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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NOV 28 1990

SECRETARY'S OFFICE  
Public Utility Commission

Application of Central Transport, : Docket No.  
Inc. : A-108155

ORDER CERTIFYING A MATERIAL QUESTION

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1. The purpose of this order is to certify to the Commission for review and answer the following material question which has arisen in this proceeding:

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?

The question has arisen as a result of a Motion to Take Official Notice of Facts filed on November 9, 1990 by the Applicant, Central Transport, Inc. By order dated November 28, 1990, I denied that motion. As further explained in my order, I denied Central's motion, despite my opinion that the evidence proffered by Central in its motion is relevant, because the evidence proffered appears to be beyond the scope of the Commission's Opinion and Order of August 16, 1990.

2. The Commission's Opinion and Order of August 16, 1990, remanded this proceeding to the undersigned Administrative Law Judge "for the limited purpose of obtaining testimony and evidence regarding Central Transport, Inc., Clean Water Act

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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." (Slip Op. at 9-10). The Commission's order appears to preclude the receipt of evidence regarding such violations committed by the protestants. During the hearings in this proceeding, I ruled that Central could offer into evidence the records of the protestant carriers with regard to violations of safety, environmental, and public utility laws and regulations. Central has proffered by its motion evidence regarding environmental violations on the part of protestant Matlack, which have become known since the close of the evidentiary record in this proceeding. It is my opinion that such evidence, while relevant, is beyond the scope of the Commission's remand order. Commission review and answer to the material question posed by this Order Certifying a Material Question may avoid the necessity of a further remand for the purpose of receiving the evidence proffered by Central.

3. Hearings are presently scheduled in this proceeding for December 4 and 5, 1990, for receipt of testimony and evidence regarding Central's environmental or safety violations which occurred or became known since the close of the evidentiary record in this proceeding. I have not continued those hearings, nor have I stayed this proceeding pending the Commission's answer to this material question. Hearings are

necessary to receive evidence regarding the Central violations regardless of the Commission's response to this Order Certifying a Material Question. Should the Commission answer this certified question by authorizing the receipt of the evidence proffered by Central, another day of hearing can be scheduled for that purpose.

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 (copy attached).

In addition to the foregoing, the following portions of the record may assist the Commission in its review of this question: Initial Decision, pp. 138-139; Orders dated January 17, 1989, February 2, 1989, and February 28, 1989. Those Orders, and pages of the Initial Decision, involve my rulings that Central could offer into evidence the records of the protestant carriers with regard to violations of safety, environmental, and public utility laws and regulations.

  
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MICHAEL C. SCHNIERLE  
Administrative Law Judge

Dated: Nov. 28, 1990

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