acre parking garage for trucks, and approximately 4,000 square feet of office space; that it is equipped with fire and burglar alarms; that the warehouse has steel racking systems for storing products and devices to ease the unloading of trucks (N.T. 10-11); that the Fogelsville facility is similarly equipped except that it has two loading docks and approximately 16,000 square feet of space; that 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 (N.T. 11); that communications between the driver and the dispatch center are maintained by telephone; that drivers call in to Doylestown after making each delivery and are equipped with pagers so that they can be contacted whenever necessary (N.T. 12); that customers place orders for service through 800 watts numbers and telephone-fax communications (N.T. 12-13).

The witness also testified that Applicant'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) (N.T. 14); that Applicant operates seven packing vans, five straight trucks, seven tractors and 15 trailers (Exh. A-4); that 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; that other equipment is leased by the company from owner-operators (N.T. 20-22); that special features of the equipment include power lift gates (N.T. 17), drop frames to accommodate extra large pieces (N.T. 21), side doors at strategic points on the truck (N.T. 21), air-ride suspension systems to provide smoother rides and reduce damages (N.T. 19), 48-foot long trailers, some up to 102 inches in width, to handle larger loads (N.T. 18-19), and "E-track" which allows for the strapping of machinery and equipment into place to prevent shifting during transit (N.T. 19); that to assist with loading and unloading, Applicant utilizes forklifts, jacks, dollies, stair crawlers, roller lifts and hand trucks (N.T. 18-20).

The witness further testified that approximately 80% of the equipment maintenance is performed by Applicant's in-house mechanics; that drivers inspect their equipment each day and any equipment deficiencies are immediately corrected; that the company performs a thorough inspection of the vehicles every 90 days (N.T. 22); that Applicant makes an extensive background check of all prospective employees before hiring (N.T. 22); that periodic safety meetings are held with employees (N.T. 22-23); that Applicant had always assumed that the PUC had the same interpretation of the third proviso of his ICC rights (electronic

equipment) as the ICC did, and when he found out that the PUC did not, Applicant filed this PUC Application in order to continue providing this service to Applicant's customers (N.T. 24); that Applicant has been transporting this third proviso (electronic equipment) type of traffic within Pennsylvania since 1982 when Applicant was formed (N.T. 24-25); that during the first ten months of 1990 Applicant handled a total of 12 such shipments in Pennsylvania that would be described as third proviso ICC shipments (N.T. 25-26; Exh. A-5).

Applicant also testified that Applicant's services are available six days a week during normal business hours and on Sunday when needed (N.T. 11, 28); that when necessary, customers are provided exclusive use of a truck. Otherwise, when scheduling permits, shipments from various customers may be commingled on a single vehicle (N.T. 28-29); that intrastate traffic is generally delivered on a same day or next day basis; that inside pickups and deliveries, as well as split pickups and deliveries, are fundamental to the company's business (N.T. 20, 29).

Applicant further testified that for the six-month period ended September 30, 1990, Applicant had net income before taxes of \$130,694 on gross revenues of \$3,366,276 (N.T. 29-30; Exh. A-6); that as of September 30, 1990, Applicant had stockholder's equity of \$427,395, and its current assets exceeded

its current liabilities by \$171,499 (Exh. A-6); that if it should become necessary, Applicant has substantial lines of credit to add additional equipment or specialized types of facilities to handle traffic and is in a position to satisfactorily perform service on these commodities (N.T. 30).

On cross-examination, the witness stated that on Exhibit A-6, approximately 80% of the transportation revenue of \$1,057,000 is intrastate business (N.T. 32); that of that 80% approximately 10% is from electronic equipment (N.T. 32); that approximately 9 months ago, he discovered that household rights in Pennsylvania did not include electronics, but he continued to perform such service (N.T. 32-33); that the issue is confusing in that Applicant can do it interstate and didn't want to let his customers down (N.T. 32-33); that he participated in the preparation of the Application (N.T. 33) and particular paragraph 11 thereof (N.T. 33); that when the Application was filed, he was aware of the fact that Applicant's household rights did not include electronics; that nevertheless, Applicant kept performing the service; that it has been over a year ago (N.T. 34); that this transportation which Applicant performed was for some of the witnesses to be called in this proceeding (N.T. 36); that all equipment described on Applicant's equipment exhibit (Exhibit A-4) is used for transportation of household goods in Pennsylvania intrastate service and the air-ride vans are used in

interstate commerce (N.T. 36); that Applicant has equipment bought specifically to carry electronic equipment in interstate commerce, i.e., the 1987 international straight truck (N.T. 36); that it could be used for Pennsylvania household (N.T. 37).

On further cross-examination, the witness stated that he owns the real estate where Applicant's business is located in Doylestown (N.T. 39-40); that Rouse and Assoc. owns the property in Fogelsville; that there are leases for the properties (N.T. 40); that the height of the warehouse is 24' clear span and has 300 linear feet of steel racking (N.T. 40); that Applicant belongs to Tristate Tariff Bureau (N.T. 40-41); that he became aware about 9 months ago of the need to file an Application in regard to electronic authority (N.T. 41); that approximately nine to twelve months prior to the November 13, 1990 hearing, Applicant transported a mail-inserting machine from the warehouse of Clemmer Moving & Storage to the warehouse of Dominic Cristinzio; that an unknown party filed some type of complaint with the PUC which, after investigation, declared the movement to be lawful (N.T. 41); that 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 (N.T. 41-42); that the Application in this case was filed in October 1989 (N.T. 42); that he didn't recall any of the rulings issued by Tristate or the PUC with regard to

interpretation of certain information (N.T. 42); that when he discovered that he might have to file an application, those of his customers with volume were informed, i.e., Bell & Howell (N.T. 43); that in the course of generating support for this Application, Applicant informed everyone of the issue (N.T. 44); that he does not intend to continue performing transportation of electronic equipment interstate during these proceedings (N.T. 44); that he intends to cease as of this moment (N.T. 44); that approximately ten days prior to the hearing, in preparation therefor, a review of Applicant's files disclosed that 12 shipments shown on Applicant's Exhibit A-5 had been transported during the pendency of the application; that prior thereto, the witness was not exactly aware that such shipments were taking place (N.T. 44-45); that Applicant did them because of confusion in interpretation (N.T. 45).

On redirect the witness testified that Applicant has not been advised by counsel to discontinue transporting electronic equipment (N.T. 45); that the electronic equipment movement that was investigated was made approximately one year before the hearing (N.T. 47); that he believed the investigation was the result of a formal complaint filed by a competitor; that there was no hearing; that Applicant 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 (N.T. 46-47); that despite this favorable result, Applicant filed the Application to avoid future problems (N.T. 47-48).

On recross, the witness testified that 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 (N.T. 49-51).

On further redirect examination, the witness testified that Applicant'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] (N.T. 52-53); that the witness 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" (N.T. 53); that exempt transportation to and from the company's warehouses makes up a considerable portion of the company's operations (N.T. 55).

On further direct, the witness testified that the movements listed on Exhibit A-5 dated September 15 and June 11, 1990 were within the warehousemen's exemption (N.T. 119); that total revenue for the other ten shipments listed on Exhibit A-5

amounted to \$3,388.50 (N.T. 119-120); that Applicant agreed to accept transportation as requested from shippers because he wasn't sure whether he needed authority for it (N.T. 122-123).

The witness also testified that he has been a member of Pennsylvania Moving and Storage Association for 2 or 3 years or possibly since 1984; that he is not very active in it; that Applicant received regular mailings from the Association (N.T. 130-131); that to his knowledge, he did not receive Protestants' Exhibit P-4 which deals with the matter involved in this proceeding (N.T. 132).

Joanne W. Iverson, the President and owner of Iverson Associates of 29 Bala Avenue, Suite 207, Bala Cynwyd, Pennsylvania 19044, testified, inter alia, that the company has been in business for six years (N.T. 58); that Iverson writes software for micro and mini computers, installs computer networks and performs computer repairs (N.T. 58-59); that 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 (N.T. 59); that her company is negotiating a proposed five-year contract for the installation and servicing of computers that IBM sells to the City (N.T. 59-60); that the shipments she is now making from her facilities to an office in Philadelphia range from a single shipment of 25 pounds to between 500 and 1,000 pounds (N.T. 62); that in the past, Iverson

employees transported computers in their own cars and vans, but it will have to have more professional help in responding to the proposed IBM-City work (N.T. 60). The witness also agreed that she had no estimate as to how often that service would be needed because of the City's condition, but that there are at least 7 who would be receiving computers over a 5 year period (N.T. 61).

The witness further testified that she has customers located in Philadelphia Center City, Greencastle, Harrisburg, Levittown, Newtown Square and Swedesford (N.T. 64); that she had used the services of the Applicant for a residential move and several office moves, and the service was excellent (N.T. 65-66); that she has contacted several smaller household goods movers but was advised that they did not handle computer equipment (N.T. 66); that if the Application is approved, she would tender her traffic to the Applicant (N.T. 66-67); that she would switch her operations to Applicant (N.T. 67); that she has never been contacted by nor has she ever used the services of J. C. Services, Inc. or Cristinzio (N.T. 67).

On cross-examination, the witness testified that she had experience with Cristinzio between 1976 and 1980 when she worked at Girard Bank (N.T. 68); that she 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 (N.T. 68); that Iverson Associates has not

used a PUC carrier to move computers in the past (N.T. 69); that the IBM contract has not been signed yet (N.T. 69); that up to now, she has been doing her own deliveries (N.T. 69); that she had never heard of J. C. Services and was not aware whether it has the authority to move electronic goods (N.T. 70); that her major concerns in hiring a carrier are the cost and the care of her equipment (N.T. 70); that when she contacted Fischer-Hughes about 4 months ago, she was quoted a price but was told that it did not have the authority to move electronic equipment (N.T. 70); that she did not compare prices, but thought that the price was fair (N.T. 70-71); that she would consider getting a competitive bid from J. C. Services (N.T. 71).

Karen A. Hertzog, Traffic Supervisor for Bell & Howell testified, inter alia, that Bell & Howell's facilities are located in Allentown, Pennsylvania (N.T. 72); that she is responsible for contacting motor carriers to arrange transportation services for Bell & Howell (N.T. 72); that Bell & Howell manufactures machines which sort and stamp mail, and also machines which insert paper items (such as bills) into envelopes (N.T. 72); that Bell & Howell's customers include banks, telephone companies, and any other businesses which have a need for high-volume mailing machines (N.T. 73); that a complete machine weighs approximately 10,000 pounds (N.T. 73); that a machine, when broken down into ten or twelve pieces, takes up an

entire truck by itself (N.T. 74); that each year customers in Philadelphia, Pittsburgh and Harrisburg each receive 40,000 pounds of freight (N.T. 75, 79); that approximately 200,000 to 300,000 pounds are shipped each year from Allentown to the Applicant's Fogelsville warehouse (N.T. 79); that 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" (N.T. 76); that shipments move to customers, riggers and warehouses (N.T. 77-79).

The witness also testified that Bell & Howell often requires trucks as large as 48 feet long and 102 inches wide to accommodate its large machines (N.T. 77); that it requires the exclusive use of its carrier's vehicles and does not want its equipment mixed with the freight of other shippers (N.T. 74); that the services of rigger are arranged by either the customer or by Bell & Howell's salesmen (N.T. 78); that 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 (N.T. 79); that 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 (N.T. 78).

On cross-examination, the witness testified, inter alia, that the Manager of Materials for Bell & Howell authorized

her to testify (N.T. 80-81); that Bell & Howell has a contract to use 5,000 square feet of the Applicant's Fogelsville warehouse (N.T. 81-82); that at the end of the month, space becomes scarce at the Bell & Howell plant and the equipment must be shipped (N.T. 82); that for shipments to riggers located within Pennsylvania, they use (sic United Airlines) United Van Lines, Fischer-Hughes; that shipments going to riggers outside Pennsylvania are handled a lot by C.H. Robinson (N.T. 83); that they use different carriers (N.T. 83); that aside from the warehousing operations, approximately five percent of Bell & Howell's direct delivery traffic in Pennsylvania is handled by Fischer-Hughes (N.T. 83); that the last such move was very recent (N.T. 84); that she would not consider using the services of Cristinzio because she is happy with the service she has received from (sic United Airlines) United Van Lines and Fischer-Hughes (N.T. 84-85).

The witness also stated that she was told by Applicant that it needed authority to transport her product within the state (N.T. 84); that Applicant has already been doing it; that approximately one year ago she found out that Applicant was having some transportation problems about authority (N.T. 84-85); that that would not affect her decision to use Applicant (N.T. 85); that she has compared the Applicant's prices with the prices charged by other carriers (N.T. 85); that she has never heard of

J. C. Services (N.T. 85); that she is not aware that J. C. Services has authority and is not aware of any contact between J. C. Services and Bell & Howell (N.T. 86); that between 20 and 40 machines are shipped out every month (N.T. 87).

Linda Roth testified, inter alia, that she has been employed by Carolinch Company since 1974 and has been the Sales Administrator for approximately nine years; that she works with the customers to move Carolinch's product directly from Carolinch's facility to the customer's facilities; that the company controls the routing of approximately one-half of its outbound shipments (N.T. 89-90); that Carolinch manufactures customized electronic equipment according to customer specifications; that the systems it creates are approximately 100 feet long and range in weight from 2,000 to 12, 000 pounds (N.T. 90).

The witness further testified that Carolinch requires the exclusive use of a vehicle for each shipment as each system fills an entire truck (N.T. 90); that during 1989 the company had four shipments of systems within the state of Pennsylvania and anticipates two intrastate shipments in 1990 (N.T. 91); that shipments from Ivyland move to customers in Harrisburg, Allentown, Bethlehem and Scranton (N.T. 91); that Carolinch has always required 48 foot long trailers which are 102 inches wide due to the size of its systems; that one of its systems was

specifically designed to fit on a 102 inch wide trailer (N.T. 92); that Carolinch requires air-ride suspension for the transportation of its equipment since it is very susceptible to damage (N.T. 92-93); that many of the machine parts are as fragile as glass and will shatter if they are twisted or dropped; that the equipment is also accompanied with fragile computer coprocessors such as PC's or modules which run the equipment (N.T. 93).

The witness also testified that Carolinch has never used the services of J. C. Services or Cristinzio, and neither company has ever solicited Carolinch's business (N.T. 92).

On cross-examination, the witness testified that whether the transportation costs are paid by Carolinch or by Carolinch's customer depends on the individual contract (N.T. 93-94); that Carolinch uses the services of Fischer-Hughes both intrastate and interstate (N.T. 94); that she was not aware that Cristinzio could do this type of transportation (N.T. 94); that she would consider using the services of Cristinzio (N.T. 95); that she would consider using J. C. Services if its service was as good as Fischer-Hughes (N.T. 95).

Cheryl Doris Card testified, inter alia, that she has been employed by Insertech as an Administrative Assistant for over two years (N.T. 97); that she makes all transportation arrangements for the company (N.T. 97); that Insertech buys used

automatic and electronic equipment, refurbishes the equipment and then resells it (N.T. 98); that the equipment is purchased from manufacturing companies located all over the world (N.T. 98); that the machines are very large and weigh between 400 and 4,000 pounds (N.T. 99); that Insertech rents warehouse space from the Applicant in Doylestown and Lansdale (N.T. 99); that Insertech has one or more shipments each month from its Bedminster facility to Applicant's Lansdale warehouse, and constantly has machines going in and out of Applicant's Doylestown warehouse (N.T. 100); that when the machines leave the Doylestown warehouse, they move either to customers or to the Bedminster facility for refurbishing (N.T. 100); that Insertech does not really have customers within Pennsylvania to which shipments are made (N.T. 101); that most of it goes interstate or around the world (N.T. 101); that she had never heard of J. C. Services or Cristinzio and has never used their services (N.T. 101); that Insertech has found the services of Fischer-Hughes Transport to be excellent (N.T. 101).

On cross-examination, the witness testified that Insertech leases from Fischer-Hughes a portion of the Lansdale warehouse (N.T. 101-102); that Insertech is not required to use the transportation services of Fischer-Hughes to move equipment to the Lansdale facility (N.T. 102); that Fischer-Hughes does not make any deliveries within Pennsylvania for Insertech other than

to the warehouses (N.T. 103); that all of Insertech's transportation needs are interstate (N.T. 103).

Galen Bull testified, inter alia, that he has been employed by HPI Plastics, Inc. for ten years and holds the position of Engineering Manager, Operations Manager and Traffic Manager; that he arranges the inbound and outbound transportation for the company (N.T. 102); that HPI designs and manufactures plating equipment and processing equipment for the manufacturers, print circuit boards for electronic companies and defense companies (N.T. 104-105); that its customers include McDonnell Douglas, Digital Equipment, government facilities and the National Security Agency (N.T. 105); that the systems are very fragile, especially in the winter time (N.T. 106-107); that outbound shipments of finished products range in weight from 500 pounds up to a full truckload which weighs approximately 5,000 pounds (N.T. 106); that the company requires larger trailers, such as 48 foot long trailers due to the size and shape of its finished products (N.T. 106); that outbound shipments within Pennsylvania have destinations such as Willow Grove, York and the Delaware Water Gap near Scranton (N.T. 107); that the company makes approximately four or five shipments to each of these locations each year (N.T. 107); that the company also has inbound shipments of electronic equipment and piping systems which weigh anywhere from 5,000 to 10,000 pounds (N.T. 105-106); that inbound

shipments originate in the Philadelphia and Harrisburg areas (N.T. 105).

The witness further testified that the company ships on both a less-than-truckload and truckload basis (N.T. 106); that HPI requires shipments to be made on a timely basis so that installation crews are not sitting idle awaiting shipment (N.T. 108-109); that due to the fragile nature of the products shipped, HPI requires its carrier to handle the products delicately (N.T. 107, 109); that HPI is attempting to obtain other customers in the Philadelphia area such as General Electric, RCA and the Navy Government Center (N.T. 108); that HPI has used the services of Fischer-Hughes Transport for interstate movements to New England, Baltimore and Washington (N.T. 108); that it has done a very good job for HPI, making pickups and deliveries on schedule (N.T. 108, 109).

On cross-examination, the witness testified that HPI has used the services of Clemmer and other common carriers for moves within Pennsylvania (N.T. 110); that HPI is not satisfied with the service provided by Clemmer because the price went up considerably and the service diminished considerably, i.e., damaged freight or late arrivals (N.T. 110); that HPI has not used Fischer-Hughes for intrastate movements because of the question about its operating authority (N.T. 110-111); that Applicant has been doing his interstate work for about 2 years

(N.T. 111); that when he contacted Applicant 2 years ago for interstate work, he would have asked Applicant to do intrastate work (N.T. 111-112); that he didn't recall whether he did have some work at that time (N.T. 112); that he would hesitate to consider using the services of Cristinzio or J. C. Services since he wants to use a carrier which is accustomed to moving HPI's equipment and which has done a good job in the past (N.T. 112).

B. Protestant's Case

Steven McGary testified, inter alia, that he is employed by J. C. Services, Inc. (N.T. 137); that he and his wife are co-owners of the company (N.T. 138); that J. C. Services holds operating authority from the Interstate Commerce Commission and the Pennsylvania Public Utility Commission (N.T. 137); that the company has ICC household goods authority for five states and ICC electronic equipment authority to serve 13 states (N.T. 137); that it is an agent for Bekins Van Lines (N.T. 137); that as an agent, J. C. Services can use Bekins interstate authority throughout the continental United States for both electronic equipment and household goods (N.T. 138); that J. C. Services holds electronic goods, tabulating machines from the PUC since 1971 (N.T. 138); that the company transports electronic goods within Pennsylvania for such companies as Pitney Bowes, Kodak, A.B. Dick, I-Tech, Sabin Corporation and AT&T (N.T. 140); that the company operates tractors and trailers, some of which are 102

inches wide (N.T. 140); that the company provides next day service and end of the month dock sweep service (N.T. 140-141); that his sales people have turned in reports stating that they have contacted the shipper witnesses who testified in support of the application (N.T. 141); that 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 (N.T. 142); that his company could perform the services required by Bell & Howell (N.T. 144); that his company has been a member of the Tristate Tariff Bureau since 1971 (N.T. 144); that Exhibit P-3 is a copy of his tariff (N.T. 145); 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 either transports the commodity to the same shipper's warehouse or another warehouse designated by that shipper (N.T. 147); that he does not believe that the warehousemen's exemption applies if the shipment goes from the carrier's warehouse to a customer (N.T. 148).

On cross-examination, the witness testified that he is not certain about the application of the warehousemen's exemption (N.T. 148); 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 (N.T. 148-150; Exh. P-1); that J. C. Services has been an agent of Bekins Van Lines since March of 1990 (N.T. 150-151); that he 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 (N.T. 151).

The witness further testified that J. C. Services has two trailers which are 48 feet long and 102 inches wide (N.T. 152); that he had nothing with him at the hearing to indicate his company's ability to provide next day delivery service nor did he have a transit time exhibit or a salesman's report, letters, or notes of telephone calls evidencing his company's solicitation of Bell & Howell (N.T. 152, 154); that his salesman contacted Karen Herzog of Bell & Howell three or four times over the last year and as recently as two months ago (N.T. 153).

On redirect examination, he stated 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 (N.T. 154); that he has to lease tractor trailers which are 40 feet long and 102 inches wide (N.T. 154-155).

On recross, the witness testified that his ICC electronic authority is for 13 states and for any electronic

shipments beyond those 13 states, he would have to rely on Bekins (N.T. 155, 156).

Russell Taddei, President of Dominic Cristinzio, Inc. testified, inter alia, that Dominic Cristinzio, Inc., as agent for Allied Van Lines, holds intrastate electronics authority and household goods in use authority (N.T. 157, 158); that the 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; that the company maintains a large facility in Philadelphia and another in Northern New Jersey (N.T. 158); that its facility in Philadelphia consists of an 85,000 square foot building with 10 backup bays for tractor trailers and a 5,000 square foot office (N.T. 158); that 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 (N.T. 159); that it employs seventy-five (75) to eighty (80) people and their services are not being fully utilized at this time (N.T. 160); that his company advertises in the phone book and has sales staff; that the company facilities and equipment are not being fully utilized (N.T. 160).

The witness also testified that his company has performed rigging services for Bell & Howell, and made inside

deliveries of Bell & Howell's larger and hard to handle items (N.T. 160-161); that he has authority to move electronic equipment for Bell & Howell from Allentown to Philadelphia (N.T. 161); that with regard to Ms. Iverson's statement that she encountered problems with Cristinzio's past services, the witness explained that Girard Bank is the successor to Mellon Bank and that Cristinzio provided delivery and installation service for Mellon ATM machines (N.T. 162); that his employees who dealt with Girard and Mellon did not recall ever dealing with a Ms. Iverson (N.T. 162) and that he knows of no particular problem and is still doing business for Mellon (N.T. 162); that he has authority from Philadelphia and surrounding counties to points in Pennsylvania or vice versa (N.T. 162).

The witness 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 (N.T. 162, 163); and that the phrase "specialized equipment and handling" authorizes the transportation of electronic equipment (N.T. 163).

Norman Clemmer, President of Clemmer Moving & Storage testified for the limited purpose of contradicting certain testimony presented by the Applicant (N.T. 168). He testified, inter alia, in regard to Galen Bull's testimony that Clemmer

increased the price of transportation for HPI Plastics; that there was tariff increase about the time he lost HPI as a customer (N.T. 169-170); that the loss of HPI Plastics as a customer also coincided with the movement of one of his salesmen to Fischer-Hughes (N.T. 171); that he is not aware of any complaints from HPI regarding damages merchandise or late deliveries (N.T. 171); that he did not know whether or not his company had damaged any of HPI Plastics merchandise or made late deliveries for HPI Plastics (N.T. 172).

The witness further testified that he 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; that Exhibit P-4 is a copy of that letter and that he believed that the Applicant was a member of the Association at that time (N.T. 174).

On cross-examination, the witness stated that he did not know for certain whether or not Fischer-Hughes was a member of the Pennsylvania Moving & Storage Association in May of 1986; and that he was not personally involved in the actual sending of the May 15, 1986 letter (N.T. 175).

### III. FINDINGS OF FACT

1. Applicant is a Pennsylvania corporation with offices at 450 N. Broad Street, Doylestown, Pennsylvania (N.T. 3-5).

2. Applicant is an agent for United Van Lines throughout the continental United States and Canada and is not affiliated with any other carrier (N.T. 5-6).

3. Applicant is currently authorized to transport household goods under Docket A-00103976, F.1, Am-A and Am-B (N.T. 10; Exh. A-1) to points within a 50 mile radius of Doylestown and vice versa; and between points in the Counties of Philadelphia, Delaware, Chester, Montgomery and Bucks and from points within that region to other points in Pennsylvania and vice versa (N.T. 6-10; Exh. A-1 and A-2).

4. Applicant holds interstate operating authority at ICC Docket No. MC-35750 (Sub-2) (N.T. 13-14; Exh. A-3) which permits Applicant to haul first, second and third proviso shipments (N.T. 14). Third proviso shipments include electronic equipment requiring special handling employed by movers and is not subject to a condition that it must be part of a relocation (N.T. 14-15).

5. Applicant has facilities in Doylestown and Fogelsville, Pennsylvania. The Doylestown facility has a 22,000 square foot building, 4 loading docks, a 3 acre parking garage

for trucks, 4,000 square feet of office space, and a steel racking system (N.T. 10-11). The Fogelsville facility has 2 loading docks, 16,000 square feet of space. Both facilities are open from 7:00 a.m. to 7:00 p.m. Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays (N.T. 11). Communications between driver and dispatch center are maintained by telephone (N.T. 12). Customers can use 800 watts numbers and telephone-fax communications (N.T. 12-13). Sunday service is also available (N.T. 11, 28).

6. Applicant has 15 sales and administrative employees, 4 full-time warehouse employees, and between 45 to 80 field men (N.T. 14). Applicant operates 7 packing vans, 5 straight trucks, 7 tractors and 15 trailers (Exh. A-4). Equipment is leased from White Circle, Inc., United Leasing and from owner-operators (N.T. 20-27).

7. Special features of Applicant's equipment include power lift gates, drop frames, side doors, air-ride suspension systems, 48 foot long trailers some up to 102 inches wide, and have "E" track. Applicant also uses forklifts, jacks, dollies, stair crawlers, roller lifts and hand trucks (N.T. 18-20).

8. For the 7 month period ended September 30, 1990, Applicant had net income before taxes of \$130,694 on gross revenues of \$3,366,276 (N.T. 29-30; Exh. A-6). Applicant's

current assets exceeded current liabilities by \$171,499 as of September 30, 1990 (Exh. A-6).

9. Of the \$1,057,000 transportation revenue shown on Exh. A-6, approximately 80% is from intrastate business (N.T. 32); and of that 80%, approximately 10% is from electronic equipment transportation (N.T. 32).

10. When necessary, customers are provided exclusive use of a truck; otherwise shipments may be commingled on a single vehicle (N.T. 28-29).

11. Traffic is delivered on a same day or next day basis, and inside pickups and deliveries as well as split pickups and deliveries are made (N.T. 20, 29).

12. Applicant performs 80% of equipment maintenance in-house. Drivers inspect equipment every day and a thorough inspection of vehicles is performed every 90 days (N.T. 22).

13. Applicant does a background check on all prospective employees (N.T. 22) and conducts periodic safety meetings (N.T. 22-23).

14. Applicant has been transporting electronic equipment within Pennsylvania since 1982 (N.T. 24-25).

15. Applicant assumed that the PUC had the same interpretation of the third proviso of his ICC rights (electronic equipment) as the ICC did, and when he found out that the PUC did not, Applicant filed the instant Application (N.T. 24, 52-53).

16. When Applicant discovered that he had to file an Application, his customers with traffic volume were notified (N.T. 43) and in the course of generating support for this Application, he informed everyone of the issue (N.T. 44).

17. The instant Application was filed in October 1989 (History of the Proceeding).

18. Following the filing of the Application in October 1989 (N.T. 42), Applicant continued to render unauthorized intrastate service, and handled at least 10 such shipments during the first 10 months of 1990 (N.T. 25-26, 32-33; Exh. A-5).

19. Applicant participated in the preparation of the Application; and when it was filed, he was aware of the fact that his household rights did not include electronics. Nevertheless, Applicant kept performing the service (N.T. 34). Unauthorized service was performed for some of the witnesses in this proceeding (N.T. 36).

20. Iverson Associates' employees transport computers in their own cars and vans, but if it obtains work from IBM which sells PC's and mini-computers to the City of Philadelphia, it anticipates that it will have to have more professional help. Iverson and IBM are currently negotiating a 5 year contract (N.T. 58-60). Iverson has no estimate as to how often professional service would be needed because of the City's condition (N.T. 61). Iverson has not used a PUC carrier to move computers in the

past (N.T. 69). Iverson's major concerns are cost and care of equipment (N.T. 70) and would consider getting a competitive bid (N.T. 71). The IBM contract has not been signed (N.T. 69) and up to now Iverson has been making its own deliveries (N.T. 69).

21. Applicant performed unauthorized service for Bell & Howell. Approximately 5% of Bell & Howell's direct delivery within Pennsylvania of its machine products is handled by Applicant (N.T. 83-85).

22. Applicant performs unauthorized service for Carolinch within Pennsylvania for transportation of Carolinch's electronic, customer built and designed equipment (N.T. 94).

23. Insertech does not have customers in Pennsylvania, and all of its traffic is interstate (N.T. 101, 103).

24. HPI Plastics, Inc. has a number (unquantified of record) of inbound shipments of its plating, processing and print circuit boards electronic equipment from Philadelphia and Harrisburg to Hatfield, Pennsylvania; and outbound from Hatfield, Pennsylvania from 4 to 5 shipments per year to each of Willow Grove, York and the Delaware Water Gap near Scranton (N.T. 104-107). HPI has not used Applicant for intrastate movements (N.T. 110-111).

25. The provision by Applicant of unauthorized service to Bell & Howell and Carolinch was not rendered as a result of a

"good faith" misunderstanding, mistake or confusion (N.T. 32-33; 33-34).

26. Protestant J. C. Services, Inc. holds ICC and PUC authority. Its PUC authority includes electronic equipment and tabulating machines. It has held such authority since 1971 (N.T. 138). It is an agent for Bekins Van Lines (N.T. 137). It transports electronic goods within Pennsylvania for Pitney Bowes, Kodak, A.B. Dick, I-Tech, Sabin and AT&T (N.T. 140). This Protestant operates tractors and trailers some of which are 102 inches wide (N.T. 140) and provides next day service and end of the month dock sweep service (N.T. 140-141). J. C. Services is a member of the Tristate Tariff Bureau (N.T. 144).

27. Protestant Dominic Cristinzio, Inc. holds intrastate electronic and household goods authority. It is an agent for Allied Van Lines (N.T. 157, 158). Its authority includes Philadelphia, Bucks, Montgomery, Chester, Delaware, Northampton, Lehigh, Schuylkill, Columbia, Montour, Monroe, Carbon, Luzerne and Lackawanna Counties and from those Counties to points in Pennsylvania and vice versa (N.T. 158). This Protestant operates tractors, trailers, straight trucks and packing vans. Some of the trailers are 48 feet by 102 inches, and some equipment has air-ride suspension (N.T. 159).

28. In May 1986, the Pennsylvania Moving and Storage Association sent a letter to its members regarding the PUC's

holding that electronic equipment carriages require separate rights (N.T. 174; Exh. P-4), but he was not personally involved in the actual sending of the letter (N.T. 175).

29. Applicant has been a member of the Pennsylvania Moving and Storage Association for 2 or 3 years or possibly since 1984. Applicant receives regular mailings from the Association (N.T. 130-131).

#### IV. DISCUSSION

The evidentiary criteria established by the Commission for determining this type of case are set forth in 52 Pa. Code §41.14. These criteria are as follows:

§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 operation of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest.

Moreover, the Commission, in Application of Blue Bird Coach Lines, Inc., Docket No. A-00088807, F.2, Am-K, in overruling its decision in Re Richard L. Kinard, Inc., Docket No. A-00095829, F.1, Am-D, stated, inter alia,

. . . a motor common carrier applicant now has a bipartite burden of proof. Subsection 41.14(a) places upon an applicant the 'burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.' Subsection 41.14(b) places upon an applicant the 'burden of demonstrating that it possesses the technical and financial ability to provide the proposed service.' Subsection 41.14(b) also contains the caveat that operating 'authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.' Together, the evidentiary criteria at subsection 41.14(a) and 41.14(b) constitute an applicant's prima facie burden of proof in an application proceeding to acquire motor common carrier authority.

The Commission further stated,

. . . mindful of our legislative mandate to safeguard public access

to satisfactory transportation by regulating competition among carriers in order to prevent unfettered and harmful competition, we have placed upon existing carriers the burden of showing that approval of an application would contravene the public interest. Morgan Drive Away, Inc.<sup>1</sup>; Seaboard Tank Lines, Inc.<sup>2</sup> Subsection 41.14(c) states the standard by which existing carriers' protests to an application will be assessed,

In rejecting the Kinard alternatives, the Commission, in Blue Bird, also stated that

. . . the use of 'alternatives to inadequacy' as defined in Re Richard L. Kinard, Inc. does not comport with our delineated regulatory policy at 52 Pa. Code §41.14.

and

. . . without proof in the record of a public demand/need for an applicant's proposed service between specified, intrastate points, an application for motor carrier authority cannot be validly approved pursuant to subsection 1103(a) of the Public Utility Code, and hence cannot be validly approved pursuant to our policy

---

1 Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission, 99 Pa. Commonwealth Ct. 420, 512 A.2d 1359 (1986).

2 Seaboard Tank Lines, Inc. v. Pennsylvania Public Utility Commission, 93 Pa. Commonwealth Ct. 601, 502 A.2d 762 (1985).

statement at 52 Pa. Code §41.14.  
(footnote omitted)

In discussing the evidence necessary to establish a public demand, the Commission, in Blue Bird, quoting from Application of Pleasant Trucking, Inc. (A-00108637) stated,

. . . '[e]vidence tending to establish a public demand for the proposed service is usually in the form of an expressed and defined desire on the part of some portion of the public for the proposed service.' Id. at 22. Public demand/need for an applicant's proposed service has customarily been demonstrated by witnesses' testimony detailing requests for service. E.g., Bverly; Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Commonwealth Ct. 1, 337 A.2d 922 (1975); 52 Pa. Code §3.382(a). '[T]he relevant inquiry is what are the public's needs, and that may be proven by the testimony of shippers or others with knowledge of that subject.' Bverly, 440 Pa. at 527, 270 A.2d at 189.

In providing clarification of its interpretation of "useful public purpose, responsive to public demand or need", the Commission, in Blue Bird, stated,

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant's proposed service will satisfy the supporting witnesses' asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14(a) by establishing

that 'approval of the application will serve a useful public purpose, responsive to a public demand or need.'<sup>7</sup> E.g., Seaboard Tank Lines, Inc., 93 Pa. Commonwealth Ct. at 613, 502 A.2d at 768; Re Lenzner Coach Lines, Inc., 63 Pa. P.U.C. 217 (1987); see also Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission (Morgan Drive Away, Inc. II), 16 Pa. Commonwealth Ct. 293, 328 A.2d 194 (1974).

The Commission added that the foregoing

. . . interpretation conforms to the indisputable and long-standing benchmark in motor carrier cases, namely, that a certificate of public convenience will be issued to an applicant only if the applicant has proven that its intended service is 'reasonably necessary for the accommodation or convenience of the public.' D.F. Bast, Inc. v. Pennsylvania Public Utility Commission, 397 Pa. 246, 250, 154 A.2d 505, 508 (1959); Purolator Courier Corp. I; Dutchland Tours, Inc.; McNaughton Bros., Inc., Zurcher; Re Mobilfone of Northeastern Pennsylvania, Inc., 54 Pa. P.U.C. 521 (1980).

Moreover, the Commission pointed out that

. . . a public demand/need for an applicant's proposed transportation service may be proven through witnesses comprising a representative sampling of the public that will use the applicant's proposed service within the territory encompassed by the application. Purolator Courier Corp. v. Pennsylvania Public Utility Commission (Purolator Courier Corp. II), 51 Pa.

Commonwealth Ct. 377, 414 A.2d 450 (1980); Purolator Courier Corp. I; Applicant of Van Trans, Inc., A-00101053, F.5 (order adopted June 25, 1987, entered July 8, 1987); Re Eagle Courier and Limousine Service, Inc. (Re Eagle Courier), 57 Pa. P.U.C. 404 (1983).

and that

The witnesses supporting a motor common carrier application must be legally competent and credible, e.g., D.F. Bast, Inc; Merz White Way Tours v. Pennsylvania Public Utility Commission, 204 Pa. Superior Ct. 43, 201 A.2d 446 (1964), and their testimony must be probative and relevant to the application proceeding. E.g., Purolator Courier Corp. I; Dutchland Tours, Inc.; Morgan Drive Away, Inc. II; 66 Pa. C.S. §332(b). The supporting witnesses must articulate a demand/need for the type of service embodied in the application. E.g., Purolator Courier Corp. I; Re Lenzner Coach Lines, Inc.; Re Mobilfone of Northeastern Pennsylvania, Inc.; Re James A. Means, 53 Pa. P.U.C. 216 (1979); Re Hesser Bros, Inc., 52 Pa. P.U.C. 69 (1978). Moreover, the supporting witnesses must identify Pennsylvania origin and destination points between which they require transportation, and these points must correspond with the scope of the operating territory specified in the application. E.g., Re Nothstein Bros., Inc., 64 Pa. P.U.C. 411 (1987); Re Purolator Courier Corp., 50 Pa. P.U.C. 308 (1976).

Finally, the Commission emphasized that

The particular circumstances of a case determine what constitutes sufficient evidence of a public demand/need for the applicant's proposed service. Noerr Motor Freight, Inc. v. Pennsylvania Public Utility Commission, 181 Pa. Superior Ct. 322, 124 A.2d 493 (1956); Re Purolator Courier Corp. Therefore, the number of witnesses which will comprise a cross section of the public on the issue of the public demand/need for an applicant's proposed service will necessarily vary with the circumstances of the case such as the breadth of the applicant's intended operating territory, the population density in the intended operating territory, and the scope of the requested operating authority. Purolator Courier Corp. II; Purolator Courier Corp. I; Noerr Motor Freight, Inc.; Application of Suburban Transit, Inc., A-00107286 (order adopted October 27, 1988, entered November 4, 1988); Re Purolator Courier Corp. Where the intended operating territory is broad and heavily populated and the applicant seeks an expansive grant of operating authority, more witnesses are required to show a cross section of the public needing the applicant's proposed transportation in the intended operating territory. Conversely, where the intended operating territory is restricted and not populous and the applicant seeks a narrow grant of operating authority, fewer witnesses are required to show a cross section of the public needing the applicant's proposed transportation in the intended operating territory.

Before proceeding with an analysis of the record evidence, it is also necessary to review the principles applicable to situations where an applicant has been found to have rendered prior unauthorized service. Under such circumstances, it has been held that, absent a convincing showing that prior illegal was rendered in good faith or was rendered under a bona fide misunderstanding of the law or the carrier's rights, the Commission is justified in denying an Application on the basis of unfitness. Application of North Penn Transfer, Inc., 54 Pa. P.U.C. 585 (1981), A-0061078, F.2, Am-B, January 18, 1981; Application of Robert Gray's Sons, Inc., A-97768, F.1, Ar-B, 1977; Application of Perfect Courier Ltd., A-104117 (1983).

Applicable appellate decisions are in accord with the Commission's rulings in this regard. Armored Motor Service Corp. v. Pa. PUC, 411 A.2d 900 (1980); Manganell v. Pa. PUC, 18 Pa. Crwth. 373, 335 A.2d 890 (1975); Bunting Bristol Transfer, Inc. v. Pa. PUC, 418 Pa. 286, 210 A.2d 281 (1965). In the case of Lancaster Transportation Co. v. Pa. PUC, 181 Pa. Super. 129, 124 A.2d 380, 385, the Court stated:

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 a 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. (Citations 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.

Thus, this "good faith" rule requires that testimony as to need and fitness which is based upon prior unauthorized service not made in good faith, be disregarded. Nevertheless, where unauthorized prior service has indeed been rendered in "bad faith", it has been held in Brinks v. Pa. P.U.C. and Brooks, 456 A.2d 1342, 1344, that although

. . . Our case law is clear that, although a favorable finding of fitness may not be based upon evidence of the quality of service conducted in willful violation of a court order or the Commission's authority, the mere fact of prior operation in violation of a court order or the Commission's authority does not preclude a carrier from obtaining lawful authority in a subsequent proceeding before the Commission. See Bunting Bristol Transfer, Inc. v. Pa. P.U.C., 418 Pa. 286, 210 A.2d 281 (1965); D. F. Bast, Inc. v. Pa. P.U.C., 397 Pa. 246, 154 A.2d 505 (1959). See also Gettysburg Tours, Inc. v. Pa.

P.U.C., 42 Pa. Cmwlt. 399, 400 A.2d 945 (1959); Johnstown-Pittsburgh Express v. Pa. P.U.C., 5 Pa. Cmwlt. 521, 291 A.2d 545 (1972); Lancaster Transportation Co. v. Pa. P.U.C., 181 Pa. Super. 129, 124 A.2d 380 (1956). Thus, while WFB's continuing to haul money in deliberate disregard of the Commonwealth Court's order gave rise to a negative inference concerning Brooks' fitness, the Commission could still have granted the requested contract carrier authority without abusing its discretion, so long as the Commission had before it positive evidence of Brooks' fitness independent of the evidence relating to the period of unlawful operation<sup>3</sup>.

The footnote to the foregoing quotation explains the reason for the rule, as follows:

3. The justification for the rule permitting the acquisition of contract carrier rights despite past unlawful operations is evident. The essence of public utility regulation is to assure that the public's needs are best served at the most reasonable rates. If past unlawful operations were deemed conclusive of an applicant's fitness, the Commission would be powerless to grant the application of a carrier who, despite its past unlawful activities, has otherwise demonstrated its present fitness to perform services beneficial to the public. Such an automatic disqualification, moreover, would improperly view the Commission's statutory obligation to determine an applicant's fitness prior to

granting a contract carrier permit as a punitive measure directed against the individual wrongdoer rather than as a safeguard, the primary purpose of which is the protection of the public. See 66 Pa. C.S. §2501.

Guided by all of the foregoing principles, let us proceed with an analysis of the evidence and arguments of the parties in the instant matter.

A. Useful Public Purpose Responsive to Public Demand or Need  
[41.14(a)]

The purpose of Fischer-Hughes' application is to obtain authority so as to permit Applicant to transport 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 goods; and parts, materials and supplies used in connection therewith.

Applicant argues that its supporting shippers ship and/or receive a variety of commodities which come within the broad definition of electronic equipment and other business machines which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods. Moreover, Applicant further argues that these shippers have various movements of electronic equipment as follows:

1. Iverson - from Bala Cynwyd to Philadelphia, Greencastle, Harrisburg, Levittown, Newtown Square and Swedesburg (N.T. 59-60, 64)
2. Bell & Howell - from Allentown to Philadelphia, Pittsburgh, Harrisburg, Fogelsville (N.T. 75, 76, 79)
3. Carolinch - from Ivyland to Harrisburg, Allentown, Bethlehem and Scranton (N.T. 90-91)
4. Insertech - from Bedminster to Lansdale and from Doylestown to customers or back to Bedminster (N.T. 100)
5. HPI - from Philadelphia and Harrisburg to Hatfield (N.T. 105-106) and from Hatfield to Willow Grove, York and the Delaware Water Gap near Scranton (N.T. 104-105, 107)

Accordingly, Applicant submits that these shippers have demonstrated a need for the proposed service.

Protestants argue that Applicant has provided unauthorized service to certain of Applicant's supporting shippers; that such service was rendered in bad faith; and therefore the testimony of these shippers cannot be considered in support of the Application under Bast, Inc., supra, and Bunting Bristol, supra.

Indeed, the record evidence does disclose that Applicant has provided intrastate service for and is presently working with Carolinch on an intrastate shipment to Scranton before the end of 1990 (N.T. 94). Likewise, the record also

indicates that Applicant has been providing Bell & Howell the intrastate service now being requested (N.T. 84-85).

Applicant asserts that any such unauthorized intrastate service was not rendered in bad faith, but rather resulted from a misunderstanding of its authority and confusion caused by differing interpretations of "third proviso" authority by the Pennsylvania Public Utility Commission and the Interstate Commerce Commission, and that Applicant was under the impression that under the third part (third proviso) of its PUC operating authority, it had the right to transport the types of commodities involved in this Application. Thus, Applicant asserts that any unauthorized service was rendered on the basis of a good faith misunderstanding of the scope of its present authority.

Protestant Cristinzio argues that Applicant has presented himself as "confused" and has allowed his company to accept and perform requests for unauthorized transportation even during the Application period. This Protestant further points out that Applicant has described the Application as a request for "clarification of the issue" when, in fact, it is an Application for additional intrastate rights, which Applicant does not presently hold, and which Applicant certified to the Commission in his Application that he would not perform until authorization was received.

Protestant J. C. Services, Inc. argues that Applicant has come before the Commission having admittedly performed services which he understood to be unlawful and apparently intends to continue to perform. This Protestant cites numerous record references to support its position.

With regard to this "good faith" issue, Mr. Justice Cohen, in a concurring opinion in Bunting Bristol Transfer, Inc. v. Pa. P.U.C., 418 Pa. 286, 210 A.2d 201 (1965) stated,

The first point has to do with the problem of burden of proof. The burden of proving good faith is on the applicant. He can acquit the burden only through the submission of proper evidence which is both clear and convincing. The protesting carriers do not have the burden of proving the applicant's lack of good faith although they have the right to present evidence on the point. It will be presumed that if the applicant violated his certificate his violation was in bad faith. The presumption can be overcome only by the applicant's submission of proper evidence which clearly and convincingly demonstrates his good faith.

The Administrative Law Judge has carefully considered the arguments of the parties, the record evidence and the applicable legal principles and finds and concludes that Applicant has not met his burden of proving good faith by clear and convincing evidence. On the contrary, the transcript of

testimony discloses the following answers by Applicant's President to questions propounded to him:

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 [Exhibit A-5] 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.

Mr. Lavelle: Yes, to what? I forgot the original question.

Mr. Casey: After he found out about the restrictions on household rights did not include electronics nine months ago, he continued to perform the service under A5, with that knowledge, The answer was yes; correct?

The Witness: Yes.

(N.T. 32-33), and

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

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.

(N.T. 33-34).

It is to be noted that paragraph 11 of the Application states,

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.

The Administrative Law Judge agrees with Protestants that this uncontroverted testimony places Applicant in the position of having wilfully disregarded the Public Utility Code and the Commission's authority. It is one thing to render unauthorized service by mistake or confusion, but quite another to provide such service, as Applicant did, after having actual knowledge that it did not have the certificated right to do so and after certifying that Applicant is not and will not engage in the transportation for which approval is being sought. This latter situation clearly negates Applicant's "good faith" contention, and indeed amounts to intentional, wilful and "bad faith" conduct.

Nor is it a satisfactory and sufficient explanation of this unauthorized service to assert, as Applicant does, that it only constituted a "de minimus" amount of traffic. This alleged "de minimus" unauthorized service constituted a wilful disregard

of the Commission's authority, as aforesaid, and is revealing on the issue of Applicant's propensity to operate lawfully, hereinafter discussed.

Moreover, that other carriers have filed applications and received grants of authority similar to that requested in this proceeding likewise is not sufficient reason to grant the instant Application. Each case must stand on its own merits, and each Applicant must sustain its own burden of proof.

Having concluded that the unauthorized service rendered by Applicant for Bell & Howell and Carolinch has not been demonstrated to have been rendered in good faith, the need testimony of the witnesses on behalf of said companies cannot be considered and must be disregarded under the applicable legal principles hereinabove set forth.

As to the remaining three (3) supporting witnesses, Insertech testified that all of its transportation needs are interstate (N.T. 103) and that it really does not have customers within Pennsylvania (N.T. 101). This testimony does not assist Applicant in its §41.14(a) burden.

The Iverson witness testified that her employees transport the computers in their own cars and vans; had never used a PUC carrier to move computers in the past; and did not testify as to a present need but rather to a possible need in the future if Iverson successfully negotiates a contract with IBM to

install and service computers which IBM may sell to the City of Philadelphia (N.T. 59-60). This contract has not been signed (N.T. 69) and Iverson has no estimate as to how often Applicant's service would be needed (N.T. 61). This then is a speculative possible future need not sufficient to support a finding of need as to this company.

Finally, the remaining supporting witness from HPI Plastics, Inc. was the sole witness presenting credible need testimony. This witness testified to an unquantified number of inbound shipments from Philadelphia and Harrisburg to Hatfield and outbound from Hatfield 4 or 5 shipments per year to each of Willow Grove, York and the Delaware Water Gap near Scranton (N.T. 104-107).

Thus, of all of the proffered supporting witnesses, only one presented the type of need testimony contemplated under 52 Pa. Code 41.14(a) as interpreted by the Blue Bird case. The Administrative Law Judge concludes that the testimony of this witness alone, or even coupled with that of the Iverson witness is not sufficient to sustain Applicant's §41.14(a) burden. There has been no convincing sufficient representative demand/need testimony to sustain Applicant's §41.14(a) burden. That it is difficult to obtain such supporting testimony, as contended by Applicant (Applicant's Main Brief, p. 30), further demonstrates the apparent lack of need for an additional carrier in the field.

Moreover, that numerous similar applications have been granted in the past by the Commission also buttresses the absence of need for an additional carrier, and does not remedy Applicant's failure to sustain its §41.14(a) burden or its burden of demonstrating that the unauthorized service performed by Applicant was in fact rendered in good faith. Further, that such unauthorized service was only a small portion of Applicant's business likewise does not supply the required "need" evidence. Nor can Applicant hide behind the failures of his employees, especially in light of the rendering of unauthorized service after the filing of the instant Application. None of the foregoing, therefore, justifies or convincingly demonstrates a need or demand for the proposed service or that Applicant's rendition of unauthorized service was done in "good faith" so as to permit consideration of the excluded testimony of Bell & Howell and Carolinch.

Accordingly, the Application must be denied by reason of Applicant's failure to sustain its burden under 52 Pa. Code §41.14(a).

B. Fitness [§41.14(b)]

No issue has been raised concerning Applicant's technical or financial fitness to provide the applied-for service.

However, the issue concerning Applicant's propensity to operate lawfully was raised. This issue clearly relates to Applicant's rendition of unauthorized service not demonstrated to have been performed in good faith, as previously discussed with respect to §41.14(a). For the reasons therein set forth, which are incorporated herein by reference, the Administrative Law Judge finds and concludes that the record demonstrates that Applicant lacks a propensity to operate legally, and therefore the Administrative Law Judge will withhold approval of the proposed authority. Although Protestants also argue that Applicant had obtained knowledge of the need for additional PUC rights to render the service being sought herein through a letter mailed to all members of the Pennsylvania Moving and Storage Association (Protestants' Exh. No. 4), it is not necessary to ground this decision on that allegation since Applicant has admitted that he had actual knowledge of such requirement when the instant Application was filed in October 1989, but nevertheless continued to render unauthorized intrastate service.

Moreover, Applicant has not otherwise demonstrated its present fitness, i.e., propensity to operate lawfully, especially in view of Applicant's rendition of unauthorized service after the filing of the Application and its recent intrastate service for Bell & Howell (N.T. 84). This continuing flaunting of the Public Utility Code is clearly not in the public interest and

weighs heavily against Applicant. The Commission must be concerned that such a course of conduct not be encouraged by casually overlooking it for in so doing it would give an incorrect signal to the industry that Code violations will be countenanced without penalty. This clearly would be in derogation of the public interest. Accordingly, the Administrative Law Judge, as aforesaid, finds and concludes that Applicant has not met the fitness standard in this regard.

The foregoing finding and conclusion does not mean that Applicant is forever barred in the future from seeking the authority it now requests in this proceeding. The Commission's Regulations at 52 Pa. Code §3.381(j) specifically provide,

(j) New applications: conditions for reconsideration. Applications filed within 6 months of the date of an order refusing or dismissing, on the merits, an application for the same rights filed by the same party shall set forth any new facts or changed conditions not previously presented to the Commission for consideration. The Commission may, in its administrative discretion, either accept or refuse the filing of the application.

For the foregoing reasons, the Application will be denied.

C. Impairment of Existing Carriers Contrary to the Public Interest [§41.14(c)]

No material and convincing evidence concerning this evidentiary criterion was presented in this proceeding, and indeed, the matter of destructive competition was not seriously pursued by Protestants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties in this proceeding.
2. Applicant has not met his burden under 52 Pa. Code §41.14(a).
3. Applicant has not met his burden under 52 Pa. Code §41.14(b) in that it has not demonstrated a propensity to operate legally.

VI. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Application of Fischer-Hughes Transport, Inc. be and the same is hereby denied.
2. That this proceeding be marked closed.

Date: May 3, 1991

  
HERBERT SMOLEN  
Administrative Law Judge

<p><b>SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.</b></p> <p>Put your address in the "TURN TO" Space on the reverse side. Failure to do so will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.</p> <p>1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
<p>3. Article Addressed to:</p> <p>A-103976, F.1, Am-B ID</p> <p>William N. R. Cooney, Jr.</p>	<p>4. Article Number</p> <p>01847570</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured  <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD  <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>5. Signature - Addressee</p> <p>X <i>William N. R. Cooney, Jr.</i></p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
<p>6. Signature - Agent</p> <p>X</p>	
<p>7. Date of Delivery</p> <p>5/21/91</p>	

PS Form 3811, Apr. 1989 \*U.S.G.P.O. 1989-239-815

<p><b>SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.</b></p> <p>Put your address in the "TURN TO" Space on the reverse side. Failure to do so will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.</p> <p>1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
<p>3. Article Addressed to:</p> <p>A-103976, F.1, Am-B ID</p> <p>Scott A. Petri, Jr.</p>	<p>4. Article Number</p> <p>01847570</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured  <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD  <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>5. Signature - Addressee</p> <p>X <i>Marge Petri</i></p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
<p>6. Signature - Agent</p> <p>X</p>	
<p>7. Date of Delivery</p> <p>5/20/91</p>	

PS Form 3811, Apr. 1989 \*U.S.G.P.O. 1989-239-815

Case Identification:

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

Initial Decision By:

ALJ Herbert Smolen

Deadline for Return to OSA:

May 31, 1991

BTL

This decision has not been reviewed by OSA.

**DOCKETED**  
JUN 1 1991

\* \* \* \* \*

**DOCUMENT  
FOLDER**

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

Wm H. Smith  
Commissioner

5-31-91  
Date

Case Identification: A-00103976, F001, Am-B;  
Application of Fischer-Hughes  
Transport, Inc.

Initial Decision By: ALJ Herbert Smolen

Deadline for Return to OSA: May 31, 1991

RECEIVED  
JUN 6 1991  
OFFICE OF SPECIAL  
ASSISTANTS

This decision has not been reviewed by OSA.

\* \* \* \* \*

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

x Joseph R. ... Jr.  
Commissioner

6/5/91  
Date

Case Identification: A-00103976, F001, Am-B;  
Application of Fischer-Hughes  
Transport, Inc.

Initial Decision By: ALJ Herbert Smolen

Deadline for Return to OSA: May 31, 1991

This decision has not been reviewed by OSA.

\* \* \* \* \*

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner Date

I do not want full Commission review of this decision.

*Dwight F. Holland*  
\_\_\_\_\_  
Commissioner Date  
*5/31/91*

RECEIVED

MAY 21 1991

COMMISSIONER HOLLAND'S OFFICE

Case Identification: A-00103976, F001, Am-B;  
Application of Fischer-Hughes  
Transport, Inc.

Initial Decision By: ALJ Herbert Smolen

Deadline for Return to OSA: May 31, 1991

This decision has not been reviewed by OSA.

\* \* \* \* \*

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

  
\_\_\_\_\_  
Commissioner

5-31-91  
\_\_\_\_\_  
Date

RECEIVED

MAY 31 1991

ORIGINAL

LAW OFFICES

VUONO, LAVELLE & GRAY

2310 GRANT BUILDING

PITTSBURGH, PA. 15219-2383

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

(412) 471-1800

TELECOPIER  
(412) 471-4477

June 6, 1991

\*ALSO MEMBER OF FLORIDA BAR

RECEIVED

JUN 11 1991

BTL

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

SECTION 5 OFFICE  
Public Utility Commission

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 Exceptions of Fischer-Hughes Transport, Inc., Applicant in connection with the above-captioned proceeding.

Copies of the Exceptions 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: William H. R. Casey, Esquire (w/Certificate of Mailing)  
Scott A. Petri, Esquire (w/Certificate of Mailing)  
Fischer-Hughes Transport, Inc.

**ORIGINAL**

**ORIGINAL**

**BEFORE THE  
Pennsylvania Public Utility Commission**

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

APPLICATION OF  
FISCHER-HUGHES TRANSPORT, INC.

JUN 3 1991  
Public

EXCEPTIONS OF  
FISCHER-HUGHES TRANSPORT, INC.  
APPLICANT

JUN 14 1991

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

Of Counsel:  
**VUONO, LAVELLE & GRAY**  
2310 Grant Building  
Pittsburgh, Pennsylvania 15219  
Due Date: June 6, 1991

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

---

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

APPLICATION OF  
FISCHER-HUGHES TRANSPORT, INC.

---

EXCEPTIONS OF  
FISCHER-HUGHES TRANSPORT, INC.  
APPLICANT

---

I. STATEMENT OF THE CASE

By application published in the Pennsylvania Bulletin on October 28, 1989, Fischer-Hughes Transport (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 to the application were filed 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. All parties filed Main Briefs and Applicant and Cristinzio filed Reply Briefs.

By Initial Decision dated May 3, 1991 and issued by the Commission on May 17, 1991, Judge Smolen denied the application. Applicant now files its Exceptions to the Initial Decision and requests that the Commission reverse the Initial Decision and grant the application in its entirety.

## II. STATEMENT OF EXCEPTIONS

Applicant respectfully submits that the Administrative Law Judge erred in the following respects:

1. In concluding that Fischer-Hughes did not transport a relative handful of shipments beyond the scope of its current operating authority under a good faith misunderstanding of the terms of its authority.

2. In disregarding the testimony of the shipper witnesses from Bell & Howell and Carolinch on the ground that several shipments handled by Applicant for them without authority disqualified their testimony with respect to the issue of need.

3. In discounting the testimony of the shipper witness from Iverson on the ground that the testimony was related to speculative future shipments.

4. In concluding that Applicant had failed to meet its burden of demonstrating a need for the proposed service.

5. In concluding that Applicant is unfit to receive a grant of authority.

### III. ARGUMENT

1. THE JUDGE ERRED IN CONCLUDING THAT FISCHER-HUGHES DID NOT TRANSPORT A RELATIVE HANDFUL OF SHIPMENTS BEYOND THE SCOPE OF ITS CURRENT OPERATING AUTHORITY UNDER A GOOD FAITH MISUNDERSTANDING OF THE TERMS OF ITS AUTHORITY.

The pivotal issue in this case is whether the transportation of ten shipments of electronic equipment subsequent to the filing of the application warrants the severe penalty imposed by the Judge, namely, denial of the application. Applicant submits that when that minimal number of shipments is placed in the overall context of this application and the Applicant's operations, and in view of the Commission's actions under virtually identical situations in prior cases, the result is unwarranted. If the Commission agrees with the Applicant with respect to this issue, then all of the other matters fall into place and point to approval of the application as the proper result.

Applicant did not attempt to conceal from the Commission the nature of its operations. Approximately ten days prior to the hearing on November 13, 1990, the Applicant's President and witness in this proceeding directed that a review of the company's files be made to determine if any shipments of electronic equipment had been transported during the time the application was pending. (44-45)\*

---

\*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.

The review disclosed that ten such shipments were transported in 1990. The details of those shipments were then presented to the Commission by the Applicant by means of its Exhibit A-5. The shipments dated September 15 and June 11, 1990 were determined to be within the warehousemen's exemption and therefore properly handled. (119) The other ten shipments, which are the only questionable ones of which there is any evidence, produced nominal revenue of \$3,338.50. (119-120)

The Applicant's President testified that to his knowledge there had been no such shipments transported after October 17, 1990 (45) and that the company did not intend to continue transporting intrastate shipments of electronic equipment thereafter. (44)

There is additional testimony by the Applicant's President that at the time the application was filed and up to the time of the hearing there was considerable confusion on the part of Fischer-Hughes as to whether or not the intrastate transportation of electronic equipment was or was not already covered by the Applicant's broad form household goods operating authority, specifically under the third proviso. (24, 32-33, 37-38, 42-43, 45, 49-51, 53) The Judge concluded that the Applicant had actual knowledge that the transportation of these ten shipments was not permitted by its certificate and therefore concluded that the shipments were intentionally handled in bad faith. Applicant disagrees completely with that

conclusion and submits that after the Commission reviews the testimony it will conclude that although Fischer-Hughes' present authority may not authorize the transportation of these ten electronic equipment shipments, the evidence does not establish willful violation of the law by the Applicant.

The confusion, which the Commission knows was shared by many household goods carriers in Pennsylvania, arises from the different interpretations of the so-called third proviso movements by this Commission and the Interstate Commerce Commission. (53) The ICC has long 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).

The Pennsylvania Public Utility Commission, on the other hand, has taken the position that specific authority is needed to transport electronic equipment and that such movements are not covered by the third proviso authority. The most recent statement of that position was set forth in Pennsylvania Moving & Storage Association, Petition for Declaratory Order, Docket

No. P-850090 (April 2, 1986) in which, relying on an unreported decision, it concluded that specific authority is required. To the best of this writer's knowledge, that Declaratory Order was not widely promulgated by the Commission but merely treated as any other routine decision despite its far-ranging ramifications. The unofficial and informal dissemination of notice of the Declaratory Order by Pennsylvania Moving and Storage Association is not sufficient to impute actual knowledge to the Applicant or any other carrier. (P-4) (42-43)

As a result of its own operating authority, both intrastate and interstate, and its agency relationship with United Van Lines, Inc., Fischer-Hughes is clearly authorized to provide the following transportation of business machines and electronic equipment:

(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 the eastern half of the United States under its own 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)

(4) 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. (5-6)

In addition, Fischer-Hughes is also lawfully permitted to transport electronic equipment between any two points in Pennsylvania without regard to territorial limitations when the commodities are transported pursuant to the recognized warehousemen's exemption, that is, between a Fischer-Hughes warehouse, on the one hand, and, on the other, the facilities of its warehouse customers.

When the extent of the Applicant's present lawful operations, which embrace the great majority of electronic equipment shipments, and the different interpretations of identical operating authority language by this Commission and the ICC are taken into consideration, it is not difficult to understand that carriers might legitimately be confused as to the extent of a somewhat ambiguously worded portion of their operating authority. The non-dissemination of the Commission's Declaratory Order decision did not aid in clarifying the matter for small household goods carriers such as the Applicant.

The transportation of ten shipments by the Applicant in this context does not properly lead to a finding of unfitness. The evidence does not support a conclusion that the Applicant willfully, intentionally and in bad faith unlawfully handled ten shipments of electronic equipment. A finding of bad faith

on the part of the Applicant is far too harsh a judgment when all of the circumstances are taken into consideration.

Contrary to the comment at page 54 of the Initial Decision, Fischer-Hughes is not continuing to flaunt the Public Utility Code. It is not at all clear whether the traffic referred to by the witness for Bell & Howell, which the Judge uses as the basis for the comment, was interstate, intrastate or exempt. Likewise, the Judge erred in finding that Applicant unlawfully handled traffic for Carolinch on the basis of discussions between that company and one of Applicant's salesmen about a possible move in December, 1990, subsequent to the hearing. Applicant's President testified that no further electronic equipment shipments would be handled.

Approval of this application will not send an incorrect signal to the trucking industry that violations will be countenanced without penalty. This is not a case of willful violation. Moreover, the Commission is well aware that in numerous proceedings when a mere handful of shipments were unlawfully transported, except in the most flagrant situations, it has reprimanded the Applicant but nevertheless proceeded to grant the application.

In that connection, we call the Commission's attention to the following applications for electronic equipment authority which the Commission granted and in which the applicants presented to the Commission traffic exhibits identifying shipments of electronic equipment that were transported

subsequent to the filing of the application. In each case the Commission granted the application despite the fact that the applicant admitted transporting the shipments during the pendency of the application.

(1) South Hills Movers, Inc., Docket No. A-00099073, Folder 2, Am-B, approved January 29, 1988. The applicant's Appendix 3 identified 58 shipments.

(2) Parks Van & Storage, Inc., Docket No. A-00103329, Folder 1, Am-A, approved September 14, 1989. The applicant's Appendix 3 identified 18 shipments.

(3) Parks Moving Systems, Inc., Docket No. A-00104390, Folder 1, Am-A, approved February 1, 1990. The applicant's Appendix 3 identified nine shipments.

The only difference between those three applications and the Fischer-Hughes application is the fact that the latter is opposed by two carriers. At page 51 of the Initial Decision, the Judge disregards the Commission's actions in similar cases, stating that each application must stand on its own merits and that an applicant must sustain its own burden of proof. While we concur with that position, we would also suggest that the Commission has an obligation to treat similarly situated carriers in a consistent manner. If the transportation of 58, 18 and nine shipments of electronic equipment during the pendency of the above three applications did not constitute grounds for denial of those cases, then the inadvertent transportation of ten electronic equipment shipments by

Fischer-Hughes during the pendency of its application should not bar it from a grant of authority. There is no discernible difference among these cases with respect to this issue.

For these reasons, Applicant requests that the Commission find that Fischer-Hughes transported the ten shipments in question under a bona fide misunderstanding of its current operating authority and that such transportation should neither disqualify any supporting shipper testimony nor form the basis for a denial of the application.

2. THE JUDGE ERRED IN DISREGARDING THE TESTIMONY OF THE SHIPPER WITNESSES FROM BELL & HOWELL AND CAROLINCH ON THE GROUND THAT SEVERAL SHIPMENTS HANDLED BY APPLICANT FOR THEM WITHOUT AUTHORITY DISQUALIFIED THEIR TESTIMONY WITH RESPECT TO THE ISSUE OF NEED.

The Judge did not consider the testimony of Bell & Howell and Carolinch because he concluded that the Applicant's transportation services for those companies had not been performed in good faith. As shown in the preceding section, the basis for concluding that the Applicant performed unlawful service for these two companies is exceedingly weak. The evidence is certainly insufficient to warrant excluding the testimony from consideration. Moreover, if the Commission concludes that the operations of the Applicant were performed in good faith, then that testimony is admissible and should be considered. Lancaster Transportation Company, 181 Pa. Super. 129, 124 A.2d 380, 385 (Super.Ct., 1956).

The Bell & Howell witness testified that the company supplies its machines to banks, telephone companies and other businesses 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)

The witness for Carolinch testified that it requires the exclusive use of vehicles to transport its electronic systems from its Ivyland facility to customers at such points as Harrisburg, Allentown, Bethlehem and Scranton. (90-91)

This testimony, which is summarized in greater detail in Appendix A to these Exceptions, should have been considered by the Judge.

3. THE JUDGE ERRED IN DISCOUNTING THE TESTIMONY OF THE SHIPPER WITNESS FROM IVERSON ON THE GROUND THAT THE TESTIMONY WAS RELATED TO SPECULATIVE FUTURE SHIPMENTS.

The testimony of the witness for Iverson does relate to future shipments but that in and of itself is not a sufficient reason for discounting it as the Judge did. A need for service clearly can be based on the future expectation of traffic which would be tendered to the Applicant. The testimony discloses that 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, 64) A more detailed summary of this shipper's testimony is set forth in Appendix A.

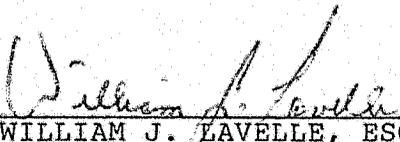
When all of the testimony of the supporting shippers is properly considered, Applicant submits that it has demonstrated in accordance with all applicable standards that there is a need for the proposed service. That finding should lead to approval of the application.

IV. CONCLUSION

For the reasons set forth herein, Fischer-Hughes respectfully requests that the Commission reverse the Initial Decision of the Administrative Law Judge, find that the Applicant has met its burden of proof under the standards set forth in 52 Pa. Code §41.14(a) and §41.14(b) and cases interpreting those standards, find that any transportation performed by Applicant beyond the scope of its present authority was done in good faith, give full weight to all of the shipper testimony, and grant the application in its entirety.

Respectfully submitted,

VUONO, LAVELLE & GRAY

BY: 

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: June 6, 1991

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Exceptions of Fischer-Hughes Transport, Inc., Applicant on all parties of record by first class mail, postage prepaid.

Dated at Pittsburgh, PA this 6th day of June, 1991.

  
\_\_\_\_\_  
William J. Lavelle

APPENDIX A

SUMMARY OF SHIPPER TESTIMONY

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 Cynwyd, 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)

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)

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)

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)

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)

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17105-3265

Public Meeting held July 3, 1991

Commissioners Present:

WILLIAM H. SMITH, CHAIRMAN  
JOSEPH RHODES, JR., VICE-CHAIRMAN  
WENDELL F. HOLLAND, COMMISSIONER  
DAVID W. ROLKA, COMMISSIONER

Pennsylvania Public Utility Commission  
v.

A-00103976C911

FISCHER-HUGHES TRANSPORT, INC.  
450 N. BROAD ST.  
DOYLESTOWN PA 18901

U.S. CERTIFIED MAIL NO. 044139

ORDER TO SHOW CAUSE

DOCUMENT  
FOLDER

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. That respondent holds a certificate of public convenience issued by this Commission at Application Docket No. A-00103976.
2. That respondent is required by 66 Pa. C.S. Section 510(b), and by the regulations of the Commission, 52 Pa. Code Section 29.43 or Section 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. That, as of the date of this order to show cause, which is after March 31, 1991 respondent has not filed its Assessment Report for 1990 revenues.
4. That, by failing to file its Assessment Report for 1990 revenues, respondent is in violation of 66 Pa. C.S. Section 510(b) and 52 Pa. Code Section 29.43 or Section 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 cancelled in its entirety for failure to file respondent's Assessment Report for 1990 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 17105-3265, an answer in writing, under oath, which, as required by 52 Pa. Code Section 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 1990 revenues within the time specified for filing an answer to this order. If the respondent so files its Assessment Report for 1990 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 1990 revenues within twenty (20) days, respondent will be deemed to have admitted all the allegations in this order, in accordance with 52 Pa. Code Section 5.64. In that event, this Commission may, without hearing, enter an appropriate order which either suspends or cancels the certificate of public convenience held by respondent and which imposes a fine or any other appropriate penalty or forfeiture as authorized by 66 Pa. C.S. Section 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 1990 revenues, this Commission will enter an order which either suspends or cancels the certificate of public convenience held by respondent and which imposes a fine or any other appropriate penalty or forfeiture as authorized by 66 Pa. C.S. Section 101, et seq.

6. That, if respondent files a timely answer which specifically denies the allegations in this order or which raises material questions of law or fact, and does not file its Assessment Report for 1990 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 suspends or cancels the certificate of public convenience held by respondent and which imposes a fine or any other appropriate penalty authorized by 66 Pa. C.S. Section 101, et seq.



BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Jerry Rich", is written over the typed name below.

Jerry Rich  
Secretary

ORDER ADOPTED: July 3, 1991

ORDER ENTERED: July 29, 1991

