COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

KJR

June 26, 1992

IN REPLY PLEASE REFER TO OUR FILE

A-00108155

WILLIAM A CHESTNUT ESQUIRE
100 PINE STREET
PO BOX 1166
HARRISBURG PA 17108

DOCUMENT FOLDER

DOCKETED
JUL 0 2 1992

Application of Central Transport, Inc.

Dear Sir:

In accordance with the provisions of Act 294 of 1978 (66 Pa. C.S.§332(h)), the decision of the Administrative Law Judge in this proceeding has become final without further Commission action and the compliance order is enclosed.

A Certificate of Public Convenience evidencing the Commission's approval of the right to operate will not be issued until the applicant has complied with the following insurance and tariff requirements:

I. Arrange through an insurance agent to have an insurance company file the following forms with the Commission.

   a. A Form E as evidence of minimum public liability and property damage insurance coverage as shown on the back of this sheet.

   b. A Form H or Form UCPC-31 as evidence of cargo insurance coverage in an amount not less than $5,000 per vehicle. Under certain circumstances, exemption from the cargo insurance requirement may be secured by filing the enclosed Form PUC-288.

II. Prepare and file a tariff according to the enclosed instructions except applicants for transfer of authority must file a tariff adoption supplement which will be forwarded by separate cover at a later date.

DOCKETED
JUL 0 2 1992

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PROPERTY(ACT 294)

Minimum Limits for PA Public Utility Commission Authorized Service

Passenger Carriers:

15 passengers or less:	$35,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage. $25,000 first party medical benefits, $10,000 first party wage loss benefits and shall conform to 75 Pa. C.S. §§1701-1798 (relating to Motor Vehicle Financial Responsibility Law). First party coverage of the driver of certificated vehicles shall meet the requirements of 75 Pa. C.S. §1171 (relating to required benefits).
16 to 28 passengers:	$1,000,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.
29 passengers or more:	$5,000,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage.

Property Carriers:

Common or Contract:	$300,000 combined single limit per accident per vehicle to cover liability because of bodily injury, death or property damage. Insurance coverage of motor carriers of property shall meet the requirements of 75 Pa. C.S. §1701-1798 (relating to Motor Vehicle Financial Responsibility Law).
Common only:	$5,000 per accident per vehicle for loss or damage to cargo.

No motor carrier shall operate or engage in any transportation until compliance with all of the above requirements and a certificate of public convenience has been issued authorizing actual operations. Motor carriers operating without complying with the above requirements will be subject to the penalty provisions of the Public Utility Code.

Commission regulations require compliance with all of the above requirements within sixty days of the date of this letter. Failure to comply within the sixty day period will cause the Commission to rescind this action and dismiss the application without further proceedings.

If you foresee any problems in meeting these requirements, please direct your questions to the following contact persons:

Insurance Filings: Mr. William P. Hoshour-Insurance Section
(717) 783-5933

Tariff Filings: Mr. Joseph Machulsky-Tariff Section
(717) 787-5521

Very truly yours,

John G.Alford
Secretary

jz
Enclosures
CERTIFIED MAIL
RECEIPT REQUESTED

cc:applicant
UWHARRIE ROAD
PO BOX 7007
HIGH POINT NC 27264

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 19, 1992

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner

Application of Central Transport, Inc. A-108155

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration are the timely-filed Exceptions of Matlack, Inc., ("Matlack" or "Protestant") taken to the Initial Decision on Remand of Administrative Law Judge ("ALJ") Michael C. Schnierle issued on August 16, 1991. Reply to Exceptions were filed by Central Transport, Inc. ("Central" or "Applicant") on September 16, 1991.

History of the Proceedings

On March 21, 1988, the Applicant filed an Application seeking Commission authorization to transport:

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

Central subsequently filed several restrictive amendments which resulted in the withdrawal of all but six of the Protestants. As amended, the Application seeks the following authority to transport:

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

Provided that no right, power, or privilege is granted to transport asphalt, cement, cement mill waste, dolomitic limestone and dolomitic limestone products, dry litharge, fly ash, limestone and limestone products, mill scale, roofing granules, salt, sand, scrap metal and stack dust.

Provided that no right, power or privilege is granted to transport aviation gasoline, butane, diesel fuel, fuel oil (grades 2, 4, 5 and 6), gasoline, kerosene, motor fuel, propane, turbo fuel, cryogenic liquids, dispersants and refrigerant gases.

Provided that no right, power or privilege is granted to transport corn syrup and blends of corn syrup, flour, honey, milk and milk products, molasses, sugar and sugar substitutes.

Provided that no right, power or privilege is granted to perform transportation in dump vehicles.

Provided that no right, power or privilege is granted to provide services from the facilities of PENNWALT Corporation, located in the county of Philadelphia, or in the county of Bucks, to points in Pennsylvania and vice versa.

(Applicant's Supplemental Exhibit 5).

After several days of hearing, and the filing of briefs by several parties, the ALJ issued an Initial Decision on March 16, 1990, in which he granted the Application in part. We shall incorporate herein by references the ALJ's Findings of Fact and Conclusions of Law as stated in ALJ Schnierle's Initial Decision of March 16, 1990. Exceptions and Reply to Exceptions were filed to the Initial Decision. Also filed by the Protestant herein, was a Petition to Reopen the record. Central opposed the Petition.

By Order entered on August 23, 1990, Matlack's Petition to Reopen was granted. We directed that the proceeding be

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 a evidentiary record in this proceeding, and the issuance of a Supplemental Initial Decision."

By letter, dated October 23, 1990, the Office of Administrative Law Judge notified the parties that a telephonic Prehearing Conference would be held on November 6, 1990, and that further hearings would be held on December 4 and 5, 1990.

On November 9, 1990, Central filed a Motion To Take Official Notice of Facts. By its Motion, Central requested ALJ Schnierle to take official notice of certain evidence regarding environmental violations on the part of Protestant Matlack which became known after the close of the evidentiary record. On November 16, 1990, Matlack filed a Reply to Central's Motion To Take Official Notice Of Facts. In its Reply, Matlack maintained that the evidence sought to be introduced by Central was beyond the scope of our remand order.

By Order dated November 28, 1990, ALJ Schnierle ruled that the evidence proffered by Central, while relevant, was beyond the scope of our remand order. By separate Order on that same date, the ALJ certified his ruling to the Commission as a material question. After receiving briefs from the concerned parties, we adopted an Order on January 31, 1991, confirming ALJ Schnierle's interpretation of the remand order.

A hearing was held to receive evidence as directed in the remand order on December 4, 1990. That hearing resulted in a record upon remand of 75 pages of recorded testimony and eight exhibits; one additional exhibit, offered by Central, was not admitted into the record. Central, Matlack and Crossett, Inc., (another protestant) filed Briefs.

ALJ Schnierle issued his Initial Decision Upon Remand on August 16, 1991. Whereupon, Protestant Matlack filed the instant Exceptions.

Discussion

Subsequent to the close of the record as developed upon remand, ALJ Schnierle made twenty (20) Findings of Fact which we shall incorporate herein by reference. Based on his evaluation and analysis of the record, the ALJ adopted the Conclusions of Law set forth in his Initial Decision of March 5, 1990. However, Conclusion of Law No. 3 from that Initial Decision was modified to read as follows:

> 3. Central has demonstrated that it possesses the requisite financial and technical fitness to provide the proposed service subject to the conditions that Central institute and maintain confined space entry and respiratory protection programs at its Karns City tank cleaning facility, and that Central comply with applicable federal and Pennsylvania state statutes and regulations pertaining to the discharge of waste water.

Exceptions of Matlack, Inc.

The gist of Protestant Matlack's Exceptions is that the ALJ erred in concluding that Central is fit to be the recipient of the grant of a certificate of public convenience (Exceptions, p. 2). Matlack contends that the ALJ failed to adequately weigh the public safety along with Central's significant environmental violations and the cost of adding another intrastate bulk carrier handling petroleum, chemicals and the like over Pennsylvania's highways. Furthermore, Matlack asserts that no recognizable public purpose will be served by the grant of the requested authority to Central. The record, Matlack argues, is devoid of

any expression of substantial public need for the service proposed by Central.

We note that the Exceptions of Matlack are not in strict compliance with our regulations at Section 5.533(b), 52 Pa. Code §533(b), which provides that:

> An exception shall be stated in specific, numbered paragraphs, identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exception shall follow a specific exception. (Emphasis Added).

Nonetheless, however, we shall address the issues voiced by the Protestant.

Historically, an applicant requesting the issuance of a certificate of public convenience to operate as a common carrier was required to establish:

1. A public need for the proposed service,
2. The inadequacy of existing service, and
3. The financial and technical capacity to meet the need in a satisfactory fashion.[1/]

The criteria which we now utilize in deciding a motor carrier's application, as codified at 52 Pa. Code §41.14, are as follows:

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the

---

1/ Chemical Leaman Truck Lines, Inc. v. Pennsylvania Public Utility Commission, 210 Pa. Super. Ct. 196, 191 A.2d 876 (1963).

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 possess the technical and financial ability to provide the proposed service, and in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

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

It is well settled in the law that an applicant submitting a motor carrier application has the burden of proof.[2/]

We note that pursuant to Section 1103(a) of the Public Utility Code, 66 Pa. C.S. §1102(a), it is our statutory mandate to grant a certificate of public convenience only if it is determined that the issuance of a certificate of public convenience "is necessary or proper for the service, accommodation, convenience, or safety of the public." In fulfilling our legislative mandate, we promulgated the regulations at 52 Pa. Code §41.14(a)(b)(c), recited supra, consonant with the directive of subsection 1103(a) of the Public Utility Code.

We recognize that the procedural posture of the instant proceeding is rather unique. This matter was reopened and

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2/ Application of Skyline Motors Air Cargo, Inc., Docket No. A-00093883, F. 1, Ma-B, entered December 7, 1988.

remanded to the 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. The Clean Water Act violation is described in ALJ Schnierle's Finding of Fact No. 1 as follows:

> 1. On March 5, 1990, Central pleaded guilty to three separate counts of an information alleging that between April 28 and May 5, 1987, it knowingly introduced into the Charlotte-Mecklenburg public sewer system certain pollutants, which Central knew or reasonably should have known could cause personal injury or property damage in violation of 33 U.S.C. §1319(c)(2)(B). (Exh. MR-2, 3).

Matlack in its Exceptions questions the fitness of the Applicant herein in light of its violation of the Clean Water Act. We are fully cognizant that in passing on an application for a certificate of public convenience, it is incumbent upon us to consider the fitness of the applicant in light of his past record. We are aware that a persistent disregard for, flouting or defiance of the Public Utility Code, and the Orders and Regulations of the Commission, including Federal regulations, warrant a finding of lack of fitness, relative to a propensity to operate illegally. Hubert et al., v. Pa. Public Utility Commission, 118 Pa. Super. 128 (1935).

However, consonant with our prior decisions, it is well established that an applicant's propensity to operate legally is only one aspect of "fitness". In the case of B. B. Motors Carriers, Inc. v. Pa. Public Utility Commission, 36 Pa. Cmwlth. Ct. 26, 289 A.2d 210 (1978) the court stated that:

> Finally, we reject Protestant's urgings to find Applicant unfit for certification due to prior violations of the Public Utility Law. Certainly, a carrier's willingness to obey is

> a factor that reflects on that carrier's fitness; yet obedience to the law is only one of many factors that compose a legal concept of "fitness." (Emphasis Added).

In the case of Application of Amram Enterprises, Ltd., A-00100531, F.1, Am-C (December 23, 1983), we affirmed the findings of ALJ Cohen that in spite of an applicant's questionable record for illegal operations and evidence of persistent defiance of the Public Utility Law, such conduct in and of itself, could not form the basis for a conclusion that the applicant lacked a propensity to operate legally. The ALJ reasoned in the Amram Case at pages 21-22 that:

> In Bunting Bristol Transfer Co. v. Pa. PUC, 418 Pa. 286, 293 (1965) the court stated there is a presumption that violations of the Public Utility Law were in bad faith, and the applicant has the burden of proving good faith.
>
> However, in the more recent case of Brinks, Incorporated v. Pa. PUC, 500 Pa. 392, and Brooks Armored Car Service, decided March 11, 1983, 456 A.2d 1342, the Court stated, inter alia:
>
> * * *
>
> Based on the foregoing (Brinks case), we feel that in spite of applicant's questionable record for illegal operations in the Pittsburgh area such antecedent conduct, in and of itself does not, at this time, act as a bar for favorable consideration of this application on the fitness criteria: [Emphasis Added.]

Consonant with the Brinks case, cited supra, we note that the fitness criteria are intended to protect the public and not to punish the carrier. The concerns raised by Matlack do not in our view address the core issue of Central's propensity to operate safely and legally in the future.

At pages 33-34 of the Initial Decision ALJ Schnierle very succinctly pointed out as follows:

> As I noted in my Initial Decision in this proceeding, during the same period of time covered by Central's violations, several of the other carriers involved in this proceeding were cited for similar violations. (Initial Decision dated March 5, 1990, at 135-150). In particular, Refiners Transport was fined for discharging inadequately treated waste water from its Oil City tank cleaning facility into Oil Creek, for transporting on several occasions hazardous waste for which it did not have a license, and for accepting hazardous waste for transport without a completed manifest. (Central Exhibits 30 and 31). As I noted there, in terms of the severity of violations, Central's are similar to those of other companies. The additional violations shown in the course of the hearing after remand do not alter my conclusion that Central's record in this regard is no better and no worse than one might expect. Moreover, because the fitness criteria is intended to protect the public and not to punish carrier, Brinks, 500 Pa. at 392, Footnote 3, the corrective actions taken by Central with respect to these violations must be weighed in Central's favor.

The criticism by Matlack that the ALJ herein failed to scrutinize the evidence presented at the hearing on remand is, in our view, misplaced. It is well settled in the law that in considering the credibility of witnesses, their manner of testifying, their apparent candor, intelligence, personal interest and bias or lack of it, are to be considered in determining what weight shall be given to their testimony. Danovitz v. Portnoy, 399 Pa. 599; 161 A.2d 146 (1960). Our review of the record leads us to conclude that the ALJ did not abuse his administrative discretion nor can his actions be characterized as arbitrary or capricious.

Conclusion

Based on the totality of the facts and circumstances in this case, we believe that the Applicant herein, possesses the requisite financial and technical fitness to provide the proposed service subject to the conditions as stipulated herein. Because of the limited purpose for which the instant proceeding was remanded, we do not believe that it is necessary to address the ancillary issue of public demand or need other than to state that we adopt the ALJ's recommended disposition of this issue; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Matlack, Inc., be, and hereby are, denied.

2. That the March 16, 1990 Initial Decision of Administrative Law Judge Michael C. Schnierle, as modified by the Initial Decision Upon Remand issued August 16, 1991, be, and hereby are, adopted consistent with this Opinion and Order.

3. That the Application of Central Transport, Inc. at Docket No. A-00108155, as restrictively amended and as further modified, be and hereby is approved, and that a certificate be issued granting the following right:

> To transport, as a Class D carrier, liquid property in bulk from the facilities of Witco Corporation in Petrolia, Butler County, to points in Pennsylvania; from the facilities of Pennzoil Products Corporation in Karns City, Butler County, to points in Pennsylvania and vice versa; from the facilities of McCloskey Corporation and Harry Miller Corporation in the City of Philadelphia to points in Pennsylvania; from the facilities of Para-Chem Southern, Inc. in the City of Philadelphia to points in Pennsylvania and vice versa; from the

facilities of Valspar Corporation in the City of Pittsburgh, Allegheny County, and in the Borough of Rochester, Beaver County, to points in Pennsylvania; subject to the following conditions:

(1) Provided that no right, power or privilege is granted to transport asphalt, cement, cement mill waste, aviation gasoline, butane, diesel fuel, fuel oil (grades 2, 4, 5 and 6), gasoline, kerosene, motor fuel, propane, turbo fuel, cryogenic liquids, dispersants and refrigerant gases, corn syrup and blends of corn syrup, flour, honey, milk and milk products, molasses, sugar and sugar substitutes.

(2) Provided that no right, power or privilege is granted to provide services from the facilities of Pennwalt Corporation, located in the City and County of Philadelphia, or in the County of Bucks, to points in Pennsylvania, and vice versa.

4. That the Applicant, Central Transport, Inc., shall not engage in any transportation granted herein until it has instituted a respiratory protection program at its Karns City tank cleaning facility in accordance with 29 CFR §1910.134, and has certified to the Commission that it has instituted such a program.

5. That Central Transport, Inc., shall not engage in any transportation granted herein until it has instituted a confined space entry program in accordance with Paragraphs 2(a) through 2(g) of the Stipulation and Notice of Settlement between Central Transport, Inc. and John C. Brooks, Commissioner of Labor of North Carolina, at Docket OSHANC No. 86-1292 of the Safety and Health Review Board of North Carolina, dated May 20, 1987, and has certified to the Commission that it has instituted such a program.

6. That Central Transport, Inc., shall not engage in any transportation granted herein until it shall have complied

with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relating to the filing and acceptance of a tariff establishing just and reasonable rates, and the filing of evidence of insurance.

7. That Central Transport, Inc., be, and hereby is directed to comply with the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all pertinent regulations of this Commission now in effect or as may hereafter be prescribed by the Commission.

8. That Central Transport, Inc., be, and hereby is, directed to maintain the respiratory protection program described in Ordering Paragraph No. 2 of the Initial Decision, and a confined space entry program which shall be in accordance with Ordering Paragraph No. 3 of the Initial Decision until such time as the Occupational Safety and Health Administration of the United States Department of Labor adopts final regulations for such a program, at which time Central shall comply with OSHA's final regulations.

9. That Central Transport, Inc., be, and hereby is, directed to comply with all applicable Federal and Pennsylvania state statutes and regulations pertaining to the discharge of waste water. Failure to comply shall be sufficient cause to suspend, or revoke or rescind the rights and privileges which are conferred hereby upon Central Transport, Inc.

10. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the carrier, shall not be construed as conferring more than one operating right.

11. That in the event the Applicant has not, on or before sixty days from the date of service of this order, complied with the requirements set forth above, this Application shall be dismissed without further proceedings.

11. That in the event the Applicant has not, on or before sixty days from the date of service of this order, complied with the requirements set forth above, this Application shall be dismissed without further proceedings.

12. That this Initial Decision shall be served upon the Law Bureau and the Bureau of Safety and Compliance.

BY THE COMMISSION,

John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: June 19, 1992

ORDER ENTERED: JUN 26 1992

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GRAF ANDREWS & RADCLIFF
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HARRISBURG PA 17101

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WILLIAM J LAVELLE ESQUIRE
VUONO LAVELLE & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219

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

August 31, 1992

IN REPLY PLEASE
REFER TO OUR FILE

DOCKETED
SEP 22 1992

TO ALL PARTIES OF RECORD:

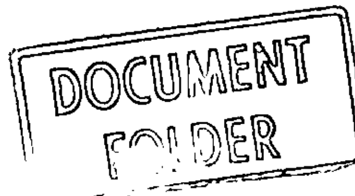
Re: A-00108155; Application of Central Transport, Inc.

Attached is a Corrected Order in the above captioned proceeding. This Order reflects an addition of information, on pages 10 and 11, which was inadvertently omitted from the Opinion and Order entered on June 26, 1992. The information added begins after the semicolon in the last line at page 10 and should read as follows:

from the facilities of E.F. Houghton and Co.

Sincerely yours,

John G. Alford
Secretary

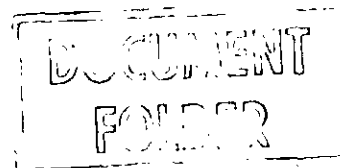


CORRECTED ORDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 19, 1992

Commissioners Present:



David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner

Application of Central Transport, Inc. A-108155

OPINION AND ORDER

DOCKETED
SEP 22 1992

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> An exception shall be stated in specific, numbered paragraphs, identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exception shall follow a specific exception. (Emphasis Added).

Nonetheless, however, we shall address the issues voiced by the Protestant.

Historically, an applicant requesting the issuance of a certificate of public convenience to operate as a common carrier was required to establish:

1. A public need for the proposed service,
2. The inadequacy of existing service, and
3. The financial and technical capacity to meet the need in a satisfactory fashion.[1]

The criteria which we now utilize in deciding a motor carrier's application, as codified at 52 Pa. Code §41.14, are as follows:

> (a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the

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1/ Chemical Leaman Truck Lines, Inc. v. Pennsylvania Public Utility Commission, 210 Pa. Super. Ct. 196, 191 A.2d 876 (1963).

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 possess the technical and financial ability to provide the proposed service, and in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

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

It is well settled in the law that an applicant submitting a motor carrier application has the burden of proof.[2/]

We note that pursuant to Section 1103(a) of the Public Utility Code, 66 Pa. C.S. §1102(a), it is our statutory mandate to grant a certificate of public convenience only if it is determined that the issuance of a certificate of public convenience "*is necessary or proper for the service, accommodation, convenience, or safety of the public.*" In fulfilling our legislative mandate, we promulgated the regulations at 52 Pa. Code §41.14(a)(b)(c), recited supra, consonant with the directive of subsection 1103(a) of the Public Utility Code.

We recognize that the procedural posture of the instant proceeding is rather unique. This matter was reopened and

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2/ Application of Skyline Motors Air Cargo, Inc., Docket No. A-00093883, F. 1, Ma-B, entered December 7, 1988.

remanded to the 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. The Clean Water Act violation is described in ALJ Schnierle's Finding of Fact No. 1 as follows:

> 1. On March 5, 1990, Central pleaded guilty to three separate counts of an information alleging that between April 28 and May 5, 1987, it knowingly introduced into the Charlotte-Mecklenburg public sewer system certain pollutants, which Central knew or reasonably should have known could cause personal injury or property damage in violation of 33 U.S.C. §1319(c)(2)(B). (Exh. MR-2, 3).

Matlack in its Exceptions questions the fitness of the Applicant herein in light of its violation of the Clean Water Act. We are fully cognizant that in passing on an application for a certificate of public convenience, it is incumbent upon us to consider the fitness of the applicant in light of his past record. We are aware that a persistent disregard for, flouting or defiance of the Public Utility Code, and the Orders and Regulations of the Commission, including Federal regulations, warrant a finding of lack of fitness, relative to a propensity to operate illegally. Hubert et al., v. Pa. Public Utility Commission, 118 Pa. Super. 128 (1935).

However, consonant with our prior decisions, it is well established that an applicant's propensity to operate legally is only one aspect of "fitness". In the case of B. B. Motors Carriers, Inc. v. Pa. Public Utility Commission, 36 Pa. Cmwlth. Ct. 26, 289 A.2d 210 (1978) the court stated that:

> Finally, we reject Protestant's urgings to find Applicant unfit for certification due to prior violations of the Public Utility Law. Certainly, a carrier's willingness to obey is

> a factor that reflects on that carrier's fitness; yet obedience to the law is only one of many factors that compose a legal concept of "fitness." (Emphasis Added).

In the case of Application of Amram Enterprises, Ltd., A-00100531, F.1, Am-C (December 23, 1983), we affirmed the findings of ALJ Cohen that in spite of an applicant's questionable record for illegal operations and evidence of persistent defiance of the Public Utility Law, such conduct in and of itself, could not form the basis for a conclusion that the applicant lacked a propensity to operate legally. The ALJ reasoned in the Amram Case at pages 21-22 that:

> In Bunting Bristol Transfer Co. v. Pa. PUC, 418 Pa. 286, 293 (1965) the court stated there is a presumption that violations of the Public Utility Law were in bad faith, and the applicant has the burden of proving good faith.
>
> However, in the more recent case of Brinks, Incorporated v. Pa. PUC, 500 Pa. 392, and Brooks Armored Car Service, decided March 11, 1983, 456 A.2d 1342, the Court stated, inter alia:
>
> * * *
>
> Based on the foregoing (Brinks case), we feel that in spite of applicant's questionable record for illegal operations in the Pittsburgh area such antecedent conduct, in and of itself does not, at this time, act as a bar for favorable consideration of this application on the fitness criteria: [Emphasis Added.]

Consonant with the Brinks case, cited supra, we note that the fitness criteria are intended to protect the public and not to punish the carrier. The concerns raised by Matlack do not in our view address the core issue of Central's propensity to operate safely and legally in the future.

At pages 33-34 of the Initial Decision ALJ Schnierle very succinctly pointed out as follows:

> As I noted in my Initial Decision in this proceeding, during the same period of time covered by Central's violations, several of the other carriers involved in this proceeding were cited for similar violations. (Initial Decision dated March 5, 1990, at 135-150). In particular, Refiners Transport was fined for discharging inadequately treated waste water from its Oil City tank cleaning facility into Oil Creek, for transporting on several occasions hazardous waste for which it did not have a license, and for accepting hazardous waste for transport without a completed manifest. (Central Exhibits 30 and 31). As I noted there, in terms of the severity of violations, Central's are similar to those of other companies. The additional violations shown in the course of the hearing after remand do not alter my conclusion that Central's record in this regard is no better and no worse than one might expect. Moreover, because the fitness criteria is intended to protect the public and not to punish carrier, Brinks, 500 Pa. at 392, Footnote 3, the corrective actions taken by Central with respect to these violations must be weighed in Central's favor.

The criticism by Matlack that the ALJ herein failed to scrutinize the evidence presented at the hearing on remand is, in our view, misplaced. It is well settled in the law that in considering the credibility of witnesses, their manner of testifying, their apparent candor, intelligence, personal interest and bias or lack of it, are to be considered in determining what weight shall be given to their testimony. Danovitz v. Portnoy, 399 Pa. 599; 161 A.2d 146 (1960). Our review of the record leads us to conclude that the ALJ did not abuse his administrative discretion nor can his actions be characterized as arbitrary or capricious.

Conclusion

Based on the totality of the facts and circumstances in this case, we believe that the Applicant herein, possesses the requisite financial and technical fitness to provide the proposed service subject to the conditions as stipulated herein. Because of the limited purpose for which the instant proceeding was remanded, we do not believe that it is necessary to address the ancillary issue of public demand or need other than to state that we adopt the ALJ's recommended disposition of this issue; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Matlack, Inc., be, and hereby are, denied.

2. That the March 16, 1990 Initial Decision of Administrative Law Judge Michael C. Schnierle, as modified by the Initial Decision Upon Remand issued August 16, 1991, be, and hereby are, adopted consistent with this Opinion and Order.

3. That the Application of Central Transport, Inc. at Docket No. A-00108155, as restrictively amended and as further modified, be and hereby is approved, and that a certificate be issued granting the following right:

> To transport, as a Class D carrier, liquid property in bulk from the facilities of Witco Corporation in Petrolia, Butler County, to points in Pennsylvania; from the facilities of Pennzoil Products Corporation in Karns City, Butler County, to points in Pennsylvania and vice versa; from the facilities of McCloskey Corporation and Harry Miller Corporation in the City of Philadelphia to points in Pennsylvania; from the facilities of Para-Chem Southern, Inc. in the City of Philadelphia to points in Pennsylvania and vice versa; from the

facilities of E. F. Houghton and Co. in the Township of Upper Macungie, Lehigh County, to points in Pennsylvania; and from the facilities of Valspar Corporation in the City of Pittsburgh, Allegheny County, and in the Borough of Rochester, Beaver County, to points in Pennsylvania; subject to the following conditions:

(1) Provided that no right, power or privilege is granted to transport asphalt, cement, cement mill waste, aviation gasoline, butane, diesel fuel, fuel oil (grades 2, 4, 5 and 6), gasoline, kerosene, motor fuel, propane, turbo fuel, cryogenic liquids, dispersants and refrigerant gases, corn syrup and blends of corn syrup, flour, honey, milk and milk products, molasses, sugar and sugar substitutes.

(2) Provided that no right, power or privilege is granted to provide services from the facilities of Pennwalt Corporation, located in the City and County of Philadelphia, or in the County of Bucks, to points in Pennsylvania, and vice versa.

4. That the Applicant, Central Transport, Inc., shall not engage in any transportation granted herein until it has instituted a respiratory protection program at its Karns City tank cleaning facility in accordance with 29 CFR §1910.134, and has certified to the Commission that it has instituted such a program.

5. That Central Transport, Inc., shall not engage in any transportation granted herein until it has instituted a confined space entry program in accordance with Paragraphs 2(a) through 2(g) of the Stipulation and Notice of Settlement between Central Transport, Inc. and John C. Brooks, Commissioner of Labor of North Carolina, at Docket OSHANC No. 86-1292 of the Safety and Health Review Board of North Carolina, dated May 20, 1987, and has certified to the Commission that it has instituted such a program.

6. That Central Transport, Inc., shall not engage in any transportation granted herein until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the rules and regulations of this Commission relating to the filing and acceptance of a tariff establishing just and reasonable rates, and the filing of evidence of insurance.

7. That Central Transport, Inc., be, and hereby is directed to comply with the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all pertinent regulations of this Commission now in effect or as may hereafter be prescribed by the Commission.

8. That Central Transport, Inc., be, and hereby is, directed to maintain the respiratory protection program described in Ordering Paragraph No. 2 of the Initial Decision, and a confined space entry program which shall be in accordance with Ordering Paragraph No. 3 of the Initial Decision until such time as the Occupational Safety and Health Administration of the United States Department of Labor adopts final regulations for such a program, at which time Central shall comply with OSHA's final regulations.

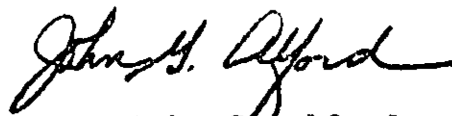
9. That Central Transport, Inc., be, and hereby is, directed to comply with all applicable Federal and Pennsylvania state statutes and regulations pertaining to the discharge of waste water. Failure to comply shall be sufficient cause to suspend, or revoke or rescind the rights and privileges which are conferred hereby upon Central Transport, Inc.

10. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the carrier, shall not be construed as conferring more than one operating right.

11. That in the event the Applicant has not, on or before sixty days from the date of service of this order, complied with the requirements set forth above, this Application shall be dismissed without further proceedings.

12. That this Initial Decision shall be served upon the Law Bureau and the Bureau of Safety and Compliance.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: June 19, 1992

ORDER ENTERED: June 26, 1992