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BEFORE

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THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S OFFICE
Public Utility Commission

In re: A-00108155 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. Further hearing.

Pittsburgh, Pennsylvania
February 15, 1989

F DO 311 117
FOINER

Pages 511 to 604, inclusive

DOCKETED
MAR 02 1989

HOLBERT ASSOCIATES
LISA J. BERKEY
Suite 401, Kunkel Building
301 Market Street
Harrisburg, Pennsylvania 17101

CERTIFIED ORIGINAL

BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Stenographic report of hearing held at the
State Office Building, 300 Liberty Avenue,
Pittsburgh, Pennsylvania

Wednesday,
February 15, 1989
9:30 a.m.

BEFORE
MICHAEL SCHNIERLE, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

WILLIAM A. CHESNUTT, ESQUIRE
McNees, Wallace & Nurick
P.O. Box 1166
Harrisburg, Pennsylvania 17108
Appearing on behalf of Applicant

HENRY M. WICK, ESQUIRE
1450 Two Chatham Center
Pittsburgh, Pennsylvania 15219
Appearing on behalf of Protestant Refiners Transport
and Terminal Corporation

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1 JUDGE SCHNIERLE: This is the time and place set for
2 further hearing in the matter of the application of Central
3 Transport. I believe the purpose of this morning's hearing is
4 to present protestants -- Refiners Transport and Terminal, to
5 present their case. I note the appearances of William
6 Chesnutt for Central Transport and Henry Wick for Refiners
7 Transport and Terminal Corporation. Are there any preliminary
8 matters to be disposed of?

9 MR. CHESNUTT: Not by me, Your Honor.

10 MR. WICK: None, Your Honor.

11 JUDGE SCHNIERLE: Okay. Mr. Wick, you may proceed with
12 your first witness.

13 MR. WICK: I'll call Keith B. Wilson.

14 JUDGE SCHNIERLE: Please raise your right hand.

15 KEITH B. WILSON, having been duly sworn, was examined
16 and testified as follows:

17 JUDGE SCHNIERLE: Please be seated.

18 MR. WICK: Judge Schnierle, Mr. Wilson has a series of
19 exhibits. I've passed them out and I'll ask that they be
20 marked for identification now, if that's all right.

21 JUDGE SCHNIERLE: That's fine.

22 MR. WICK: I think Refiners may have one exhibit already
23 in the record. Shall we begin with --

24 JUDGE SCHNIERLE: I don't --

25 MR. CHESNUTT: Well, yes, we do have an exhibit from

1 Refiners in the record, as a matter of fact. You're
2 absolutely right. It was Refiners Transport Exhibit No. 1,
3 and it was marked at page 86 of the transcript, and I think it
4 was admitted, too.

5 MR. WICK: Yes, I think it was. Shall we begin with 2?

6 JUDGE SCHNIERLE: We'll start with 2.

7 MR. WICK: May we have marked for identification as
8 Refiners' Exhibit 2 a multi-page document being a Certificate
9 of Public Convenience issued by the Pennsylvania Public
10 Utility Commission at A-93117?

11 JUDGE SCHNIERLE: That's fine. That will be Exhibit No.
12 2.

13 MR. WICK: As Refiners' Exhibit No. 3, a document headed
14 Pennsylvania Terminals and Facilities of Refiners Transport
15 and Terminal Corporation.

16 JUDGE SCHNIERLE: It may be so marked.

17 MR. WICK: As Refiners' Exhibit No. 4, a document
18 entitled Headcount for Refiners Transport and Terminal
19 Corporation.

20 JUDGE SCHNIERLE: That will be No. 4.

21 MR. WICK: As Refiners' Exhibit No. 5, a multi-paged
22 document, the second page of which has the legend Refiners
23 Transport and Terminal Fleet Profile by Terminal Tractors. In
24 other words, a tractor list.

25 JUDGE SCHNIERLE: That will be No. 5.

1 MR. WICK: Five. As Refiners' Exhibit No. 6, a
2 multi-paged document, the second page of which indicates
3 Refiners Transport and Terminal Fleet Profile by Terminal
4 Trailers. In other words, a trailer list.

5 JUDGE SCHNIERLE: That will be No. 6.

6 MR. WICK: As Refiners' Exhibit No. 7, a single paged
7 document headed Terminal and showing various numerical codes
8 for terminals.

9 JUDGE SCHNIERLE: That will be No. 7.

10 MR. WICK: And as Refiners' Exhibit No. 8, a multi-paged
11 document entitled Corporate Safety Procedures, Leaseway
12 Transportation Corp.

13 JUDGE SCHNIERLE: That will be No. 8.

14 (Refiners Transport Exhibit Nos. 2 through 8 were
15 produced and marked for identification.)

16 MR. WICK: I've given copies of these to Mr. Chesnutt,
17 Your Honor and to the reporter.

18 DIRECT EXAMINATION

19 BY MR. WICK:

20 Q Mr. Wilson, would you state your full name and
21 business address?

22 A My name is Keith, K-e-i-t-h, B., as in boy, Wilson,
23 W-i-l-s-o-n. My business address is in care of Refiners
24 Transport and Terminal Corporation, P.O. Box 273, Oil City,
25 Pennsylvania, 16301.

1 Q What is your position with Refiners Transport and
2 Terminal Corporation?

3 A Regional manager.

4 Q Briefly describe your duties as regional manager, and
5 describe the area of operations that you supervise.

6 A I'm in charge of all operations issues for an area
7 consisting of 12 terminals. The area starts basically at the
8 Ohio/Pennsylvania state line, goes eastward as far as New
9 Jersey, north as far as Boston, Massachusetts, south as far as
10 Baltimore, Maryland.

11 Q Are you responsible, then, for all operations in the
12 Commonwealth of Pennsylvania?

13 A Yes, I am.

14 Q Did you attend the hearings in this proceeding at
15 Harrisburg, Philadelphia and Pittsburgh where shipper
16 witnesses testified?

17 A Yes, I did.

18 Q Mr. Wilson, I show you what's marked for
19 identification as Refiners' Exhibit No. 2, and ask you if that
20 is a document showing the operating rights issued by this
21 Commission to Refiners?

22 A Yes.

23 Q Would you turn to the next to the last page of that
24 exhibit, sir? Does that document at Folder 1, Amendment A
25 describe the basic rights of Refiners to transport property in

1 bulk, in tank vehicles between points in Pennsylvania, subject
2 to two conditions?

3 A Yes.

4 Q Does your company also hold nationwide authority to
5 transport bulk commodities as issued by the Interstate
6 Commerce Commission?

7 A Yes.

8 Q Mr. Wilson, would you describe briefly the terminals
9 of Refiners which are the major ones providing equipment and
10 personnel for Pennsylvania operations, and in that connection,
11 I refer you to exhibit -- the document marked as Exhibit No.
12 3? Does that document show the Pennsylvania terminals?

13 A Yes, it does.

14 Q Describe them briefly, sir.

15 A Oil City, Pennsylvania is a -- what we call a full
16 service-type facility. Full service meaning we transport all
17 types of commodities. We have an office, maintenance
18 facility, tank cleaning and, of course, tractors and trailers.
19 It's located on approximately a four acre parcel of ground
20 with a ten bay maintenance facility.

21 East Butler, Pennsylvania is also what we consider full
22 service-type facility. We have a four bay maintenance
23 facility and an office located on approximately three acres of
24 property. We do have tank cleaning there also. Sewickley,
25 Pennsylvania is located on approximately three acres of

1 property. Our primary function of that terminal is petroleum
2 products, short haul. We have no interior cleaning facility
3 there. We do have maintenance and an office.

4 Duncansville, Pennsylvania is located on approximately
5 two acres. We have an office there. We have no maintenance
6 facilities of our own there, no tank cleaning. And Devault,
7 Pennsylvania, we have virtually no property. We have an
8 office with management and dispatch. No maintenance
9 facilities.

10 Q In addition to those Pennsylvania terminals, do you
11 have terminals in close proximity to Pennsylvania which also
12 provide service in Pennsylvania?

13 A Yes. We have a terminal in Wilmington, Delaware
14 which is approximately a 25 to 28 truck operation. It's about
15 15 miles from Philadelphia, so it's in a good location to
16 provide service in that area to those shippers. We also have
17 a terminal in Hammonton, New Jersey, which is about 30 miles
18 from Philadelphia. Here again, those are both multi-service
19 facilities that are able to provide service to Pennsylvania.

20 Q And by service to Pennsylvania, are you including
21 intrastate service?

22 A Yes.

23 Q Mr. Wilson, I show you what's marked for
24 identification as Refiners' Exhibit No. 4, entitled Headcount
25 for Refiners Transport and Terminal Corp. What is that

1 exhibit intended to show?

2 A What that shows is all terminals of Refiners, with
3 the total number of drivers, mechanics, tank cleaners.
4 Really, all employees of Refiners Transport.

5 Q And are these all fulltime employees?

6 A Yes.

7 Q I next direct your attention to what's been marked
8 for identification as Refiners' Exhibit No. 5. Is that a list
9 of the tractors which your company owns and operates?

10 A Yes.

11 Q I'll ask you to explain that code in just a moment,
12 but would you now turn to your -- the document identified as
13 Refiners' Exhibit No. 6, and I ask you if that's a list of all
14 the trailers that your company operates?

15 A Yes.

16 Q I direct your attention to Exhibit No. 7, headed
17 Terminal, and would you explain what that exhibit is intended
18 to show?

19 A Each terminal is coded by number. All that is, it
20 shows you which terminal and the corresponding code that goes
21 with that terminal.

22 Q Will you turn back to your Exhibit No. 5, which is
23 the tractor list, and very briefly, explain how that code
24 works by reference to the Oil City terminal, as an example?

25 A Okay. If you leaf back into the package to about the

1 seventh or eighth page, you see toward the bottom where it
2 lists Terminal 0930. 0930 means that it's the Oil City
3 terminal. The first entry in the column under that is 84.
4 That means it's a 1984 model. The next column, B1109 is the
5 unit number.

6 The third column is a -- it's a class code. You can
7 look at that and tell, without some of the other things, what
8 year, make, model the unit is. For example, this one, the
9 first letter is J. If you go clear to the front, the very
10 front page, if you go down there and you see J, beside J it
11 says 1984. It just designates the year of the unit. The
12 second is a four. If you go to the second digit column and
13 follow beneath and you see that the No. 4 means that it's a
14 Mack.

15 Q You're referring to the front page?

16 A The very front page. It's like a decode for the
17 class listing that's back in the meat of it. The third number
18 is one. Well, if you go back to the code sheet again, the
19 third digit one is a conventional. It means it's a
20 conventional tractor. The next, the fourth digit M, back to
21 the code shows that if you follow down M -- I'm sorry. It
22 took me a minute to find M. M is a Mack E6 300 engine. And
23 then the last digit in the class is a two. Go to the decode,
24 fifth digit two is a tandem fixed axle tractor. So you can
25 really find out everything about the tractor, except the unit

1 number, by looking at the class list.

2 Q Would you then turn to your trailer Exhibit No. 6,
3 and again, taking the Oil City terminal, explain how one
4 decodes this document to determine the type of trailer that's
5 involved.

6 A Okay. If you go to the eighth page of the trailers,
7 there's a couple things you can learn on the trailer. First
8 I'll go to that third column again under Terminal 0930. The
9 first letter there is a B. If you go back to the original
10 decode that we started with for the tractors, it also applies
11 to trailers for this purpose, for the class. B, the first
12 digit indicates it's a 1977 model unit. The second one is an
13 H. You go to the second digit and find H, and you'll find
14 it's a Heil. That's the make. The third digit, one --
15 actually, it's one that you have to go to 18 on this, BH18.
16 One eight is the next code that's important. If you can see
17 on this, they've got the third and fourth digits together on
18 the bottom. This covers the freighters.

19 Q Which document are you referring to?

20 A I'm looking at Exhibit 5 as a decoder. Eighteen
21 tells us that it's an MC306 aluminum type trailer. Then the
22 final column, the two, it tells you that it's a tandem fixed
23 axle unit. The other thing that you can tell by looking at
24 the trailer listing is -- you have to go to Exhibit 6 and
25 there's a decoder on that, too. Now, what this does, you can

1 actually go to the unit number. If you see a number of a unit
2 going down the road, if you know what the decode is, you can
3 tell what kind of unit that is, based on the unit number.

4 Q You're referring to the first page of Exhibit No. 6?

5 A The first page of Exhibit 6 also tells you some
6 things, based on the unit number. If you look at the first
7 digit -- now, these are only numbers that are important here.
8 The one on this first unit under 0930 tells you that it's
9 aluminum MC306. The second one, nine, tells you that it's in
10 excess of 9,000 gallon capacity. The third digit, the four,
11 tells you number of compartments, and then the last three
12 digits is just a sequence number, unit number.

13 Q So that particular unit would have four compartments?

14 A Yes.

15 Q Now, there's been some testimony in this case about
16 trailers identified as MC306 and MC307. Does your company
17 operate a number of those types of trailers in Pennsylvania?

18 A Yes.

19 Q How many, sir?

20 A Okay. We have -- I don't know the total number, but
21 in the terminals that we've discussed here so far, we have 53
22 MC307's serving Pennsylvania. We have 109 MC306 compartmented
23 trailers serving Pennsylvania.

24 Q What's the -- what are some of the major uses of an
25 MC307?

1 A MC307 is a stainless steel unit, most of which are
2 clean bore (phonetically). Some of them are compartmented,
3 many of them in our particular instance. Most of them are
4 insulated also. They are units that are acceptable for
5 cleaning back and forth between one product and another. They
6 are easily cleaned. They -- they're versatile as far as going
7 from one product to the other. They can be heated. You know,
8 they have panels built in that -- so you can reheat products,
9 things like this.

10 Q What's the -- one of the principal uses of the
11 trailer identified as MC306?

12 A MC306 is aluminum. Primarily for -- well, gasolines,
13 fuel oils, petroleum, lube oils, base stocks. Things that,
14 you know, you wouldn't do too much cleaning back and forth
15 really.

16 Q Obviously, Mr. Wilson, some of this equipment is
17 assigned to your Wilmington terminal and your Hammonton
18 terminal that you mentioned?

19 A Yes.

20 Q Is that trailer equipment, as well as the power
21 equipment, available to provide service?

22 A Yes.

23 Q Intrastate Pennsylvania?

24 A Yes.

25 Q Now, you've previously mentioned the large number of

1 compartmented trailers you have available. Are those
2 available for Pennsylvania shippers?

3 A Yes.

4 Q Would you tell us briefly how many hours a day and
5 how many days a week each of your Pennsylvania terminals, as
6 well as Wilmington and Hammonton, are open for service to the
7 public?

8 A There's some variance to hours of operation. A basic
9 for all operations would be from 6:30 or 7:00 in the morning
10 till 6:00 or 7:00 in the evening. You have, you know, a
11 little less coverage than that in some, a little more in
12 others, depending on the operation. For example, Oil City,
13 Pennsylvania terminal operates from 6:30 in the morning till
14 6:00 in the evening Monday through Friday. It operates from
15 7:00 a.m. till approximately noon on a typical Saturday.

16 Q And what are the hours of Butler?

17 A Butler is from 7:00 a.m. to 6:00 p.m., Monday through
18 Friday, and roughly 8:00 a.m. till noon on Saturday.

19 Q Now, if a shipper wants to reach your company over
20 the weekend or on holidays, how do they do it?

21 A Many of our terminals have answering machines where
22 our people call back for messages. Some of our terminals --
23 dispatchers carry beepers, you know, pagers so that -- a lot
24 of our major customers have these numbers, even including home
25 numbers to reach us.

1 Q And do you have any arrangement with your mechanics,
2 that they may be available other than normal working hours?

3 A In some cases what we do, if we have a terminal
4 that's going to operate all weekend, we will take turns with
5 the mechanics, or they'll be on-call, carry a beeper. If a
6 driver has an emergency or a mechanical problem on the
7 weekend, he can get ahold of a mechanic to take care of it.

8 Q What kind of communication do you have that permits a
9 shipper to reach your company toll free?

10 A All of our terminals have inbound WATS lines.
11 Depending on the application, some intrastate and some
12 interstate. Some of our lines are a combination of lines so
13 that we can be reached toll free really at any of our
14 terminals.

15 Q And do you have a FAX machine that shippers can make
16 use of if they have the proper equipment?

17 A Yes. All of our terminals also have FAX machines.

18 Q Would you just describe briefly how a shipper could
19 avail themselves of that service?

20 A Well, the shippers, many of them, you know, rather
21 than the old style telephone call order system, they use the
22 FAX machines. It's really -- it's nice for them and
23 convenient, and it's also convenient for us. They'll really
24 ship all orders by FAX. We don't even talk to them. We talk
25 to them, but not based on orders. That way it's in writing,

1 everybody knows so there's no mistakes.

2 Q Would you explain how you conduct a typical movement
3 from receipt of call by the shipper to dispatch of the
4 equipment and delivery?

5 A Well, typically, a call will come in either on the
6 phone or an order will come in over the FAX. The dispatcher
7 gets the order immediately. Depending on the order, he may
8 call central dispatch. If it's what we consider a long haul
9 chemical load, he reports it into central dispatch because
10 they have the overall picture of the system, or they may just
11 record it on a dispatch sheet if it's a load that we know
12 we'll handle locally. The dispatch function really goes on
13 all the time, all day long.

14 Once the order is recorded, then we apply the proper
15 equipment to it. As the day goes on, then we would assign a
16 driver and a tractor to it, and we type a waybill, put any
17 special instructions, everything that's relating to the
18 shipment, and ultimately we give it to the driver. He would
19 check his equipment and go.

20 Q You mentioned central dispatch. Is that someplace
21 other than Oil City or Butler?

22 A Yes. It's in Nashville.

23 Q But do you dispatch for your Pennsylvania operations
24 also from Oil City, Butler and your other terminals?

25 A Yes.

1 Q What type of service do you hold out to the public to
2 provide in terms of time of transit in Pennsylvania?

3 A Typically, the things we do intrastate would either
4 be same day or overnight type service. I'd say the majority
5 of the shipments we make, we receive an order today for
6 delivery tomorrow, regardless of the length of the trip.
7 There are many instances where we receive a call for same day
8 service, particularly in the short haul lubricating oil
9 business or the petroleum business. That's very typical.

10 Q Is your company able to provide that service in
11 Pennsylvania?

12 A Yes.

13 MR. CHESNUTT: Well, I object and move to strike the
14 answer. If a trucking company is going to prove the
15 accomplishment of delivery, there's a standard way that this
16 Commission has always expected that to be proved, and that is
17 to bring in documentation that would reflect that a consignee
18 has signed for a shipment within a certain time after it has
19 been picked up. That documentation is traditional in the
20 industry, and to have a witness just simply respond to a
21 leading question that it is able to provide same day service
22 on any number of shipments is simply not acceptable.

23 MR. WICK: Your Honor, this witness is the operations
24 manager of the company of Pennsylvania. He's speaking from
25 his own knowledge. I think the objection goes to the weight

1 that may be accorded that testimony.

2 MR. CHESNUTT: Well, that's a traditional retreat from
3 something when you haven't proved it well, is to simply say
4 that it's admissible. But I say to you that it is not
5 admissible. It's not credible or helpful to this record to
6 have a bald, unsupported statement of transit time
7 accomplishment when there is evidence that could support or
8 impeach that characterization, and which is the responsibility
9 of the protestant to bring forward if he's going to allege
10 that type of performance.

11 We're talking about specifics here. This man, however
12 qualified he is, and I assume he's eminently qualified as an
13 operations man, certainly does not sit and pour over tons,
14 numerous shipments which will be later displayed as having
15 been transported by this company in Pennsylvania intrastate
16 commerce and be able to say with certainty the delivery
17 performance on any number.

18 MR. WICK: Your Honor, I'm willing to let you rule on
19 the objection. I think, again, all of Mr. Chesnutt's comments
20 go to the weight to be accorded the testimony.

21 JUDGE SCHNIERLE: Would you read back the -- do you have
22 the question, the prior question to that one, and then his
23 answer and then the question?

24 (The referred-to questions and answer were read
25 back by the court reporter.)

1 MR. CHESNUTT: My point is, if Your Honor please, the
2 framing of those questions is important. Holding out is one
3 thing, and I have no objection to his testifying about what
4 they're holding out is. The second question leaps quickly to
5 the issue of what did you accomplish, and in one answer yes,
6 boom, we did it and that's just -- that's totally
7 unacceptable.

8 MR. WICK: Well, Your Honor, the witness is available
9 for cross examination at the appropriate time if Mr. Chesnutt
10 wants to test his knowledge of this. The man is the
11 operations manager involved with the company on a daily basis.
12 He's testifying within the scope of his knowledge.

13 MR. CHESNUTT: I would request that I have an
14 opportunity to examine him on voir dire right now if you're
15 going to rule --

16 JUDGE SCHNIERLE: I'm going to overrule the objection
17 and allow the question. I think it is -- I think the
18 objection goes to the weight, rather than the admissibility of
19 the evidence. Please proceed.

20 BY MR. WICK:

21 Q Mr. Wilson, briefly describe your internal
22 communication system.

23 A Our terminals -- really, they talk quite often
24 between each other. That's normal procedure. They each have
25 WATS lines. The same WATS lines that the customers would use

1 are utilized by our terminal people. Depending on the
2 application, many of our terminals talk several times to each
3 other each day with exchange of information, exchange of
4 loads, tying things together, one load to another, things like
5 that.

6 Q Your exhibits indicate that you have trailers and
7 tractors stationed at specific terminals. Are those trailers
8 limited to providing service out of the specific terminal area
9 to which they're assigned?

10 A No.

11 Q Would you explain to us just how you move equipment
12 in Pennsylvania?

13 A We really, on a daily basis, could be moving
14 equipment, drivers, whatever, as needed from one spot to
15 another to cover a load, and not necessarily just a big rush
16 or something. It could be just a parcel of business that fits
17 one operation, that doesn't have the resources on a given day
18 to handle it. So we do a lot of exchanging, a lot of moving
19 around.

20 Q Will you state the number of years that you've been
21 with Refiners in operations, sir?

22 A I've been with Refiners since 1970.

23 Q And can you tell us, from your knowledge, how many
24 years Refiners has been in business providing tank truck
25 service in Pennsylvania?

1 A Refiners bought Pennland Tankers, which was an Oil
2 City based company, back in the spring of 1966. That
3 operation branched from Oil City to, over the years, to
4 Butler, Pennsylvania, which is where I started in 1970. It
5 was really -- had been located in Butler some years before
6 that, but was actually made a separate terminal facility in
7 1970, when I started. We've been providing service to the
8 shippers named -- some of them named in this -- in our protest
9 since before I started.

10 Q As part of your preparation for this case, did you
11 work with other people in your company, specifically Mr. David
12 Michalsky, to determine the extent of service you were
13 providing for the supporting shippers?

14 A Yes.

15 Q I'm going to indicate names of certain shippers who
16 supported this case and ask you if your review showed that you
17 were actually providing intrastate service in '87 and in 19 --
18 the first six months of 1988 for certain companies. The first
19 is Witco.

20 A Yes.

21 Q The second is Pennzoil, which is sometimes referred
22 to as Pennreco?

23 A Yes.

24 Q McCloskey Corporation?

25 A Not that I'm aware of.

1 Q E.F. Houghton, H-o-u-g-h-t-o-n?

2 A Not during the period of time that you mentioned.

3 Q Are you now serving them?

4 A Yes.

5 Q Harry Miller Corporation?

6 A Harry Miller is a familiar name, but I think it's
7 controlled by someone else, as far as being paid a bill. We
8 don't do business with Harry Miller.

9 Q Para-Chem Southern, Incorporated?

10 A Not that I know of.

11 Q Calgon Corporation?

12 A Yes.

13 Q And what period of time did you serve Calgon
14 transporting bulk commodities?

15 A I believe that would have been in early 1987.

16 Q Valspar Corporation?

17 A Not that I'm aware of.

18 Q Does your company, in addition to that intrastate
19 service, also provide interstate service for certain of these
20 companies?

21 A Yes.

22 Q And which ones would you provide interstate service
23 to?

24 A Witco Corporation, Pennzoil Corporation. Well, now
25 for E.F. Houghton and Calgon.

1 Q Now, will Mr. Michalsky provide the details of the
2 precise number of loads and the precise intra and interstate
3 revenues that have been handled by your company for
4 Pennsylvania shippers and receivers?

5 A Yes.

6 Q Did you work with Mr. Michalsky at securing that
7 information?

8 A Yes, I did.

9 Q Mr. Wilson, are Witco and Pennzoil, including
10 Pennreco, of importance to your company as shippers,
11 particularly in Western Pennsylvania?

12 A Yes. We've really had strong ties, as far as
13 business is concerned, to both of those companies for as long
14 as I've been with the company, and I'm sure prior to that.
15 They -- we are in a position where we feel we provide a good
16 service to them and their revenue is very important to us.

17 Q Mr. Wilson, can you tell us, based upon your studies
18 with Mr. Michalsky, how many shipments your company actually
19 handled in intrastate commerce for Witco in 1987 and the first
20 six months of '88, for the select commodities which are --
21 that is only those that are now involved?

22 A In 1987, we handled 4,054 loads. In the first half
23 of 1988, we handled 1,985 loads.

24 Q And what was the revenue that you received from Witco
25 during those periods?

1 A In 1987, on those 4,054 loads, our revenue was
2 \$722,023.89. In 1988, the first half, the revenue on the
3 1,985 loads was \$360,076.80.

4 Q Is that a significant and important amount of revenue
5 for your company?

6 A Yes, it is.

7 Q Which are the principal terminals that provide
8 service to Witco on that traffic?

9 A Basically Oil City, PA and East Butler, PA.

10 Q What amount of the total revenue of your East Butler
11 terminal is represented by Witco traffic?

12 A Approximately 50 percent.

13 Q Do you have people assigned specifically to the Witco
14 account?

15 A Yes, we do. We have, on a given day or given week,
16 up to nine units at times providing inbound raw material
17 transportation for Witco on an intrastate basis. These trucks
18 operate five days a week basically, sometimes more, but
19 basically five days, 24 hours a day. We have drivers assigned
20 to take care of this for them.

21 Q Would you provide the same information for Pennzoil,
22 Pennreco? That is what the total loads intrastate handled for
23 Pennzoil by your company were in '87 and '88, and the
24 revenues?

25 A In 1987, we handled 4,583 loads for Pennzoil, and in

1 the first half of 1988, we handled 1,682 loads. The
2 corresponding revenue for those loads, in 1987 was
3 \$1,269,431.03. The first half of 1988 was \$454,176.00.

4 Q And which was the principal terminal providing
5 service to Pennzoil?

6 A Oil City.

7 Q Again, what percentage, from your knowledge, of the
8 Oil City terminal business is represented by this Pennzoil
9 transportation?

10 A Approximately 40 percent.

11 Q Mr. Wilson, what would be the effect, in your opinion
12 as the person in charge of all operations in Pennsylvania, on
13 your Refiner operations, particularly Oil City and Butler, if
14 your company were to lose any significant amount of this
15 intrastate traffic of Pennzoil and Witco?

16 A It would be very detrimental to either of those
17 terminals. We consider that the Witco and Pennzoil business
18 in Pennsylvania is a base -- really is a base for our
19 operations there. They're big numbers. There's a tremendous
20 amount of volume provided by those shippers that we feel if
21 any significant amount was lost, it would hamper our ability
22 to serve the public and to continue operations in those
23 points.

24 Q Did you take a look to see how many shippers you're
25 actually serving in Pennsylvania on the intrastate traffic

1 that would be involved in this application?

2 A Yes.

3 Q Do you have that list with you for examination by
4 counsel?

5 A Yes, I do.

6 Q Approximately how many shippers is your company
7 serving in Pennsylvania intrastate commerce on the commodities
8 now involved in the application?

9 A About 150.

10 Q Mr. Wilson, what efforts has your company made to
11 meet the requirements of Witco and Pennzoil?

12 A Back as far as 1970, we entered into a joint
13 arrangement with Witco Chemical at their petroleum refinery.
14 In an effort to increase productivity at the plant and
15 productivity of our people, we installed run-down tanks. By
16 run-down tanks, basically, all that means was like two 25,000
17 gallon tanks that were put beside the unloading ramp with
18 large lines going into them from the unloading site where we
19 could pull a truck up, hook-up two, four inch lines and unload
20 it in 12 minutes. This was compared to -- prior to that we
21 were probably 45 minutes to an hour with a typical delivery.
22 What we did was we paid for the installation and then, over a
23 period of time, they bought it back from us. So that was one
24 of the few things we did.

25 Going back as far as the early 1970's, it was typical

1 for Refiners to purchase trailers brand new from the factory
2 and they would never handle any material other than Witco's
3 white oil. This was kind of a joint effort also. You know,
4 we got the bills because we provided the equipment they
5 needed.

6 The other thing for Pennzoil, the most recent thing, I
7 guess of all of it, is that they came to us requesting special
8 metered units for deliveries to their Jiffy Lube account.
9 They made a 20-year supply agreement with Jiffy Lube. This is
10 the ten minute oil change people all over the country. They
11 made a special commitment to Jiffy Lube and they came to us
12 and asked us to design, build some units that would be
13 acceptable to make multi-stop deliveries to these Jiffy Lubes.
14 In other words, taking a transport load and peddling it to
15 their stations, making it more economical for them to deliver
16 the oil.

17 Q Do you yourself meet with representatives of Witco
18 and Pennzoil from time to time to discuss transportation?

19 A Yes.

20 Q And do other people in your company meet with
21 representatives of those two shippers on a regular basis?

22 A Yes.

23 Q You mentioned that you had about 150 big -- 150
24 customers in Pennsylvania. Would you name just a few of the
25 bigger customers who actually ship product involved in this

1 amended application?

2 A Some of the larger ones are Ashland Oil, B.P.,
3 British Petroleum, Boler Petroleum, Exxon Company, Quaker
4 Chemical, Quaker State Oil Refining, Texaco, Sun Oil, Union
5 Chemical. That's the biggest ones off the sheet.

6 Q Turning to Pennzoil and Witco again, have
7 representatives of that company asked you in recent years to
8 make any changes in your operations?

9 A Yes. It was a few years ago Witco came to me, as
10 manager of both operations they were dealing with, and asked
11 me to transfer some work from one of our terminals to the
12 other. Jurisdictionally, the freight handled out of Witco in
13 Bradford was done by the Oil City terminal because of
14 location, primarily. They felt that it would be better for
15 them in their refinery in Petrolia if they could coordinate
16 the traffic that was being done by our Oil City trucks, take
17 that work and give it to the Butler raw material supply trucks
18 so that they could coordinate the delivery of all the raw
19 materials with one group of trucks, one group of drivers, so
20 we did that. We made a transfer of work bid with our local
21 union and we did make the transfer.

22 Q Other than that, has there been any request for you
23 to change your service?

24 A No.

25 Q That was Witco you were speaking of?

1 A Yes.

2 Q Has Pennzoil asked you to make any changes in your
3 operations?

4 A No.

5 Q Sir, does your company have a program in securing
6 drivers and maintaining safety of operations concerning the
7 training of drivers?

8 A Yes, we do.

9 Q I show you what's marked for identification as
10 Exhibit 8 and ask you if that is the training program that
11 your company uses?

12 A Yes.

13 Q The heading on it is -- shows Leaseway. Is your
14 company presently a subsidiary of Leaseway?

15 A Yes.

16 Q And will another witness, Mr. Hoover explain that
17 corporate relationship?

18 A Yes.

19 Q Do you follow that program set forth in Exhibit 8
20 very carefully?

21 A Yes.

22 Q Just as a matter of interest, for example, how many
23 years do you check a driver's record before you hire them?

24 A Ten. Ten years.

25 Q Ten years. Do you maintain a continuing safety

1 program and training of your drivers?

2 A Yes.

3 Q Sir, you mentioned something in your last answer
4 about you handled something with the union. Is your company
5 organized at Butler and Oil City?

6 A Yes.

7 Q And are there other terminals at which it has
8 contracts, collective bargaining agreements with drivers,
9 driver unions?

10 A Yes.

11 Q Do you now have a contract at Butler and Oil City?

12 A Yes.

13 Q And can you -- there's been questions about
14 compensation of drivers. Do you compensate these drivers on
15 an hourly basis?

16 A Both hourly and mileage, depending on the trips.

17 Q Can you compare the wage rate -- tell us what the
18 wage rate is today for drivers actually paid by the hour?

19 A \$10.60 an hour.

20 Q What was that wage rate in 1982, do you remember?

21 A 12.68.

22 Q How do you explain that change, sir?

23 A Back in the early 80's, we really were facing a lot
24 of stiff competition in the area, people coming in, cutting
25 rates, most of it at that time being non-union. We were

1 having a very difficult time operating and surviving at that
2 time. We went to our people, and really, beginning in late
3 '81 probably, and on an ongoing basis, we were doing
4 concessions, bargaining. That's the only way I can describe
5 it.

6 And finally, in early '83, late '82, at contract time we
7 negotiated concessions with our people. At that time our
8 teamsters were making a base rate of 12.68 an hour, five sick
9 days, 12 holidays, maximum five week vacations, maximum
10 health, welfare pension benefits, the whole thing. They had a
11 really expensive package for us. We basically couldn't
12 operate under those conditions anymore.

13 So when the first concession took place, we went back to
14 9.50 an hour. We cut the sick days, cut four holidays, cut
15 the vacation to a maximum of four, put a lid on the amount of
16 money we pay for vacations, and along with that, at the same
17 time, we entered into an agreement. We call it the TIP,
18 Terminal Incentive Program, where we agreed to share any
19 profits on a terminal by terminal basis, on a quarterly basis
20 with the drivers. You know, a good faith bargain that we
21 made. We said if we survive and we make money, we'll share it
22 with you and we've operated under that basic program ever
23 since.

24 Q Who are your major competitors on intrastate traffic
25 in Pennsylvania?

1 A Matlack, Chemical Leaman Tank Lines, Oil Tank Lines,
2 Marshall. A lot of private fleets in this area that we really
3 compete with. The oil companies all have their own fleets
4 pretty much, and then there's a lot of small jobber-type
5 competitors that we also have stiff competition with, the
6 little guys like Erie Petroleum and Five Star Trucking, Frenz
7 Petroleum, Zappi. There are a lot of them out there.

8 Q Under present conditions, Mr. Wilson, are all of your
9 people working, all of them on a seniority list at Oil City
10 and Butler?

11 A No.

12 Q How many are laid off at Oil City and Butler?

13 A The number changes pretty quickly, but I'd say right
14 now we probably -- between Oil City, Butler Sewickley and
15 Altoona, we have probably 25 drivers laid off.

16 Q What would be the total pool of employment, drivers?

17 A Probably 135, 130.

18 Q Is all of your equipment being used today, your
19 trailer equipment at Butler and Oil City?

20 A No.

21 Q How much of your equipment is idle in Butler and Oil
22 City?

23 A Here again, it changes pretty rapidly, but I'd say on
24 an average, over the last month and a half, probably between
25 10 and 20 percent.

1 Q Mr. Wilson, based on your knowledge of your company's
2 operations and the needs of Witco and Pennzoil, Pennreco, is
3 Refiners in a position to handle the continuing transportation
4 requirements of those two companies in intrastate commerce in
5 Pennsylvania?

6 A Yes.

7 Q And if either of those companies, or both, asked
8 Refiners to acquire additional equipment, will you do so?

9 A Yes.

10 Q I believe you may have answered this, but has either
11 of those shippers asked your company to secure any additional
12 equipment of any type for intrastate transportation in the
13 last year?

14 A No.

15 Q And is your company willing and hopeful of being able
16 to provide service to the other shippers who supported this
17 application?

18 A Yes.

19 MR. WICK: I believe that's all we have of this witness,
20 Your Honor. I'll offer Exhibits 2 through 8.

21 JUDGE SCHNIERLE: Mr. Chesnutt, do you want to start
22 cross examination immediately, as has been your custom?

23 MR. CHESNUTT: Yes.

24 JUDGE SCHNIERLE: You may proceed.

25 MR. CHESNUTT: Thank you, sir.

CROSS EXAMINATION

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BY MR. CHESNUTT:

Q Mr. Wilson, you talked about your idle equipment. As I understood your testimony, you talked about the period of 1989 to date because you said month, and month and a half, so I suppose that's what we're talking about, isn't it?

A Yes.

Q Now, when you say the equipment is idle, what equipment are we talking about?

A Tractors, trailers.

Q Which tractors? The ones at any particular terminal or system-wide?

A By system-wide, I'm talking about the system I'm responsible for, you know, being Pennsylvania, surrounding.

Q Okay.

A I'd say on an average, the whole system that I'm responsible for has had idle equipment, yes.

Q Right. I understand that, but let me focus on how many tractors in the pool from which -- how we're going to calculate at the end, as I understand it from your answer to Mr. Wick, the number 10 to 25 percent of your equipment is idle. Is that the statement you made?

A I said 10 to 20 percent.

Q Ten to 20 percent has been idle in this period. Okay. Now, in order to make a rational calculation of the 10

1 to 20 percent, I have to know of what, so how many tractors
2 are in the pool that we're calculating the 10 to 20 percent
3 idleness factor?

4 A Okay. If you want to know the number of tractors in
5 all those terminals --

6 Q I don't know. It was your testimony. You said 10 to
7 20 percent of the equipment was idle. If we're going to make
8 any rational judgments here, it seems to me we'd have to know
9 -- I mean, 10 to 20 percent, in my limited intellect, is a
10 matter of calculating mathematically a fraction of some larger
11 pool, and if I -- if you tell me 10 to 20 percent of your
12 equipment is idle, if you got 20 tractors, that means one or
13 two is idle. If you've got 8,000, it means that eight or 16
14 are idle. I'd like to know -- that's wrong. Eighty or 160.
15 But I need to know what is the pool of tractors that we're
16 talking about.

17 A Okay. I'll give you some examples. Sewickley
18 terminal has 22 units.

19 Q Okay.

20 A They've had, on a daily basis, five units parked.

21 Q Okay.

22 A Oil City has 35 tractors.

23 Q Okay.

24 A On a daily basis they've had four to five parked.

25 Q Okay.

1 A East Butler has 21 tractors. On a daily basis
2 they've had two parked. Wilmington, Delaware has 27 units.
3 They've had three parked.

4 Q Now, the units at Wilmington, Delaware are all
5 owner-operator units, are they not?

6 A Yes, they are.

7 Q Are your owner-operators permitted to use their
8 equipment under lease to carriers other than Refiners during
9 the long-term lease with Refiners?

10 A No, they're not.

11 MR. WICK: Did you say Wilmington terminal for
12 owner-operators?

13 MR. CHESNUTT: I don't know.

14 MR. WICK: Did you use the word Wilmington terminal?

15 MR. CHESNUTT: Yeah, that's what I used because that's
16 what the witness used.

17 MR. WICK: All right.

18 BY MR. CHESNUTT:

19 Q Did you conclude your answer, Mr. Wilson?

20 A I could go on. You know, Hammonton --

21 Q Sure.

22 A -- out of 30 units, they've had about ten parked. I
23 didn't do a calculation.

24 Q Now, is there any time, in your memory, when every
25 unit that is owned by -- and operated by Refiners has been on

1 the road, where you have a hundred percent utilization of
2 tractors on a particular day?

3 A I'd say sure, yes.

4 Q Okay. How many days of the year does that occur?

5 A I don't know.

6 Q Would it be fair to say that on most days there are
7 parked tractors in the Refiners' system?

8 A Yes.

9 Q Now, what about trailers? There are more trailers
10 than there are tractors in your system, right?

11 A Yes.

12 Q Do you have any information -- do you make a -- does
13 the company make a daily recap or study of how many of its
14 units are operated on any particular one day? You seem to be
15 able to talk about averages. I would assume that in order to
16 calculate the average you must have had the specifics, didn't
17 you?

18 A Yes.

19 Q Do you have those recaps with you?

20 A No, I don't.

21 Q Now, when you were telling us who you competed with,
22 I didn't hear you make any mention of a carrier by the name of
23 Crossett. Are they not a factor in your Pennsylvania
24 intrastate commerce operations?

25 A They definitely are. I overlooked it.

1 Q As far as the Witco and Pennzoil accounts, does
2 Crossett compete for their traffic on an intrastate basis?

3 A Yes.

4 Q Does Matlack?

5 A Yes.

6 Q Does Chemical Leaman?

7 A Yes.

8 Q Does Oil Tank Lines?

9 A Yes.

10 Q Does Marshall Services?

11 A Witco, yes.

12 Q Are there any other competitors for Pennsylvania
13 intrastate service, other than the ones that you've named?

14 A I'm sure there are some.

15 Q What is the fact with respect to Pennsylvania
16 interstate -- I'm sorry. What is the fact with respect to
17 service for Witco and Pennzoil on interstate transportation
18 services? Do the five carriers that I've talked about so far,
19 Matlack, Chemical Leaman, Oil Tank Lines, Marshall Services
20 and Crossett also compete for traffic moving on interstate
21 basis for those trucking companies -- or for those two
22 shippers?

23 A Yes.

24 Q In addition to those five, are there other carriers
25 that compete for interstate traffic tendered by Witco and

1 Pennzoil?

2 A Yes.

3 Q How many?

4 A Very many. I couldn't tell you. Lots.

5 Q Almost innumerable, right?

6 A Right.

7 Q Okay. Do you -- does Refiners Transport furnish
8 interstate services for Witco and Pennzoil, as well as
9 Pennsylvania intrastate service?

10 A Yes.

11 Q Did you indicate how much revenue or how many loads
12 are handled on an interstate basis for Witco and Pennzoil?

13 A No.

14 Q Do you know that?

15 A I don't have it right here.

16 Q Do you have any -- can you give us some idea? For
17 example, Witco intrastate in a year is 4,000 loads. Would the
18 interstate service for Witco in a year be more than 4,000
19 loads or less than 4,000 loads?

20 A I'd say less.

21 Q All right. And what's the fact with respect to
22 Pennzoil, where the intrastate service is at a level of 4500
23 loads in a year's time? Would the interstate service for
24 Pennzoil be more or less than 4500 loads?

25 A Here again, I'd say less.

1 Q All right. On a per load basis, is the revenue
2 derived for Refiners' service to Witco on an interstate basis
3 higher than it is for -- on a per load basis for Pennsylvania
4 intrastate service?

5 MR. WICK: I object to the question, unless there can be
6 some meaningful comparison on a basis of miles. If a load
7 moves a thousand miles, the revenue is obviously going to be
8 different than one moving 50 miles.

9 JUDGE SCHNIERLE: Do you wish to specify for a move of
10 the same length?

11 MR. CHESNUTT: No, I didn't particularly. I was just
12 trying to get some idea of the revenue -- let me withdraw the
13 question and ask it another way.

14 BY MR. CHESNUTT:

15 Q You indicated that the interstate service furnished
16 to Witco by Refiners involves fewer loads than that that are
17 involved in Pennsylvania intrastate service, is that correct?

18 A That's what I said. I'm not absolutely certain of
19 numbers.

20 Q Okay. Would the revenues derived from the interstate
21 service for Witco be greater or lesser than the revenues
22 derived from Pennsylvania intrastate service?

23 A It's very difficult to say.

24 Q Would maybe one of the other witnesses who's an
25 expert in financial matters be able to tell me that?

1 A Possibly they have the information.

2 Q Thank you, sir. You indicated you've been employed
3 since 1970. Is that with Refiners Terminal and Transport?

4 A Yes.

5 Q And I recognize that Mr. Hoover is going to discuss
6 the corporate structure in which Refiners is a wholly owned
7 subsidiary of Leaseway Transportation Corp., but have you
8 always worked only for Refiners Transport and Terminal?

9 A Yes.

10 Q And you hold no position with any of the affiliated
11 companies of Refiners?

12 A No.

13 Q And you hold no position with Leaseway Transportation
14 Corp., itself?

15 A No.

16 Q How long have you been in your position as regional
17 manager with Refiners?

18 A Five years.

19 Q Began about January of 1984 --

20 A Yes.

21 Q -- as regional manager?

22 A Yes.

23 Q Now, when Refiners Transport provides a service for a
24 shipper in Pennsylvania intrastate commerce, does it furnish
25 to the shipper a bill of lading indicating that it's received

1 product from that shipper?

2 A Yes.

3 Q Is that bill of lading in paper form, or is it in
4 some other form?

5 A Paper.

6 Q Okay. Is there, associated with the paperwork of
7 Refiners Transport in the services it provides to Pennsylvania
8 shippers, any document called a delivery receipt?

9 A Some do and some don't.

10 Q All right. In other words, you furnish that document
11 to some shippers, but not to others?

12 A No. We give all customers a copy of our waybill. Is
13 that what you're talking about, our waybill?

14 Q Let me see if I can make this clear. Let's go to the
15 delivery end of the business. When Refiners Transport
16 performs delivery of a load in Pennsylvania intrastate
17 commerce, does the driver obtain from the receiver or
18 consignee any signature and dating of any piece of paper to
19 reflect the fact that delivery has been accomplished?

20 A Yes.

21 Q In all instances does that occur?

22 A As far as I know, yes.

23 Q In all instances, when the consignee signs the piece
24 of paper, can we call that piece of paper a delivery receipt?

25 A Yes.

1 Q Is that a document -- is that a meaningful
2 description of a document in the Refiners Transport system?

3 A Yes.

4 Q In all instances, when a consignee signs a delivery
5 receipt, does he date it, he or she?

6 A All, that's a big word. Most of the time I would say
7 yes.

8 Q In instances at the same time that delivery is
9 accomplished, is there any requirement in the Refiners
10 Transport system that the driver counter-sign, in effect, and
11 verify that delivery was made on the date that the shipper --
12 or that the consignee may indicate that it was made on?

13 A Yes.

14 Q So there are two ways of establishing within the
15 Refiners' paperwork system when delivery is accomplished, is
16 that correct?

17 A Yes.

18 Q Do those dates ever differ, the driver's date and the
19 consignee's date?

20 A I don't know.

21 Q Have you ever reviewed delivery receipts furnished by
22 Refiners to shippers -- or to consignees for signature?

23 A Yes.

24 Q Where is the delivery receipt copy of the freight
25 bill stored?

1 A It goes to our Cleveland office for billing.

2 Q The delivery -- how many parts is the freight bill
3 made up in?

4 A I think today there's five parts.

5 Q Five parts. And one copy is called the delivery
6 receipt copy is, it not?

7 A We call them -- you know, one is a shipper copy,
8 one's a consignee copy and one's an original waybill. One may
9 be called an accounting copy.

10 Q Which copy has the signature of the consignee on it?

11 A They all do. The waybill is signed on top and is
12 carboned through the rest of the copies.

13 Q And that waybill, when it is prepared, does it have
14 on it the date on which the shipment was originated?

15 A Yes.

16 Q And who enters that date on the waybill?

17 A Normally the dispatcher, when he processes the
18 waybill, he types that on.

19 Q He types it on. And the dispatcher is located where?

20 A At each terminal.

21 Q At each terminal, okay. And does he type the waybill
22 up at the time that the customer or shipper calls requesting
23 service, or does he only type it up at the time when -- well,
24 let me stop the question there. Does he type it up at the
25 time that the shipper requests pickup?

1 A Not necessarily. It could be done at that time, it
2 could be done later in the day. There could be a situation
3 where it would not be done by the dispatcher at all.

4 Q Okay. Why would he not do it in every instance at
5 the time that he gets the call?

6 A It's possible that he would give the order to a
7 driver over the phone, or to another terminal over the phone.

8 Q But in every instance there is on your waybills a
9 date, that if you had those bills in front you, you would
10 testify is the date of pickup, is that correct?

11 A Yes.

12 Q And so if one were to have those waybills in front of
13 them, they could measure whether delivery -- when delivery was
14 accomplished and when pickup was accomplished, is that
15 correct?

16 A Yes.

17 Q Do you have any such waybills in the hearing room?

18 A No, I don't.

19 Q Now, I'm not sure my pen was as fast as my ears, so I
20 need to catch up a little bit on this, the run-down tanks at
21 Witco. First of all, the run-down tanks were constructed only
22 at Witco, is that correct?

23 A Yes.

24 Q And not at Pennzoil?

25 A Right.

1 Q Okay. And the run-down tanks involved a capital
2 expenditure of how much money?

3 A I don't recall.

4 Q Is there any other witness that's testifying here
5 today that would be able to tell us that?

6 A No.

7 Q And they were constructed for Witco when?

8 A 1970.

9 Q 1970?

10 A Yes.

11 Q And at that time the -- whatever they cost was an
12 expenditure made by Refiners Transport, is that correct?

13 A Yes.

14 Q And then as I understood it, over some period of time
15 payments were made back to Refiners by Witco in a cumulative
16 amount that equaled the amount of the capital investment, is
17 that correct?

18 A As I understand it, yes.

19 Q Do you know whether Witco paid any interest on the
20 money that was involved in the capital expenditure by Refiners
21 Transport?

22 A I really don't know.

23 Q Do you know whether the expenditure of funds to
24 construct run-down tanks for the benefit of Witco was an item
25 that was quoted in your tariffs as available for all shippers

1 for whom you provide service?

2 A I don't know.

3 Q Are you aware of any tariff provision in your tariffs
4 today that reflect a provision that you would be willing to do
5 that for shippers?

6 A No, I'm not.

7 Q Do you know over what period of time Witco was able
8 to pay back to Refiners the capital investment in those tanks?

9 A No.

10 MR. CHESNUTT: If Your Honor please, I'd like to have
11 marked for identification as Central Exhibit No. 30, I
12 believe --

13 JUDGE SCHNIERLE: I think that's right.

14 MR. CHESNUTT: -- a multi-paged document that, on its
15 face, purports to be responses of Refiners Transport and
16 Terminal Corporation to the interrogatories of the applicant
17 Central Transport, Inc.

18 JUDGE SCHNIERLE: It may be so marked.

19 (Central Transport Exhibit No. 30 was produced
20 and marked for identification.)

21 MR. WICK: Your Honor, I'm going to object to any
22 questions on this exhibit, since it relates, based upon Mr.
23 Chesnutt's past examination of other witnesses, on some
24 alleged claim as to an industry standard or other standard of
25 fitness which should be decided by reviewing any citations

1 issued to protestants, and then apparently comparing it with
2 those issued to the applicant. As other counsel have
3 indicated, the only party whose fitness is in question in a
4 case of this nature is the applicant. The fitness of Refiners
5 is not in question, and I will object to any use of this
6 document in an attempt by Mr. Chesnutt to buttress his case as
7 to the fitness of applicant Central.

8 MR. CHESNUTT: Well, if Your Honor please, I'm not going
9 to burden the record. I've argued this point on at least two
10 occasions, if not three, and I perceived a consistent ruling
11 by His Honor with respect to the argument that Mr. Wick is now
12 making, and I perceive that ruling to be countered to Mr.
13 Wick's argument, and I will not further comment.

14 MR. WICK: I will not either, Your Honor. I understand
15 how you've ruled. I wish to have my objection noted so that
16 it can be raised.

17 JUDGE SCHNIERLE: I'd like to look at this document to
18 see what specifically it deals with.

19 (Brief pause.)

20 JUDGE SCHNIERLE: Okay. The objection is overruled.
21 You may proceed.

22 MR. CHESNUTT: Thank you.

23 BY MR. CHESNUTT:

24 Q Mr. Wilson, do you recognize what has been marked as
25 Central Exhibit No. 30 as a document that you were responsible

1 for furnishing to me?

2 A Yes.

3 Q And you recognize that the final page of the exhibit
4 is your affidavit swearing to the accuracy of the information
5 furnished, is that right?

6 A Yes.

7 Q The next to the last page of what has been marked as
8 Exhibit No. 30, Central Exhibit No. 30 reflects an execution
9 of this document by an official of Refiners Transport on
10 September 2, 1988, is that correct?

11 A Yes.

12 Q If you would refer to a page that has numbering on it
13 at the bottom with the No. 5 at the bottom of it, do you have
14 that before you?

15 A Yes.

16 Q In Paragraph 8 appearing on that page, it indicates
17 that Refiners has the responsibility to pay a civil penalty in
18 association with this matter in the amount of \$5600.00, and
19 then in Paragraph 10, which continues over to the next page,
20 it indicates that if Refiners fails to comply with any of the
21 obligations in certain paragraphs, then it is obligated to pay
22 civil penalties according to some different formula. Do you
23 know which happened? Did they pay the \$5600.00 or did -- were
24 several penalties assessed in accordance with the schedule
25 that appears at the top of page 6?

1 A We paid the \$5600.00.

2 MR. CHESNUTT: Thank you. If Your Honor please, I would
3 like to have marked as Central Exhibit No. 31 a multi-paged
4 document which purports to be an adjudication by the
5 Environmental Hearing Board of the Commonwealth of
6 Pennsylvania.

7 (Central Transport Exhibit No. 31 was produced
8 and marked for identification.)

9 MR. WICK: I'm going to continue the same objection to
10 any of these materials, particularly this one which I have not
11 seen before, on the same basis of the other objection, Your
12 Honor.

13 JUDGE SCHNIERLE: I understand. Again, I want to look
14 at the document.

15 MR. WICK: Is this No. 31?

16 JUDGE SCHNIERLE: Yes.

17 MR. CHESNUTT: Yes. This is a document of which I will
18 be requesting the presiding officer to take official notice,
19 or judicial notice, in accordance with 52 Pa. Code Section
20 5.406 (a) (II).

21 JUDGE SCHNIERLE: For my information, what does that
22 provide? I don't know the -- that one off the top of my head.

23 MR. CHESNUTT: It provides as follows: A report,
24 decision, opinion or other document, or a part thereof, need
25 not be produced or marked for identification, but may be

1 offered in evidence as a public document by specifying the
2 document or part thereof and where it may be found, if the
3 document is one of the following, and then we skip to
4 Paragraph (2). An official report, decision, opinion,
5 published scientific or economic statistical data, or similar
6 public document which is issued by a governmental department,
7 agency, committee, commission or similar entity which is shown
8 by the offeror to be reasonably available to the public. I've
9 gone a step further by making those portions of it that I'm
10 wishing to have official notice taken of available so that
11 there's an ease of research by His Honor.

12 JUDGE SCHNIERLE: Is this the entire document?

13 MR. CHESNUTT: It is not. It is a part of the document,
14 which the rules provide that I'm entitled to cite a part.

15 MR. WICK: I assume we'll be allowed to produce any
16 other parts of it under the same rule, if that seems
17 appropriate, if it is ever used in this proceeding.

18 JUDGE SCHNIERLE: Mr. Wick, do you have any reason to
19 doubt the authenticity of this document?

20 MR. WICK: Not on the face of it obviously. I know
21 nothing about it, but it certainly has the appearance of a
22 document issued by the Environmental Hearing Board. But I
23 can't -- I do not question its authenticity, but I don't know
24 what is left in the record. I have no idea what else is
25 there. If it is to be admitted, I'd just like the

1 opportunity, if it is appropriate, to supplement it if there
2 are other documents that may be explanatory.

3 JUDGE SCHNIERLE: Let me make one comment. The reason I
4 asked that question, my practice with the Commission is -- my
5 experience was that if we were going to -- if staff counsel is
6 going to offer this kind of document, we typically obtained a
7 certified copy from the agency that issued it, rather than
8 asking that judicial notice be taken. But as far as I'm
9 concerned, that requirement goes primarily to the authenticity
10 of the document, rather than any other objection.

11 If you don't object to that, to authenticity, I will
12 take judicial notice for the purpose of permitting you to go
13 forward with it. I believe it is relevant, so I'm going to
14 overrule the objection, but subject to your ability to review
15 the entire document and bring to my attention any other
16 portions which you think should be brought to my attention.

17 MR. CHESNUTT: I would like -- it doesn't necessarily
18 have to be on the record, but I do have a copy of the full
19 document. I'm willing to make it available to Mr. Wick. He
20 can make a photocopy of it, as long as he returns the original
21 to me.

22 MR. WICK: Well, I understand your ruling, that based
23 upon the prior rulings you will permit the introduction of
24 this type of document, subject, of course, to our exception,
25 and if we determine it is not the complete document, we can

1 make an appropriate response.

2 JUDGE SCHNIERLE: All right. You may proceed, Mr.
3 Chesnutt.

4 MR. CHESNUTT: Well, I don't want any suggestion to be
5 made that it is anything -- that it is the complete document.
6 I made no representation that it was. It's -- very clearly I
7 have taken only the portions that I felt were pertinent.

8 MR. WICK: I understand that. I mean, if there's
9 something else in the record which we think is appropriate, I
10 understand you will --

11 JUDGE SCHNIERLE: Permit you to supplement it.

12 MR. WICK: Yes, supplement it, and we can take official
13 notice if it ever becomes relevant in the proceeding.

14 JUDGE SCHNIERLE: Yes. Do you understand that, Mr.
15 Chesnutt?

16 MR. CHESNUTT: Oh, absolutely.

17 JUDGE SCHNIERLE: All right. You may proceed.

18 BY MR. CHESNUTT:

19 Q Have you had a chance to look at Exhibit No. 31, Mr.
20 Wilson?

21 A Yeah, I glanced through it.

22 Q Do you know anything about the facts that are recited
23 in that document as Findings of Fact by the Environmental
24 Hearing Board?

25 A I personally don't know any of the detail there, no.

1 Q In your Exhibit No. 2, Mr. Wilson --

2 MR. WICK: That's the certificate.

3 THE WITNESS: Oh, okay.

4 BY MR. CHESNUTT:

5 Q If you would turn with me -- the pages in that are
6 not numbered, but if you would turn with me to the next to
7 last sheet of Exhibit No. 2.

8 A Okay. Which sheet?

9 Q Next to last.

10 A Okay.

11 Q That, to my understanding, is an order issued by this
12 Commission in which it adopts the initial decision of an
13 Administrative Law Judge, dated October 15, 1984, concerning
14 an application filed by Refiners Transport and Terminal, is
15 that correct?

16 A Yes.

17 Q And if you turn to the last sheet of Exhibit No. 2,
18 we see that that order was adopted on December 7, 1984, and
19 entered on December 13, 1984, is that correct?

20 A Yes.

21 Q Did you have anything to do with the filing of the
22 application which resulted in the issuance of the authority
23 reflected in this -- in these two pages?

24 A No.

25 Q Was there a William P. Fromm, F-r-o-m-m, that was

1 employed by Refiners Transport and Terminal Corporation at any
2 point, to your knowledge?

3 A Yes.

4 Q Is Mr. Fromm still employed by the company?

5 A No.

6 Q Was he employed by the company in 1984?

7 A Yes.

8 MR. CHESNUTT: If Your Honor please, I would request
9 that official notice be taken of the fact that hearing on the
10 application that resulted in the authority that appears under
11 Folder 1, Amendment A, occurred on March 20, 1984, before
12 Administrative Law Judge Michael A. Nemec.

13 JUDGE SCHNIERLE: Do you have any objection?

14 MR. WICK: Only on the grounds of relevance. It has
15 absolutely nothing to do with this case.

16 JUDGE SCHNIERLE: I was wondering the same thing. Can
17 we have an offer of proof?

18 MR. CHESNUTT: Sure.

19 JUDGE SCHNIERLE: What's the point?

20 MR. CHESNUTT: His Honor, very early on in this
21 proceeding, called my attention to a decision by the
22 Commission in a case of Xpress -- that's spelled X-p-r-e-s-s
23 -- Truck Lines, Inc., at A-00104745, and the purpose of the
24 Judge's calling my attention to that decision was a
25 recognition by the Judge that the decision involved the

1 Commission looking at activities of an applicant outside the
2 area of pure transportation to see whether the conduct of the
3 applicant was such that it might be held that the applicant
4 was not fit to receive an operating license from the
5 Commission.

6 JUDGE SCHNIERLE: I recall that.

7 MR. CHESNUTT: In that decision by the Commission, which
8 really sort of reflects a non-decision by the Commission,
9 because what happened is that there was a ruling on
10 applicant's exceptions by a Judge which never really reached
11 the Commission itself, but the Judge made several mentions of
12 the fact that at the time that the applicant presented its
13 evidence to the Commission, it knew of its conviction for mail
14 fraud, and yet that knowledge was not presented to the
15 Commission on its record.

16 I submit to you that under Exhibit No. 31, that in
17 February of 1984, Refiners knew of where the Department of
18 Environmental Resources was going with its citations that are
19 recited in Exhibit No. 31, and yet Refiners appeared before
20 Administrative Law Judge Michael A. Nemecek on March 20 of 1984,
21 a full month after it became aware of the DER citations, and
22 made no mention of them to the Commission when it was
23 presenting its application that resulted in the grant of
24 authority relied on here.

25 MR. WICK: Your Honor, this is so farfetched as to be

1 ridiculous. Refiners' fitness is not at issue here. A record
2 was closed before the Commission back in 1984, and obviously
3 Mr. Chesnutt is going to argue that the Commission should
4 consider the fact that there have been violations by
5 protestants in assessing the validity of Central's standing.
6 I'm going to object to any use of this record back in 1984,
7 and I think that those innuendoes that Mr. Chesnutt is making
8 are completely inappropriate. I think they should be stricken
9 from the record.

10 MR. CHESNUTT: Well now, you didn't let me finish, Mr.
11 Wick. I still have some more to say. My point is, Your
12 Honor, that you are the one who finds the Xpress Truck Lines
13 case to be pertinent to an issue that involves my client, and
14 I don't know what you're going to do with Xpress Truck Lines,
15 Inc., as it affects my client, but I do think I'm entitled to
16 show an inconsistency, a potential inconsistency between the
17 way my client might be treated at the end of this case and the
18 way another carrier -- and it doesn't matter that it's
19 Refiners Transport or anybody else.

20 There's a well-known principle of administrative law
21 that an administrative body such as this Commission has been
22 held by the courts to be under a standard of doing a
23 consistent pattern of adjudication and not departing from a
24 consistent pattern of adjudication, and I think I'm entitled
25 to show these facts.

1 Now, Mr. Wick seems to want to leap ahead to tell you
2 what I'm going to do with them. And I'll tell you right now,
3 I have no interest in doing anything to Refiners Transport, in
4 terms of what he may be suggesting about reopening any 1984
5 case. I don't have any interest in that whatsoever.

6 But I think I am entitled, when the Judge has signalled
7 that he's going to look at a decision of Xpress Truck Lines
8 and when I don't know how the Judge is going to use that
9 decision, to show that there has been another decision
10 contemporaneous with the Xpress Truck Lines case in which
11 similar facts were available and which, in my judgment at
12 least, there is at least some question that the Commission
13 acted in an inconsistent manner. I think I'm entitled to make
14 the record necessary so that I can make that argument at a
15 later time.

16 JUDGE SCHNIERLE: All right. I'm going to sustain the
17 objection. I don't think that the Xpress -- I don't think
18 that, to the extent that Xpress Truck Lines may stand for the
19 proposition that when the applicant has an affirmative duty to
20 come forward in the absence of any specific question and bring
21 forward evidence of possible violations on its part, I don't
22 think that the law is that.

23 My purpose in citing Xpress Truck Lines to you, and I
24 think I mentioned a couple other cases in my order on the
25 Motion to Compel, was to simply indicate that I believe that

1 violations of other than the Public Utility Code which relate
2 to transportation are fair game on the issue of fitness.

3 I haven't read -- I believe it was Judge Farber's
4 decision -- I haven't read that decision all the way through
5 in some time, but as you indicated, it became final because
6 the Commission -- because the applicant's attorney failed to
7 file exceptions on time to the Commission and it was affirmed
8 on that basis by the Commonwealth Court, that he failed to
9 file a timely appeal to the Commission.

10 But I -- to the extent that Judge Farber may hold that
11 Xpress Truck Lines had an affirmative duty to come forward
12 with information in the absence of a question on that issue, I
13 don't think that's the law. I don't believe that's the law.
14 Consequently, I will not take judicial notice of a March 24,
15 '84 hearing date in the Folder 1, Amendment A application.

16 MR. CHESNUTT: Those are all the questions I have of the
17 witness.

18 JUDGE SCHNIERLE: Do you have any redirect, Mr. Wick?

19 REDIRECT EXAMINATION

20 BY MR. WICK:

21 Q You were asked about Exhibit -- Refiners' Exhibit 30.
22 To the best of your knowledge, is Refiners complying with the
23 schedule that was set forth in that December order?

24 A Yes.

25 MR. CHESNUTT: If I may, I believe Mr. Wick identified

1 that as Refiners' Exhibit 30, and I believe it's Central's
2 Exhibit 30.

3 MR. WICK: Excuse me. Central's Exhibit 30. That's all
4 I have, Your Honor. I don't believe you ruled on my
5 admissibility of the Exhibits 2 through 8.

6 JUDGE SCHNIERLE: Do you have any recross?

7 MR. CHESNUTT: No. No, sir.

8 JUDGE SCHNIERLE: All right. Let's start with Refiners'
9 Exhibits 2 through 8. Do you have any objection to 2?

10 MR. CHESNUTT: No objection.

11 JUDGE SCHNIERLE: Two is admitted.

12 MR. CHESNUTT: I have no objection to any of them.

13 JUDGE SCHNIERLE: Refiners' Exhibits 3 through 8 are
14 admitted into evidence.

15 MR. CHESNUTT: I offer Central Exhibits 30 and 31.

16 MR. WICK: I have my objections outstanding and I won't
17 repeat them.

18 JUDGE SCHNIERLE: The objections are overruled. Central
19 Exhibits 30 and 31 are admitted. Let's have, say, a ten
20 minute recess before we start the next witness.

21 MR. CHESNUTT: That's fine.

22 JUDGE SCHNIERLE: Off the record.

23 (A brief recess was taken.)

24 MR. WICK: I'm going to call Mr. David Michalsky.

25 JUDGE SCHNIERLE: Please raise your right hand.

1 DAVID MICHALSKY, having been duly sworn, was examined
2 and testified as follows:

3 JUDGE SCHNIERLE: Please be seated.

4 DIRECT EXAMINATION

5 BY MR. WICK:

6 Q Would you give us name and business address?

7 A David L., M-i-c-h-a-l-s-k-y. Business address is
8 6500 Pearl Road, P-e-a-r-l, Cleveland, Ohio.

9 Q What's your position, Mr. Michalsky?

10 A My position is director of pricing for the Northern
11 Bulk Group.

12 Q And does that specifically include Refiners Transport
13 and Terminal Corporation?

14 A Yes, it does.

15 Q From your answer, apparently there are other
16 companies which you also work as director of pricing?

17 A Yes.

18 Q You say the Northern Bulk Group. Is that a term used
19 by Leaseway?

20 A Yes, it is.

21 Q How long have you held your position with Leaseway?

22 A This position, six years.

23 Q And during that entire six years, have you worked
24 with the records of Refiners Transport and Terminal
25 Corporation?

1 A Yes, I have.

2 Q Mr. Michalsky, are you familiar with the amendment
3 which the applicant has made in this proceeding?

4 A Yes, I am.

5 Q As part of the original presentation, or answers to
6 interrogatories in this case, did you work with Mr. Wilson in
7 making a revenue report summary showing all bulk commodities,
8 that is liquid bulk, transported by Refiners in Pennsylvania,
9 and either to or from a Pennsylvania point?

10 A Yes, I did.

11 MR. WICK: May we have marked for identification as
12 Refiners' Exhibit No. 9 a two sheet document headed Refiners
13 Transport and Terminal Corporation, with the first legend, All
14 Commodities?

15 JUDGE SCHNIERLE: It shall be so marked.

16 (Refiners Transport Exhibit No. 9 was produced
17 and marked for identification.)

18 MR. WICK: I've given copies to all parties, Your Honor.

19 BY MR. WICK:

20 Q Mr. Michalsky, I show you what's been marked for
21 identification as protestant Refiners' Exhibit No. 9 and ask
22 you if you were the person who actually prepared the figures
23 that are shown on that exhibit?

24 A Yes, I am.

25 Q Now, the first section shows a heading of all

1 commodities. Does that refer to liquid commodities?

2 A That is all commodities.

3 Q And you showed, as I understand it, both origin and
4 destination in Pennsylvania, which would be intrastate?

5 A Correct.

6 Q And only origin, which is obviously interstate, with
7 an origin in Pennsylvania; and only destination in PA, which
8 is a destination in PA?

9 A Right.

10 Q Briefly tell us from what documents you prepared
11 Refiners' Exhibit No. 9?

12 A Okay. What I -- all I did was have the -- when we do
13 our billing out of Cleveland, we punch in all information
14 that's contained on the freight bill and that becomes history,
15 and what I did was just have the computer -- the data
16 processing people provide the program that said draw off any
17 information that was requested in this application, which --
18 meaning anything that was within the State of Pennsylvania or
19 into or out of Pennsylvania.

20 Q You took all commodities for that first step?

21 A Originally, yes.

22 Q Does your company maintain these hard copy documents
23 that Mr. Wilson was testifying about in cross examination,
24 that is freight bills and bills of lading and delivery
25 receipts?

1 A No, we do not.

2 Q What happens to them in Cleveland?

3 A Once they're billed to the customer and sent out,
4 they're then, some time after the fact, usually within a 30
5 day period, they're microfilmed. The microfilm is developed,
6 processed. As soon as the approved microfilm returns, the
7 original documents are destroyed.

8 Q Looking at the second half of page 1 of your
9 Refiners' Exhibit 9, would you tell us how you set up a
10 program to secure the information as to the commodities which
11 are now included in the application?

12 A Okay. Again, we isolate -- all of our transportation
13 is by commodity codes, starting with No. 1, which, for
14 example, is petroleum, gasoline -- excuse me, gasoline. No. 2
15 is fuel oil, and on down the line, and what I did was go back
16 and take -- tell them, okay, give me everything except
17 commodity 001, 002, whatever commodities are listed in this
18 exception.

19 Q This amendment?

20 A The amendment, correct.

21 MR. WICK: What's the number of that thing?

22 MR. CHESNUTT: Supplemental Exhibit No. 5.

23 JUDGE SCHNIERLE: Five.

24 BY MR. WICK:

25 Q So you took Supplemental Exhibit 5 which showed the

1 amendment made, and as I understand it, you excluded the
2 commodities which the applicant had excluded?

3 A Correct.

4 Q And the results, then, at the bottom of the page show
5 the actual revenue and loads from commodities still in the
6 application?

7 A Yes.

8 Q Do you have with you in the hearing room the studies,
9 that is the printout that you made?

10 A Yes, I do.

11 Q Where is that, sir?

12 A It's in this box.

13 Q And has that document been made available to Mr.
14 Chesnutt for his review?

15 A Yes, yesterday.

16 Q On the second sheet of your Exhibit 9, Mr. Michalsky,
17 you show loads and revenue for specific shippers, that is
18 intrastate revenues and loads. How did you secure that
19 information?

20 A Well, the detail -- we broke the detail down twice.
21 We first took -- in order to get this three million six on the
22 origin and destination, PA, we said okay, now sort it out to
23 us by shipper. So then we've got a list of about eight, ten
24 pages that had it by every shipper, and then we said okay, now
25 go back and give us a detail of each of those shippers, origin

1 to destination.

2 Q As a result of that, did you come up with the figures
3 that are shown on the second page of your exhibit, as to Witco
4 and Pennzoil?

5 A Yes, I did.

6 Q Is it a fact from your search that the only other
7 shipper from which you had intrastate traffic in this period
8 was Calgon?

9 A Correct.

10 Q And when did you stop your search? That is, what --
11 through what date?

12 A June of '88, as requested.

13 Q Do you have with you your complete list of
14 Pennsylvania shippers?

15 A Yes.

16 Q Do you recall if you showed that to Mr. Chesnutt?

17 A Yes.

18 Q And does that show for those, each intrastate
19 shipper, the actual revenue intrastate?

20 A Yes, it does, and the number of loads.

21 Q Mr. Wilson mentioned a figure about 150 shippers
22 actually served by Refiners in intrastate commerce. Do you
23 have any ability to confirm that as an accurate estimate?

24 A Yeah, I do. It's from the same report, yes.

25 Q Did you actually count the shippers --

1 A Yes.

2 Q -- the separate ones? Do you believe this exhibit to
3 be self-explanatory otherwise?

4 A Yes, I do.

5 Q Mr. Michalsky, your entire study for the select
6 commodities, as you call them, or commodities included in the
7 application area, is that available here at the hearing room,
8 the detail of it?

9 A Yes, it is.

10 MR. WICK: I think that's all I have on direct. The
11 witness is available for cross examination, and the documents
12 are here.

13 JUDGE SCHNIERLE: Mr. Chesnutt.

14 CROSS EXAMINATION

15 BY MR. CHESNUTT:

16 Q Mr. Michalsky, look, if you will, at the second page
17 of Exhibit No. 9, and can we agree that the heading down at
18 the bottom of the page should read January 1, rather than June
19 1, 1988?

20 A Yes, we can.

21 MR. WICK: I appreciate that, Mr. Chesnutt. May we
22 physically correct that document, Judge?

23 JUDGE SCHNIERLE: Yes. Why don't we do that. The
24 correction shall be made in the document.

25 BY MR. CHESNUTT:

1 Q On page 1 of Exhibit 9, in the section entitled
2 Commodities Included in Application, for the 1987 full year,
3 is it not a fact that you and I, when we were reviewing the
4 underlying data yesterday, determined that there was
5 approximately \$6,000.00 of revenue included on shipments of
6 cement which should not have been included?

7 A Yes. Yes, we did.

8 Q In the computer printout that you made available to
9 me yesterday for study, would it be fair to say that there are
10 revenues that Refiners Transport obtains from shippers that
11 are not associated with a service of moving goods from one
12 point to another?

13 A Yes.

14 Q Okay. And what types of other services, other than
15 moving goods from one point to another, might be included in
16 this computer printout?

17 A A special service where they request to use a
18 tractor, or maybe, you know, pump out a service station. We
19 are not actually moving, you're just providing a service,
20 yeah.

21 Q And when you say they request to use a tractor, I'm
22 not quite sure what you mean.

23 A Well, there may be -- you may have a customer call
24 you and tell you they want to move a trailer within their
25 plant, and you have to bring a tractor over to move it.

1 Q So you make a charge for that service and that would
2 be included in these revenues that you label as, quote,
3 commodities included in the application?

4 A Yes, it would.

5 Q Now, also included in the revenues that you describe
6 as commodities included in the application are shipments that,
7 although they move from one point in Pennsylvania to another
8 point in Pennsylvania, they actually have a continuous
9 movement from some other location, such as a foreign country
10 or another state, and are transported by means of
11 transportation other than Refiners Transport, isn't that a
12 fact?

13 A Yes.

14 Q And the precise value of those revenues from that
15 type of traffic are not discernible, are they --

16 A No, they are not.

17 Q -- from reviewing the underlying documents? Looking
18 at the next part of your Exhibit 9 at the top, where all
19 commodities are discussed, you have a revenue figure of
20 \$9,821,890.67 associated with full year 1987 traffic having
21 both an origin and destination in Pennsylvania. Do you see
22 that?

23 A Yes.

24 Q Now, with what you've just told me about interstate
25 and foreign commerce loads being included within that figure,

1 would you be willing to accept that the real Pennsylvania
2 intrastate commerce revenues for 1987 that you reported --
3 that your company reported to the Pennsylvania Commission were
4 \$8,370,511.00?

5 A Yes.

6 Q Now, when you were talking about the disposition of
7 the documentation that I discussed with Mr. Wilson, and you
8 indicated that there was a microfilm record made of those
9 waybills --

10 A Correct.

11 Q -- what is the retention period on the microfilm?

12 A As long as we need. Probably ten years.

13 Q And among the data retained on the microfilm, would
14 the delivery date of the shipment to the consignee be
15 included?

16 A Yes. In most cases, yes.

17 Q If it was recorded in the first instance, it's
18 retained on the microfiche?

19 A Right.

20 MR. CHESNUTT: Those are all the questions I have of Mr.
21 Michalsky.

22 JUDGE SCHNIERLE: I have a couple before you do
23 redirect. You said you're the director of pricing for the
24 Northern Bulk Group which includes Refiners Transport and
25 Terminal. Who else does it include?

1 THE WITNESS: Ray Molder Carrier Corp., Ray Molder, Inc.
2 JUDGE SCHNIERLE: Little louder.
3 THE WITNESS: Ray Molder Carrier Corp., Ray Molder,
4 Inc., Leaseway Bulk Services, Incorporated, Baywood Transport,
5 Incorporated.
6 VOICE FROM THE FLOOR: That's Baywood Express.
7 THE WITNESS: Baywood Express.
8 JUDGE SCHNIERLE: The other question I have is regarding
9 these interstate loads that are basically a continuation of
10 something that's moving interstate commerce that are included
11 in the commodities included in the application, those would be
12 in the category that shows both origin and destination in
13 Pennsylvania?
14 THE WITNESS: Correct.
15 JUDGE SCHNIERLE: So that the specific load might have
16 an origin and destination in Pennsylvania, but prior to the
17 origin or subsequent to the destination, it's -- it would be
18 considered in interstate commerce, is that --
19 MR. WICK: Well, Your Honor, you raise a very
20 interesting question which is being litigated before the
21 courts, as to the nature of transportation, for example, that
22 is by prior barge movement.
23 JUDGE SCHNIERLE: I understand that. You've got ones
24 that are origins in Pennsylvania and destinations in
25 Pennsylvania, which I understand those to be movements in

1 interstate commerce.

2 MR. WICK: Intra.

3 THE WITNESS: Inter.

4 JUDGE SCHNIERLE: Inter. If it's only origin in
5 Pennsylvania and only destination in Pennsylvania, those are
6 in interstate commerce.

7 MR. WICK: Inter, yeah.

8 JUDGE SCHNIERLE: If I understand the questioning that
9 Mr. Chesnutt engaged in, and the answers, in fact, under the
10 category both origin and destination in Pennsylvania, there
11 are additional interstate commerce movements in that category
12 as well, is that --

13 THE WITNESS: No.

14 JUDGE SCHNIERLE: No?

15 THE WITNESS: Our origin and our destination are
16 Pennsylvania.

17 JUDGE SCHNIERLE: Pennsylvania, but they may have come
18 in to Pennsylvania by a barge or something?

19 THE WITNESS: Yes.

20 JUDGE SCHNIERLE: So that they might be, under the new
21 law, under the newer decisions, considered interstate commerce
22 moves, is that --

23 MR. WICK: As the witness indicated, they report a
24 lesser figure to the PUC.

25 JUDGE SCHNIERLE: For intrastate revenue?

1 MR. WICK: Yeah.

2 JUDGE SCHNIERLE: All right. I have no further
3 questions. Any redirect?

4 MR. CHESNUTT: Maybe at this point in the record it
5 would be well to just have -- to make a comment, which I
6 believe I think is clear on the record. What I was able to
7 establish with Mr. Michalsky is that the assessment report
8 filed with this Commission by this carrier says that in 1987
9 their Pennsylvania intrastate revenues on which an assessment
10 will be based were reported at 8,370,511, which is a variation
11 from the 9,821,890.67 figure shown on Exhibit 9, and that is
12 the difference.

13 The reason that there's a difference between those, as I
14 understand the record, and maybe Mr. Michalsky should correct
15 us if we're wrong, is that -- the reason there is a difference
16 of \$1,500,000.00 approximately there, is because the carrier
17 considers that amount of revenues to have been associated with
18 interstate or foreign commerce moves, even though the origins
19 and destinations are both shown to be in Pennsylvania.

20 JUDGE SCHNIERLE: Is that -- is that the reason for that
21 differential?

22 THE WITNESS: No, it's not.

23 JUDGE SCHNIERLE: Well, then --

24 MR. WICK: I'll ask him.

25 REDIRECT EXAMINATION

1 BY MR. WICK:

2 Q Perhaps you better explain it. I understood your
3 answer is no?

4 A Right.

5 Q Explain your understanding for the reason between
6 your figures and what was reported to the PUC.

7 A Okay. Our data processing systems are just evolving
8 in the past couple, three years. Prior to that time, the
9 people that provide these reports to the ICC and the PUC used
10 a particular terminal, profit and loss statements to establish
11 intrastate and interstate revenue numbers. Okay. We -- you
12 know, years ago we could not go to the computer and say give
13 me everything that was from PA, to PA, so they established the
14 the -- what do you call it -- the system to take -- okay, give
15 me all the Pennsylvania terminals and any intrastate revenue
16 they report, add it up, and that added up to eight million
17 three. Therefore, they did not pick up Pennsylvania revenue
18 that Wilmington hauled, intra-Pennsylvania revenue that
19 Wilmington hauled.

20 JUDGE SCHNIERLE: Okay. I'm assuming they also didn't
21 pick up revenue for these other non-transportation services.
22 Would that also contribute to this differential?

23 THE WITNESS: No. I would assume they would probably --
24 that would still be intrastate traffic, yeah. They would
25 still pick that up.

1 JUDGE SCHNIERLE: Okay.

2 BY MR. WICK:

3 Q Do you have any feeling as to how significant this
4 other transportation revenue was in any period?

5 A I would think very minimal.

6 Q Minimal?

7 A Yeah. Just we're not called upon that often to do
8 something without moving a product.

9 MR. WICK: I have nothing else from this witness. I
10 think I offered this Exhibit 9.

11 JUDGE SCHNIERLE: Mr. Chesnutt?

12 MR. CHESNUTT: Let me see if I can just understand,
13 then.

14 RE CROSS EXAMINATION

15 BY MR. CHESNUTT:

16 Q With the \$3,370,511.00 Pennsylvania intrastate
17 revenues reported on the assessment form, the reason that it
18 is considerably lower than what you're showing on Exhibit 9 is
19 because the method for capturing the data that was filed in
20 the assessment report was not as comprehensive as what you
21 have been able to do in presenting Exhibit 9, is that -- in
22 other words, there was some revenues that were truly
23 Pennsylvania intrastate revenues that were not reflected in
24 the report that you made to this Commission, or that the
25 corporation made?

1 A Right. Yeah. I think that the people who were
2 making out the report, I don't think were aware that we could,
3 you know, be -- or they weren't -- the information wasn't
4 tested by them to be accurate, so they did it in the same way
5 they've always done it.

6 MR. CHESNUTT: That's all I have on recross examination.

7 MR. WICK: I have nothing further.

8 JUDGE SCHNIERLE: Any objection to their Exhibit 9?

9 MR. CHESNUTT: No.

10 MR. WICK: Thank you, Mr. Michalsky.

11 JUDGE SCHNIERLE: Refiners' Exhibit No. 9 is admitted
12 into evidence.

13 MR. WICK: Our next witness is Mr. Hoover.

14 JUDGE SCHNIERLE: Please raise your right hand.

15 GERALD L. HOOVER, having been duly sworn, was examined
16 and testified as follows:

17 JUDGE SCHNIERLE: Please be seated.

18 MR. WICK: May we have marked for identification as
19 Refiners' Exhibit No. 10 a financial statement consisting of
20 three sheets, balance sheet, December 31, '88?

21 JUDGE SCHNIERLE: Make it so.

22 (Refiners Transport Exhibit No. 10 was produced
23 and marked for identification.)

24 MR. WICK: It also includes earnings and retained
25 earnings for the year 1988, and with the accompanying notes.

DIRECT EXAMINATION

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BY MR. WICK:

Q Would you state your name and business address?

A My name is Gerald, G-e-r-a-l-d, L., Hoover,
H-o-o-v-e-r, 6500 Pearl Road, Cleveland, Ohio.

Q By whom are you employed and in what capacity?

A Currently I am employed by Mitchell Transport, Inc.,
and I am the group financial manager of the Bulk Materials
Group.

Q Does that Bulk Materials Group include Refiners
Transport and Terminal, Inc.?

A Yes, it does.

Q How long have you held your position?

A Three and a half years.

Q In your present position, are you familiar with the
books and records and financial statements of Refiners
Transport and Terminal?

A Yes, I am.

Q Did you cause to be prepared a document which has
been marked for identification as Refiners' Exhibit No. 10,
consisting of a three page financial statement?

A Yes, I did.

Q And from what underlying documents was this prepared?

A This was prepared from the internal computer system,
financial system that is used by Leaseway Transportation.

1 Q What is the precise relationship today between
2 Leaseway Transportation Corp. and Refiners Transport and
3 Terminal, Inc.?

4 A Refiners is a wholly owned subsidiary of Leaseway
5 Transportation.

6 Q To the best of your knowledge, is the Refiners'
7 Exhibit No. 10 a correct statement of the financial position
8 of Refiners as of the date shown?

9 A Yes, it is.

10 Q Sir, you indicated that Refiners is now a subsidiary
11 of Leaseway. Are there certain proposed changes in the
12 corporate structure of Leaseway and Refiners which should take
13 place in the near future?

14 A Yes. On October 28th, 1988, five management members
15 of the Bulk Materials Group signed a letter of intent to
16 acquire the group from Leaseway Transportation, subject to
17 completion and execution of a definitive purchase agreement.
18 The proposed acquisition is expected to occur during the first
19 quarter of 1989. The majority of financing is expected to be
20 obtained in the form of long-term debt from a major financial
21 institution.

22 Q Which companies will be in this bulk group?

23 A Currently -- there are currently 16 different
24 subsidiaries that comprise the Bulk Materials Group. Thirteen
25 of those subsidiaries are part of the proposed acquisition.

1 Would you like me to name those?

2 Q No. I just want to make sure, is Refiners one of
3 that group?

4 A Refiners is one of the 13, yes.

5 Q Does that transaction, or proposed transaction,
6 contemplate that there will be a holding company for the bulk
7 group?

8 A Yes. There has been a holding company, Bulk
9 Materials, Inc., that has been formed that will acquire the
10 outstanding stock of all of those 13 subsidiaries.

11 Q And you say, to the best of your knowledge, this may
12 take place when?

13 A It is anticipated to take place prior to the end of
14 the first quarter of 1989.

15 Q Will that transaction have an effect upon the balance
16 sheet of Refiners?

17 A Yes, it will.

18 Q Would you briefly explain what -- incidentally, I
19 should ask you, what would be your position with the new bulk
20 group?

21 A I will be chief financial officer.

22 Q All right. Proceed.

23 A Basically, the income -- the income statement and the
24 balance sheets that you see before you contain a number of
25 different items which are allocated costs from Leaseway

1 Transportation themselves. Being part of a big organization,
2 there are a number of different costs that are borne by a
3 central group, that's Leaseway Transportation, and then
4 allocated, based upon different methodologies, out to the
5 various subsidiaries and groups. And those costs,
6 specifically on the balance sheet, most of the -- all of the
7 debt that is shown, deferred income taxes and intercompany
8 receivables, payables, will be gone as part of the
9 transaction. Neither represent a true liability nor an asset
10 of the group.

11 Q Would you explain, sir, what -- there is a subsidiary
12 under current assets showing an investment. What will occur
13 there?

14 A The investment subsidiary, a company called A.R.
15 Gundrey, G-u-n-d-r-e-y, it's a dormant company and it's
16 comprised of a piece of property that is up in New York. That
17 subsidiary is a wholly owned subsidiary of Refiners Transport.
18 It is not one of the 13 subsidiaries that's going -- that
19 piece of property is in the process of being sold by Leaseway
20 Transportation. The investment in the sub -- the transaction
21 will have that investment in subsidiary dividend up to the
22 parent company, which is Leaseway Transportation, at the time
23 the deal is consummated.

24 Q Sir, as the prospective chief financial officer of
25 this new group, would you give us your opinion as to the

1 effect which the transaction will have upon the balance sheet
2 of Refiners?

3 A From an operating standpoint, it really wouldn't have
4 any effect. In terms of the viability of the Refiners and
5 bulk group, it will have the -- the balance sheet will become
6 much stronger with the separate organization.

7 Q Could you briefly explain why?

8 A Once again, it relates back to the allocated costs.
9 Approximately 20 percent of the costs that are borne -- that
10 are shown in the income statement of Refiners Transport amount
11 to what we call the allocated costs from the corporate group.
12 Now, these allocation methodologies have been established,
13 reviewed, audited and are subject to audit by various federal,
14 state, Internal Revenue, you know, because these -- the
15 amounts that are generated from these allocations are used for
16 tax reporting.

17 But as has been shown in other major organizations, they
18 do not purport to show actual costs that would be incurred by
19 that organization, what -- had it been on a stand-alone basis
20 or organized differently. They are simply allocations that
21 are made to cover entire Leaseway Transportation costs that
22 are made on a consistent basis throughout the organization.

23 Q Today does Leaseway have a number of subsidiaries,
24 other than Refiners?

25 A Yes, it does.

1 Q Does Leaseway subsidiaries engage in other
2 businesses, such as car hauling, package delivery, a variety
3 of services?

4 A Yes, it does.

5 Q You mentioned the administrative and selling expenses
6 of Refiners, the second sheet of your statement, something in
7 excess of 6.8 million. Please express your opinion as to
8 whether that figure would be less under the new group
9 operation?

10 A Yes, it will be less.

11 Q Does that relate to the allocations that you've
12 mentioned?

13 A Correct.

14 Q And the only asset, then, that Lease -- that Refiners
15 would no longer show on its balance sheet would be this
16 investment in subsidiaries?

17 A The accounts receivable from affiliates, that number
18 will be decreased slightly. There are some, I call them third
19 party transactions. We do haul fuel for another Leaseway
20 subsidiary. That is a third party-type transaction. We bid
21 against other transportation haulers for that business, and it
22 is conducted on a third party-type basis. Those receivables
23 will stay. Other receivables for a variety of other things
24 that are not true receivables, trade receivables, would
25 disappear and be offset with the current portion of long-term

1 debt due affiliates and the equipment financing, term loan and
2 revolving credit facility, along with the deferred income
3 taxes.

4 Q What I'm getting at, Refiners will not be required to
5 transfer any revenue equipment as part of that transaction?

6 A That is correct.

7 Q And will there be any effect upon the actual
8 personnel of Refiners? The same people will be there as there
9 are today?

10 A That's correct.

11 MR. WICK: I think that's all I have of this witness,
12 Your Honor. I'll offer Exhibit No. 10, and the witness is
13 available.

14 JUDGE SCHNIERLE: Mr. Chesnutt.

15 CROSS EXAMINATION

16 BY MR. CHESNUTT:

17 Q Mr. Hoover, you don't have with you, and you're not
18 intending to present, are you, any financial data that would
19 show Leaseway Transportation Corp., on a consolidated basis
20 with all its subsidiaries?

21 A No, but that is a matter of public record. They file
22 -- they do have some public debt that's outstanding and due
23 and are required to file an annual 10K report.

24 Q Page 1 of Exhibit No. 10 reflects investment in
25 subsidiaries at \$2,439,321,00. That you've described as this

1 piece of land up in New York?

2 A That's correct.

3 Q Is that on this balance sheet at book value?

4 A On this balance sheet, yes, it is.

5 Q And it will sell at a price considerably in excess of
6 the value shown on this balance sheet?

7 A No. It's -- no.

8 Q Will it sell right at it or below it?

9 A That I don't know because Leaseway Transportation is
10 -- the property department is handling that transaction.

11 Q With respect to the equipment finance obligations
12 shown on the liabilities portion of the balance sheet, that's
13 marked as due to affiliates. What will happen after the
14 consummation of the buy-out by Bulk Materials, Inc.?

15 A Basically, Leaseway Transportation's policy for
16 equipment financing was that every subsidiary that purchased
17 equipment, purchased the equipment through a subsidiary,
18 another subsidiary, Leaseway Finance. So in other words, even
19 though Leaseway was not really borrowing the money from an
20 outside lender, this internal lender was lending the money to
21 each subsidiary, and so they charged interest expense based
22 upon a pre-established rate over the life of the assets which
23 corresponded to the depreciable life that we were doing.

24 So in other words, every one of our assets, as to
25 Leaseway, is paying expense until it's fully depreciated.

1 That doesn't really represent a true liability. It's simply a
2 corporate financing measurement and so -- in other words, all
3 of Lease -- all of the Refiners' of the world, all of the
4 subsidiaries that participate, their equipment is a hundred
5 percent financed through this Leaseway Finance Corp.

6 Q The two other entries on the liability side of the
7 balance sheet of some significant amount are a term loan and a
8 revolving credit facility. Are they both, again, allocated-
9 type values?

10 A Yes, they are. Leaseway Transportation went through
11 a leveraged buy-out in June of 1987, and those are allocated
12 portions of the debt that was incurred as part of that
13 transaction.

14 Q And I would -- if we turn over, then, to the second
15 page of your Exhibit No. 10, the interest expense item of
16 \$1,773,503.00, that is another allocated item?

17 A That is correct. It is actually calculations on the
18 amounts that are shown on the balance sheet, the equipment
19 finance, the term loan and revolving credit.

20 Q And you indicated the administrative and selling
21 expense item after the consummation of the Bulk Materials,
22 Inc., buy-out will be less on the Refiners' income statement,
23 is that correct?

24 A That is correct.

25 Q By how much?

1 A At this point in time it would be pure speculation
2 and, you know, I'm not, at this point in time, willing to say.

3 Q When the acquisition by Bulk Materials, Inc., is
4 accomplished and it then is the holding company for 13
5 subsidiaries, including Refiners, will Bulk Materials, Inc.,
6 file consolidated income tax returns with its 13 subsidiaries?

7 A Yes, they will.

8 Q As an employee of Mitchell Transport presently, is
9 that one of the 13 subsidiaries that will become a part of
10 Bulk Materials, Inc.?

11 A Yes. Actually, to clarify the Mitchell Transport,
12 formerly, prior to 12/31/88, I was an employee of Leaseway
13 National Service Corp., which was the administrative
14 subsidiary that all of the group-type people like myself were
15 employed by. In anticipation of the impending deal, to make
16 the transaction as clean as possible, all employees of
17 Leaseway National Service that were dedicated to the bulk
18 group, that would be part of this transaction, were
19 transferred to one of the 13 subsidiaries that were part of
20 this deal. I just happened to be placed under Mitchell.
21 There is no specific reason for that.

22 Q In your functioning before December 31, 1988, your
23 compensation and benefits were part of the allocated expenses?

24 A That is correct.

25 Q That went to Refiners, among others?

1 A Yes, that is correct.

2 MR. CHESNUTT: Thank you. Those are all the questions I
3 have.

4 JUDGE SCHNIERLE: Redirect?

5 MR. WICK: I don't believe I have anymore. I believe I
6 did offer Exhibit 10.

7 JUDGE SCHNIERLE: Any objection?

8 MR. CHESNUTT: None.

9 JUDGE SCHNIERLE: Refiners' Exhibit 10 is admitted into
10 evidence. You may step down. Do you have any other witnesses
11 to call?

12 MR. WICK: Yes. May I have just a brief recess to
13 review something with my witness?

14 JUDGE SCHNIERLE: A five minute recess. How long do you
15 expect this one to take?

16 MR. WICK: I would guess no more than ten minutes on
17 direct.

18 JUDGE SCHNIERLE: We'll let him do his direct and see
19 what it looks like.

20 MR. CHESNUTT: Thank you, sir.

21 (A brief recess was taken.)

22 MR. WICK: I'll call Mr. Richard L. Frieze.

23 JUDGE SCHNIERLE: Would you raise your right hand,
24 please?

25 RICHARD L. FRIEZE, having been duly sworn, was

1 examined and testified as follows:

2 JUDGE SCHNIERLE: Please be seated.

3 DIRECT EXAMINATION

4 BY MR. WICK:

5 Q State your name and business address.

6 A My name is Richard L. Frieze. My business address is
7 Cleveland, Ohio.

8 Q By whom are you employed and in what capacity?

9 A Refiners Transport. I'm a territory sales manager.

10 Q Did you sit in on the Philadelphia hearings in this
11 application, sir?

12 A Yes, I did.

13 Q And also, did you sit in on the Pittsburgh hearing
14 where there was public testimony?

15 A Yes.

16 Q Do you, from time to time, make calls on various
17 shippers seeking their business for Refiners?

18 A Yes, I do.

19 Q I show --

20 MR. WICK: Your Honor, may we have marked for
21 identification a two sheet document dated October 15, 1986,
22 addressed to E.F. Houghton and Co.?

23 JUDGE SCHNIERLE: It shall be marked Refiners' Exhibit
24 11.

25 (Refiners Transport Exhibit No. 11 was produced

1 and marked for identification.)

2 BY MR. WICK:

3 Q Mr. Frieze, I show you what's marked for
4 identification as Refiners' Exhibit 11 and ask if that is a
5 letter which you prepared and signed?

6 A Yes, it is.

7 Q And there's attached to it a series of rates. Did
8 you make those rate quotations available to the addressee, Mr.
9 William F Dahms, Sr.?

10 A Yes, I did.

11 Q Mr. Dahms testified, as I recall it, that your
12 company had not served them in 1987 and the first part of '88.

13 A That's correct.

14 Q Have you begun to serve this company?

15 A Yes, we have.

16 MR. WICK: May we have marked for identification a
17 single sheet document dated March 4, 1987, addressed to
18 Valspar Corporation?

19 JUDGE SCHNIERLE: It shall be marked for identification
20 as Refiners' Exhibit No. 12.

21 (Refiners Transport Exhibit No. 12 was produced
22 and marked for identification.)

23 BY MR. WICK:

24 Q I show you what's marked for identification as
25 Refiners' Exhibit No. 12 and ask you if that letter shows your

1 signature?

2 A Yes.

3 Q Did you prepare this letter and send it to the
4 company, Valspar Corporation?

5 A Yes. The way these are done is I prepare the letter,
6 I send them into our corporate office, they in turn send them
7 out. That's how it's done.

8 Q Did you, in fact, make a sales call upon Mrs. Mary
9 Noga, the addressee?

10 A Several calls.

11 Q What's the latest call that you can remember making?

12 A More than likely, around January of '88.

13 Q In 1987 or '88, did your company receive any
14 transportation requests from Valspar Corporation?

15 A No, we did not.

16 Q There was another witness at the Philadelphia hearing
17 representing Harry Miller Corporation. Is that name familiar
18 to you?

19 A Yes, it is.

20 Q Have you called upon that company soliciting
21 intrastate Pennsylvania business for Refiners?

22 A Yes, I have.

23 Q Has your company secured any business from them?

24 A No, we haven't.

25 Q Does the name McCloskey Corporation mean anything to

1 you?

2 A Yes.

3 Q Has your company provided any transportation for
4 McCloskey?

5 A No, we haven't.

6 MR. WICK: I think that's all I have for this witness.

7 JUDGE SCHNIERLE: Cross examination, Mr. Chesnutt?

8 CROSS EXAMINATION

9 BY MR. CHESNUTT:

10 Q Mr. Frieze, Exhibit No. 11 indicates the date of
11 October 15, 1986. Would it be correct that your visit with
12 Mr. Dahms occurred prior to that date?

13 A Yes, it is.

14 Q Was this letter sent on the date that it's dated?

15 A That's correct. Yes, sir.

16 MR. CHESNUTT: If Your Honor please, I need a little
17 time to review the transcript concerning the witnesses about
18 whom he's testified.

19 JUDGE SCHNIERLE: Would you like a recess for that
20 purpose?

21 MR. CHESNUTT: No thank you. No. If we can just stand
22 down, I guess is the phrase, for a moment.

23 JUDGE SCHNIERLE: At ease. Be at ease.

24 MR. CHESNUTT: Whatever.

25 (Brief pause.)

1 MR. CHESNUTT: I have no further questions of Mr.
2 Frieze.

3 MR. WICK: I'll offer these two exhibits into evidence.

4 JUDGE SCHNIERLE: Any objection to Refiners' 11 and 12?

5 MR. CHESNUTT: No.

6 JUDGE SCHNIERLE: Refiners' Exhibits 11 and 12 are
7 admitted into evidence. Do you have anything further, Mr.
8 Wick?

9 MR. WICK: I think that's all we have, Your Honor. We
10 will rest our presentation.

11 JUDGE SCHNIERLE: And I understand that you will review
12 all -- the entire document, portions of which were admitted as
13 Central Exhibit 31, and if you desire to put in other portions
14 of that document, I see no reason to have a further hearing,
15 but simply submit it to the file, to the secretary and to all
16 parties by mail, with appropriate cover letter. Is that
17 satisfactory to you, Mr. Chesnutt?

18 MR. CHESNUTT: It certainly is, Your Honor.

19 JUDGE SCHNIERLE: With that, I believe we have no
20 further business to transact today and this hearing is
21 adjourned, and I suppose these hearings will be adjourned
22 until we resolve the outstanding discovery matter with
23 Matlack.

24 MR. CHESNUTT: It certainly seems that way, yes, Your
25 Honor.

1 JUDGE SCHNIERLE: Thank you very much.

2 MR. WICK: Your Honor, since the last hearing will
3 probably occur with Matlack's testimony, at which time you
4 will set a briefing date?

5 JUDGE SCHNIERLE: Yes. I'm also anticipating that,
6 depending on Matlack's counsel's pleasure, you may yet be
7 submitting a witness on the -- Central, that is, may be
8 submitting a witness on the whole fitness issue for cross
9 examination. I believe that's still theoretically possible at
10 this juncture.

11 MR. CHESNUTT: I'm not sure how that's going to go. I
12 mean, I suppose they can subpoena whomever they wish. I can
13 present as a rebuttal witness whomever I wish.

14 JUDGE SCHNIERLE: As I recall, you offered to provide a
15 witness if they felt it necessary at some point. I think
16 there was an offer like that at the first -- one of the first
17 hearings. I don't know. As I said, I think it's going to
18 depend on how this discovery thing plays out, but there will
19 be one more day of hearing at least, I would imagine, at which
20 time I will set a briefing schedule, if that represents the
21 close of the record, or the close of the receipt of evidence.
22 Thank you very much.

23

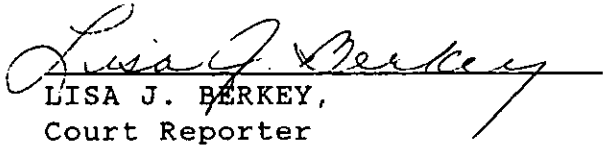
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(The hearing adjourned at 12:25 o'clock p.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.


LISA J. BERKEY,
Court Reporter

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