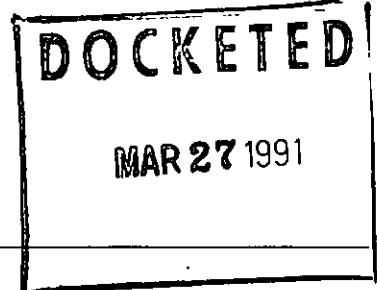


KJR

1. <u>REPORT DATE:</u> January 23, 1991	:	2. <u>BUREAU AGENDA NO.:</u>
3. <u>BUREAU:</u> Office of Special Assistants:	:	JAN-91-OSA-12*
4. <u>SECTION(S):</u>	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: Cheryl Walker Davis 7-1827 Supervisor:	:	January 31, 1991
7. <u>MONITOR:</u>	:	
8. <u>PERSON IN CHARGE:</u> Russell Albert 7-4717	:	
9. <u>DOCKET NO.:</u> A-00108155	:	



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

(a) Application of Central Transport, Inc.  
 (Home Office - North Carolina)

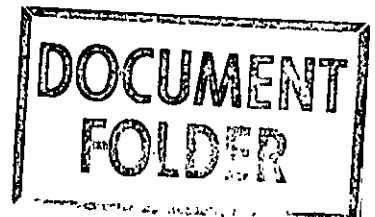
(b) By Application published in the Pennsylvania Bulletin on June 11, 1988, Central Transport, Inc. ("Applicant") requested common carrier authority to transport property in bulk, in tank and hopper type vehicles, between points in Pennsylvania. Numerous Protests were filed in opposition to the Application. In response, the Applicant amended its Application so as to eliminate transportation of certain specified commodities. Six Protestants remained active in opposing the grant of authority, even as amended. Evidentiary hearings were held before ALJ Schnierle. Main and Reply Briefs were filed. ALJ Schnierle issued his Initial Decision on March 5, 1990, granting the Application, in part. On June 25, 1990, Matlack, Inc. filed a Petition to Reopen the Record. The Commission per its Opinion and Order of August 16, 1990, granted said Petition and remanded the case to the Office of ALJ for hearing. During the remand hearing, the ALJ certified to the Commission the instant material question pursuant to 52 Pa. Code §305.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed draft Opinion and Order which answers the question presented in the negative.

dlr

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

CONTENT OF MOTION: Staff recommendation adopted.



KJR

February 1, 1991

A-00108155

William A. Chesnutt, Esquire  
McNees, Wallace & Nurick  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Application of Central Transport, Inc., a corporation of the State of  
North Carolina

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by  
the Commission in public meeting held January 31, 1991.

A copy of this Opinion and Order has been enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

fao  
Encls.  
Certified Mail  
Refer to letter dated March 29, 1990

DOCUMENT  
FOLDED  
DOCKETED  
FEB 1 1991

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120

Public Meeting held January 31, 1991

Commissioners Present:

William H. Smith, Chairman  
Joseph Rhodes, Jr., Vice-Chairman  
Frank Fischl, Commissioner  
Wendell F. Holland, Commissioner  
David W. Rolka, Commissioner



Application of Central Transport, Inc.  
A Corporation of the State of North  
Carolina, for the right to transport,  
as a common carrier, property, in  
bulk, in tank and hopper-type vehicles,  
between points in Pennsylvania.

A-00108155

DOCKETED  
FEB 11 1991

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration is an Order Certifying a Material Question filed pursuant to the provisions of 52 Pa. Code §5.305(c), by presiding Administrative Law Judge ("ALJ") Michael C. Schnierle relative to the above-captioned proceeding.

BRIEF HISTORY OF THE PROCEEDING

On March 21, 1988, Central Transport, Inc. ("Central" or "Applicant") filed an Application seeking Commission authorization to transport:

Property, in bulk, in tank and hopper-type vehicles, between points in Pennsylvania.

Notice of the Application was published in the Pennsylvania Bulletin on June 11, 1988. Twenty common carriers and one contract carrier (Samuel Coraluzzo, Co., Inc.) filed timely protests.

The Applicant subsequently filed several restrictive amendments, which resulted in the withdrawal of all but six of the Protestants. Evidentiary hearings were held before ALJ Schnierle resulting in a transcript of 701 pages. Subsequent to the filing of Briefs, the ALJ issued his Initial Decision on March 6, 1990. On June 25, 1990, Matlack, Inc. filed a Petition to Reopen the Record ("Petition"), in the instant proceeding. By Opinion and Order entered August 23, 1990, the Commission granted the Petition and remanded the proceeding to the ALJ for obtaining testimony and evidence consistent with its Opinion and Order. During the course of the remand proceeding, ALJ Schnierle certified the instant question to the Commission.

#### Discussion

The specific material question certified to the Commission for our review and answer is as follows:

Does the Opinion and Order adopted by the Commission on August 16, 1990 (entered on August 23, 1990), authorize the admission of testimony and evidence regarding environmental or safety violations of the protestants which occurred or became known since the close of the evidentiary record in this proceeding? (Emphasis supplied).

In our Opinion and Order of August 23, 1990, we noted that newly discovered evidence, which involves environmental violations by Central, affecting the public safety, is clearly relevant to a determination of the issues presented in the instant proceeding. We were persuaded, in part, by the ALJ's observation, as stated on pages 137-138 of the Initial Decision, that:

The occupational safety and health violations and the environmental violations at issue in this case involve the tank cleaning operations of Central. That these tank cleaning operations are an indispensable part

of the trucking operation is evident from the considerable testimony both by the applicant (Central Exhibit 1, pp. 11-12) and by the various shippers (N.T. 152-153, 301, 334) of the need to clean the trailers between loads. Central's proposed service will be of little benefit to the public if it cannot conduct that service without endangering the health of its employees and the cleanliness of Pennsylvania's waters. (Emphasis Added).

Accordingly, at pages 9-10 of our Opinion and Order of August 16, 1990, we ordered as follows:

That this proceeding be, and hereby is, remanded to the Office of Administrative Law Judge, for the limited purpose of obtaining testimony and evidence regarding Central Transport, Inc. Clean Water Act violations, and any other environmental or safety violations occurring or becoming known since the close of the evidentiary record in this proceeding, and the issuance of a Supplemental Initial Decision. (Emphasis supplied).

Our remand Order was quite specific regarding the limited purposes for which this record was reopened. It is apparent that the additional testimony and evidence to be produced in this "limited" reopening is to relate only to Central's Clean Water Act, environmental and safety violations.

Our review of Matlack, Inc.'s Petition, lends support to the foregoing interpretation. At pages 3-4 of its Petition, Matlack averred that:

On March 5, 1990 - the date the Initial Decision was signed by Judge Schnierle - the United States Attorney filed a Bill of Information with the U.S. District Court for the Western District of North Carolina averring that Central had violated the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq. (hereinafter referred to as the "Clean Water Act."). Specifically, the Bill of Information alleged that on three

(3) separate occasions in April and May, 1987 Central knowingly introduced into the Charlotte-Mecklenburg Utility Department water treatment works pollutants which Central knew or reasonably should have known could cause personal injury or property damage.

Matlack argued, in its Petition, that Central failed to produce any evidence regarding the Clean Water Act violations in response to its interrogatory. Matlack requested a reopening of the record for the introduction of relevant, probative evidence that was unobtainable until after the close of the evidentiary record in the proceeding. In our view, the newly discovered evidence, not discoverable by Matlack through the exercise of due diligence prior to the close of the record, related solely to environmental and safety violations committed by Central. Phillip Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982).

An objective reading of our entire Remand Opinion and Order would clearly indicate, that it is directed solely to evidence of the violations committed by Central, which information, would assist in the fitness-determination of Central (Applicant). In considering the certified question before us, we are not requested to expand upon the scope of our remand Order, but rather to elucidate the extent of the relief we intended to grant when we issued the remand Order. The arguments presented in Matlack's Petition to Reopen and the analysis contained in our Opinion and Order of August 23, 1990, clearly indicate that we contemplated a reopening of the record for the "limited" purpose of receiving testimony and evidence regarding only Central's Clean Water Act, environmental and safety violations. We did not contemplate the submission of evidence regarding the violations by Matlack or any of the other six (6) Protestants.

Accordingly, the material question certified to the Commission must be answered in the negative.

At page 3 of the Order Certifying a Material Question, ALJ Schnierle stated that:

The following portions of the record in this proceeding are relevant to the disposition of this certified question:

1. Central's Motion to Take Official Notice of Facts,
2. Matlack's Reply to Central's Motion to Take Official Notice of Facts, and
3. Order Denying Motion to Take Official Notice of Facts.

We must reiterate that procedurally, the certified question before us requires no more than a clarification of our Remand Order of August 23, 1990. Any other prior pleadings, rulings or orders are, in our view, not germane to the instant certified question; **THEREFORE,**

**IT IS ORDERED:** That the Order Certifying a Material Question filed by Administrative Law Judge, Michael C. Schnierle, be, and hereby is, answered in the negative.

BY THE COMMISSION,



Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: January 31, 1991

ORDER ENTERED: February 1, 1991