

LAW OFFICES

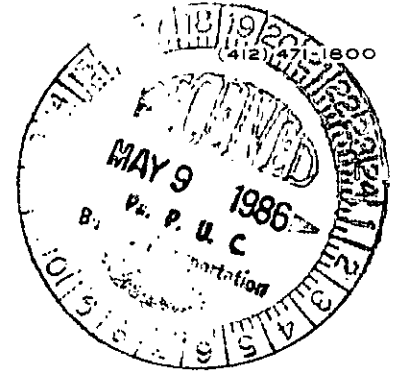
VUONO, LAVELLE & GRAY

2310 GRANT BUILDING
PITTSBURGH, PA. 15219

JOHN A. VUONO
WILLIAM J. LAVELLE
WILLIAM A. GRAY
MARK T. VUONO
RICHARD R. WILSON
DENNIS J. KUSTURISS

May 6, 1986

Re: Norman M. Earhart t/d/b/a Earhart Trucking
Docket No. A-0065936, F. 3, Am-A
Temporary Authority Application



2nd TA

RECEIVED

MAY 9 1986

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17120

SECRETARY'S OFFICE
Public Utility Commission

Dear Mr. Rich:

FILE

We enclose for filing with the Commission the protest of Bulk Transportation Services, Inc. to the above application. A copy of the protest has been sent to Administrative Law Judge Robert Meehan and to Arthur J. Diskin, Esquire, applicant's representative.

Sincerely yours,

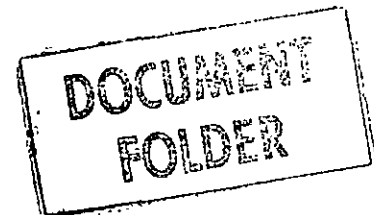
VUONO, LAVELLE & GRAY

William J. Lavelle
William J. Lavelle

pz

Enclosure

cc: Honorable Robert Meehan,
Administrative Law Judge
Arthur J. Diskin, Esquire
Bulk Transportation Services, Inc.



Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAY 9 1986

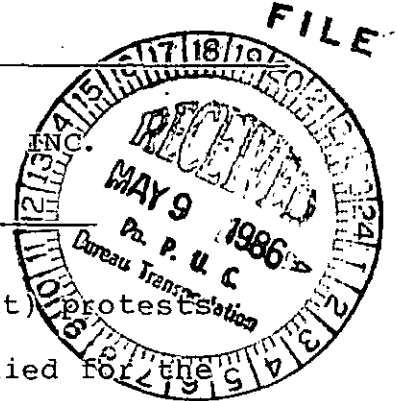
DOCKET NO. A-00065936, F. 3, Am-A

TEMPORARY AUTHORITY APPLICATION

SECRETARY'S OFFICE
Public Utility Commission

NORMAN M. EARHART T/D/B/A EARHART TRUCKING

PROTEST OF BULK TRANSPORTATION SERVICES,



Bulk Transportation Services, Inc. (Protestant) protest station
the above application and requests that it be denied for the
following reasons:

1. Protestant holds authority at Docket No. A-00101351, F. 1, Am-A as follows:
 4. To transport, as a Class D carrier, coal between points within an airline distance of forty-five (45) statute miles of the limits of the Borough of Nanty Glo, Cambria County;

With Right No. 4 above subject the following condition

That no right, power or privilege is granted to transport coal to the steel plants of the Bethlehem Steel Corporation in the County of Cambria, except as presently authorized.

Under the above authority, Protestant is authorized to transport coal from both of the origins involved in this application, namely, Jobsite 189 located in the Township of Lower Yoder, Cambria County, and Jobsite 191 located in the Village

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ENTRY No. *10*

of Hamilton, Perry Township, Jefferson County, to the single destination, namely, Conrail Rail Site in the Township of Burrell, Indiana County.

2. Protestant's headquarters are located in Mineral Point, Cambria County, which is just to the northeast of Johnstown. One of the origins, Jobsite 189 in the Township of Lower Yoder, is located just north of Johnstown and approximately ten miles from the Protestant's facilities. The second origin point, Jobsite 191 in the Village of Hamilton, Perry Township, Jefferson County, is located about 45 miles from the facilities of both Protestant and the applicant.

3. Protestant operates 95 dump trucks, 38 tractors and 33 dump trailers. All of this equipment is suitable for the transportation of coal.

4. Protestant is prepared to provide service for North Cambria Fuel Co. Protestant's service is available seven days a week if necessary. While it is advantageous to have a shipper arrange for transportation service one day in advance, Protestant can and does provide service the same day it is requested. Paragraph number 7 of the supporting shipper's statement and the letter of applicant's counsel both allege that Protestant requires one day's notice in order to provide service.

At the hearing on April 9, 1986, in connection with the related application for permanent authority, the witness for Protestant testified as follows at page 73 of the transcript:

Q. What prior arrangements have to be made, in other words, how far in advance of the service must you receive a call?

A. Well, now we usually get calls in the evening for the next morning.

We could--we have connections at another location where we could radio contact trucks and be available in a matter of hours or a short period of time.

Q. When you say that you now get calls the night before, is that a requirement by your company?

A. Yes. People that we are doing business with now, it works out very well.

Q. If a company for some reason had shipments, during the course of a day that had to be covered, is your company able to respond to those kinds of requests?

A. Yes. We have one operation that we run into that now and we can do it.

Q. Are you able to divert trucks from one origin to another origin if a shipper has such a requirement?

A. Yes, we can.

From the above it is clear that Protestant can provide service on short notice, contrary to the characterization of the Protestant's testimony by the shipper and applicant's counsel.

5. Section 3.384 of Title 52 of the Pennsylvania Code sets forth the standards by which emergency and regular temporary authority applications are to be judged. Sub-section 3.384(b)(1) states that "Grants of TA or ETA shall be made upon the establishment of an immediate need for the transportation of passengers or of particular commodities or classes of commodities".

Sub-section 3.384(b) (2) gives examples of what type of evidence might establish the existence of an immediate transportation need. The supporting shipper's statement does not show that this service involves a new or relocated shipping or receiving point, does not show that a different method of distribution is involved, does not show that there are new or unusual commodities involved, does not establish that either the origins or destinations are not presently served by other carriers, does not indicate that there has been any discontinuance of existing service, does not establish any failure by existing carriers to provide the needed service, and does not describe any situation which requires a new carrier service before the application for permanent authority can be processed to a conclusion. All that the shipper has presented to the Commission is the fact that it has 20 truckloads of coal a day from the Lower Yoder Township facility and five truckloads of coal a day from the Hamilton facility moving to the railhead in Burrell Township, Indiana County.

It is important to note that Sub-section 3.384(b) (2) specifically states that "An immediate need will not normally be found to exist where there are other carriers capable of rendering the service unless it is determined that there is a substantial benefit to be derived from the initiation of a competitive service". Protestant is in a position to provide all of the service required by the supporting shipper. There is no

evidence of any substantial benefit to be derived from the initiation of the applicant's competitive service.

6. Sub-section 3.384(b)(3) provides that TA or ETA may be granted where existing authorized carriers are unable or refuse to furnish equipment necessary to move passengers or freight to meet an immediate transportation need. The supporting shipper statement does not provide any evidence that there has been any inability or refusal by Protestant or any other carrier to provide the service proposed by this application.

7. Protestant is shocked by the tone of the presentation by the supporting shipper and applicant's representative. As a motor carrier authorized by this Commission to provide service in Pennsylvania, and in light of the rules and regulations of the Commission, Protestant is of the opinion that it has a legal right to protest applications which conflict with its operating authority. After Protestant and other parties to a proceeding have presented their evidence, the Commission weighs the evidence and makes a determination as to whether the application should be approved or denied.

In paragraph 9 of the supporting statement, the shipper states that he "resents" the Protestant "deliberately interfering with our application". He goes on to state that he feels the Protestant is "maliciously interfering" with his opportunity to do business with the applicant. The shipper concludes by stating that "I do not like being blackmailed by Bulk Transportation Services, Inc. in this manner".

Applicant's representative in the last paragraph on page 2 of his letter characterizes the Protestant's protest to the permanent application as a "nuisance" protest. Counsel goes on to state that he hopes that the Commission will not give the "attitude" of Protestant any serious consideration because it represents a "cynical attitude" that the shipper must use its services.

8. These comments by the shipper and applicant's representative are apparently based on the fact that Protestant has not provided any service for North Cambria Fuel Co. for approximately ten years. Admittedly, Protestant and its alter ego, Charles J. Merlo, Inc., have been providing service for other accounts during that time, just as the applicant has undoubtedly served some but not all potential shippers in its authorized territory. The evidence presented by Protestant in opposition to the related permanent application shows that one of its major accounts is shutting down its operations and this will eliminate a considerable portion of Protestant's revenue. It will also obviously make available a considerable amount of equipment. In view of those changing circumstances, Protestant legitimately is seeking new accounts, including that of North Cambria Fuel Co. It has offered its service, it has presented its evidence to the Commission, and it submits that under the law and the Commission's regulations temporary authority is not justified under the present circumstances.

9. There is no cause for the supporting shipper to resent Protestant or to accuse it of blackmail. There are certain rules and regulations governing the for-hire motor transportation industry in Pennsylvania. Applicants, protestants, shippers and receivers have operated within the context of this regulatory scheme for some 50 years. Neither the shipper nor applicant's experienced counsel should resent nor characterize as blackmail or cynical the Protestant's exercising of its legal rights.

10. Perhaps the most telling aspect of the shipper's evidence is the statement that "I will not use Bulk Transportation Services, Inc., under any circumstances, even if the temporary authority is not granted, do to the attitude of this company". Presumably, the shipper's primary concern is obtaining transportation service to meet its needs. This application is implicitly premised on the notion that there is an immediate need for the applicant's service because adequate service cannot be obtained from any other source. Protestant submits, and the Commission will decide the validity of its position, that it can provide all of the service required by this supporting shipper. If Protestant's position is accurate, then there is no immediate need for the applicant's service and under the law and the Commission's regulations this application should be denied. If the Commission denies the application, then the shipper will have to make a decision. It will either use the

available service of the Protestant and move its coal as required, or it will refuse to use Protestant's service because of the personal animosity of the shipper witness.

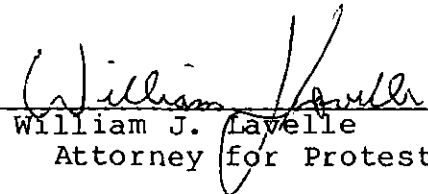
That personal animosity, which Protestant finds difficult to understand, should not enter into the Commission's decision as to whether the application should be approved or denied. The application should be determined on the basis of the standards referred to previously. If the decision is adverse to the applicant and supporting shipper, the shipper will then have to decide whether the need to move its traffic is sufficiently important to use the Protestant's service.

For the reasons set forth herein, Bulk Transportation Services, Inc. respectfully requests that the application of Norman M. Earhart t/d/b/a Earhart Trucking for temporary authority be denied in its entirety.

Respectfully submitted,

BULK TRANSPORTATION SERVICES, INC.

By:


William J. Lavelle
Attorney for Protestant

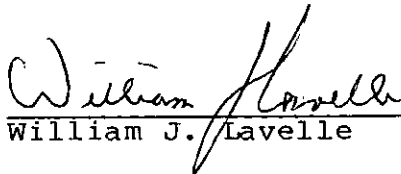
VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Dated: May 6, 1986

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the above protest upon applicant's attorney.

Dated at Pittsburgh, Pa. this 6th day of May, 1986.



William J. Lavelle

LAW OFFICES

VUONO, LAVELLE & GRAY

2310 GRANT BUILDING
PITTSBURGH, PA. 15219

JOHN A. VUONO
WILLIAM J. LAVELLE
WILLIAM A. GRAY
MARK T. VUONO
RICHARD R. WILSON
DENNIS J. KUSTURISS

May 6, 1986



Re: Norman M. Earhart t/d/b/a Earhart Trucking
Docket No. A-0065936, F. 3, Am-A
Emergency Temporary Authority Application

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MAY 9 1986

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17120

SECRETARY'S OFFICE
Public Utility Commission

Dear Mr. Rich:

We enclose for filing with the Commission the protest of Bulk Transportation Services, Inc. to the above application. A copy of the protest has been sent to Administrative Law Judge Robert Meehan and to Arthur J. Diskin, Esquire, applicant's representative.

Sincerely yours,

VUONO, LAVELLE & GRAY

William J. Lavelle
William J. Lavelle

pz
Enclosure

cc: Honorable Robert Meehan,
Administrative Law Judge
Arthur J. Diskin, Esquire
Bulk Transportation Services, Inc.

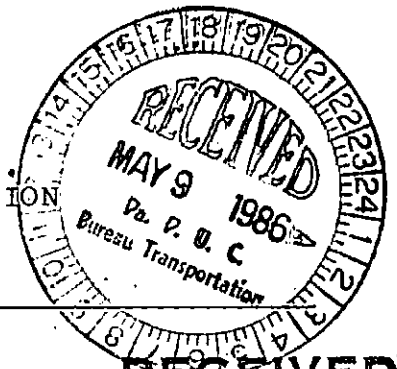
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MAY 12 1986

Office of A. L. J.
Public Utility Commission

FOLDER

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION



DOCKET NO. A-00065936, F. 3, Am-A

EMERGENCY TEMPORARY AUTHORITY APPLICATION

NORMAN M. EARHART T/D/B/A EARHART TRUCKING

MAY 9 1986

RECEIVED
SECRETARY'S OFFICE
Public Utility Commission

PROTEST OF BULK TRANSPORTATION SERVICES, INC.

Bulk Transportation Services, Inc. (Protestant) protests the above application and requests that it be denied for the following reasons:

1. Protestant holds authority at Docket No. A-00101351, F. 1, Am-A as follows:
 4. To transport, as a Class D carrier, coal between points within an airline distance of forty-five (45) statute miles of the limits of the Borough of Nanty Glo, Cambria County;

With Right No. 4 above subject the following condition

That no right, power or privilege is granted to transport coal to the steel plants of the Bethlehem Steel Corporation in the County of Cambria, except as presently authorized.

Under the above authority, Protestant is authorized to transport coal from both of the origins involved in this application, namely, Jobsite 189 located in the Township of Lower Yoder, Cambria County, and Jobsite 191 located in the Village

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of Hamilton, Perry Township, Jefferson County, to the single destination, namely, Conrail Rail Site in the Township of Burrell, Indiana County.

2. Protestant's headquarters are located in Mineral Point, Cambria County, which is just to the northeast of Johnstown. One of the origins, Jobsite 189 in the Township of Lower Yoder, is located just north of Johnstown and approximately ten miles from the Protestant's facilities. The second origin point, Jobsite 191 in the Village of Hamilton, Perry Township, Jefferson County, is located about 45 miles from the facilities of both Protestant and the applicant.

3. Protestant operates 95 dump trucks, 38 tractors and 33 dump trailers. All of this equipment is suitable for the transportation of coal.

4. Protestant is prepared to provide service for North Cambria Fuel Co. Protestant's service is available seven days a week if necessary. While it is advantageous to have a shipper arrange for transportation service one day in advance, Protestant can and does provide service the same day it is requested. Paragraph number 7 of the supporting shipper's statement and the letter of applicant's counsel both allege that Protestant requires one day's notice in order to provide service.

At the hearing on April 9, 1986, in connection with the related application for permanent authority, the witness for Protestant testified as follows at page 73 of the transcript:

Q. What prior arrangements have to be made, in other words, how far in advance of the service must you receive a call?

A. Well, now we usually get calls in the evening for the next morning.

We could--we have connections at another location where we could radio contact trucks and be available in a matter of hours or a short period of time.

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A. Yes. People that we are doing business with now, it works out very well.

Q. If a company for some reason had shipments, during the course of a day that had to be covered, is your company able to respond to those kinds of requests?

A. Yes. We have one operation that we run into that now and we can do it.

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A. Yes, we can.

From the above it is clear that Protestant can provide service on short notice, contrary to the characterization of the Protestant's testimony by the shipper and applicant's counsel.

5. Section 3.384 of Title 52 of the Pennsylvania Code sets forth the standards by which emergency and regular temporary authority applications are to be judged. Sub-section 3.384(b)(1) states that "Grants of TA or ETA shall be made upon the establishment of an immediate need for the transportation of passengers or of particular commodities or classes of commodities".

Sub-section 3.384(b)(2) gives examples of what type of evidence might establish the existence of an immediate transportation need. The supporting shipper's statement does not show that this service involves a new or relocated shipping or receiving point, does not show that a different method of distribution is involved, does not show that there are new or unusual commodities involved, does not establish that either the origins or destinations are not presently served by other carriers, does not indicate that there has been any discontinuance of existing service, does not establish any failure by existing carriers to provide the needed service, and does not describe any situation which requires a new carrier service before the application for permanent authority can be processed to a conclusion. All that the shipper has presented to the Commission is the fact that it has 20 truckloads of coal a day from the Lower Yoder Township facility and five truckloads of coal a day from the Hamilton facility moving to the railhead in Burrell Township, Indiana County.

It is important to note that Sub-section 3.384(b)(2) specifically states that "An immediate need will not normally be found to exist where there are other carriers capable of rendering the service unless it is determined that there is a substantial benefit to be derived from the initiation of a competitive service". Protestant is in a position to provide all of the service required by the supporting shipper. There is no

evidence of any substantial benefit to be derived from the initiation of the applicant's competitive service.

6. Sub-section 3.384(b) (3) provides that TA or ETA may be granted where existing authorized carriers are unable or refuse to furnish equipment necessary to move passengers or freight to meet an immediate transportation need. The supporting shipper statement does not provide any evidence that there has been any inability or refusal by Protestant or any other carrier to provide the service proposed by this application.

7. Protestant is shocked by the tone of the presentation by the supporting shipper and applicant's representative. As a motor carrier authorized by this Commission to provide service in Pennsylvania, and in light of the rules and regulations of the Commission, Protestant is of the opinion that it has a legal right to protest applications which conflict with its operating authority. After Protestant and other parties to a proceeding have presented their evidence, the Commission weighs the evidence and makes a determination as to whether the application should be approved or denied.

In paragraph 9 of the supporting statement, the shipper states that he "resents" the Protestant "deliberately interfering with our application". He goes on to state that he feels the Protestant is "maliciously interfering" with his opportunity to do business with the applicant. The shipper concludes by stating that "I do not like being blackmailed by Bulk Transportation Services, Inc. in this manner".

Applicant's representative in the last paragraph on page 2 of his letter characterizes the Protestant's protest to the permanent application as a "nuisance" protest. Counsel goes on to state that he hopes that the Commission will not give the "attitude" of Protestant any serious consideration because it represents a "cynical attitude" that the shipper must use its services.

8. These comments by the shipper and applicant's representative are apparently based on the fact that Protestant has not provided any service for North Cambria Fuel Co. for approximately ten years. Admittedly, Protestant and its alter ego, Charles J. Merlo, Inc., have been providing service for other accounts during that time, just as the applicant has undoubtedly served some but not all potential shippers in its authorized territory. The evidence presented by Protestant in opposition to the related permanent application shows that one of its major accounts is shutting down its operations and this will eliminate a considerable portion of Protestant's revenue. It will also obviously make available a considerable amount of equipment. In view of those changing circumstances, Protestant legitimately is seeking new accounts, including that of North Cambria Fuel Co. It has offered its service, it has presented its evidence to the Commission, and it submits that under the law and the Commission's regulations emergency temporary authority is not justified under the present circumstances.

9. There is no cause for the supporting shipper to resent Protestant or to accuse it of blackmail. There are certain rules and regulations governing the for-hire motor transportation industry in Pennsylvania. Applicants, protestants, shippers and receivers have operated within the context of this regulatory scheme for some 50 years. Neither the shipper nor applicant's experienced counsel should resent nor characterize as blackmail or cynical the Protestant's exercising of its legal rights.

10. Perhaps the most telling aspect of the shipper's evidence is the statement that "I will not use Bulk Transportation Services, Inc., under any circumstances, even if the temporary authority is not granted, do to the attitude of this company". Presumably, the shipper's primary concern is obtaining transportation service to meet its needs. This application is implicitly premised on the notion that there is an immediate need for the applicant's service because adequate service cannot be obtained from any other source. Protestant submits, and the Commission will decide the validity of its position, that it can provide all of the service required by this supporting shipper. If Protestant's position is accurate, then there is no immediate need for the applicant's service and under the law and the Commission's regulations this application should be denied. If the Commission denies the application, then the shipper will have to make a decision. It will either use the

available service of the Protestant and move its coal as required, or it will refuse to use Protestant's service because of the personal animosity of the shipper witness.

That personal animosity, which Protestant finds difficult to understand, should not enter into the Commission's decision as to whether the application should be approved or denied. The application should be determined on the basis of the standards referred to previously. If the decision is adverse to the applicant and supporting shipper, the shipper will then have to decide whether the need to move its traffic is sufficiently important to use the Protestant's service.

For the reasons set forth herein, Bulk Transportation Services, Inc. respectfully requests that the application of Norman M. Earhart t/d/b/a Earhart Trucking for emergency temporary authority be denied in its entirety.

Respectfully submitted,

BULK TRANSPORTATION SERVICES, INC.

By: _____

William J. Lavelle
Attorney for Protestant

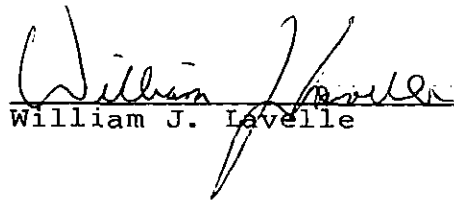
VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Dated: May 6, 1986

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the above protest upon applicant's attorney.

Dated at Pittsburgh, Pa. this 6th day of May, 1986.



William J. Lavelle

ARTHUR J. DISKIN
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
402 LAW & FINANCE BUILDING
PITTSBURGH, PA. 15219
TELEPHONE (412) 281-9494

ORIGINAL

RECEIVED

MAY 12 1986
SECRETARY'S OFFICE
Public Utility Commission

May 9, 1986

Mr. Jerry Rich, Secretary
Pa. Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

IN RE: Application of Norman M. Earhart, t/d/b/a Earhart
Trucking; Docket No. A. 65936, F. 3, Am-A

Dear Sir:

Enclosed are the original and two copies of the Petition of Norman M. Earhart, t/d/b/a Earhart Trucking, for Reconsideration of the Tentative Decision entered February 13, 1986, in which temporary authority was denied.

The enclosed Petition is self-explanatory, but I wish to point out that we have also filed an application for temporary authority which we wish to withdraw. On April 18, 1986, I submitted the original and two copies of an application for emergency temporary authority and the original and two copies of an application for regular temporary authority. Please consider this letter as a withdrawal of both applications.

In lieu thereof, I am submitting the enclosed Petition for Reconsideration. I am sending a copy of the enclosed to William J. Lavelle, Esq., counsel for the only protestant, Bulk Transportation Services, Inc., and to Administrative Law Judge Robert Meehan, who is handling the application for permanent authority.

Kindly acknowledge receipt thereof.

Very truly yours,


Arthur J. Diskin

AJD/cmm

Enclosures

cc: ALJ Robert Meehan
William J. Lavelle, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of

NORMAN M. EARHART, t/d/b/a EARHART TRUCKING

Docket No. A. 65936, F. 3, Am-A

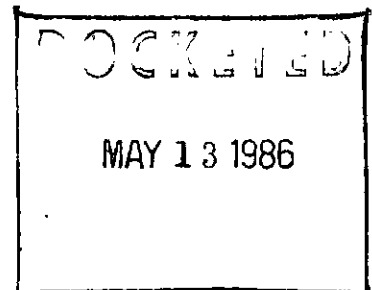
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MAY 12 1986
SECRETARY'S OFFICE
Public Utility Commission

PETITION FOR RECONSIDERATION

To the Honorable, the Pennsylvania Public Utility Commission:

Norman M. Earhart, t/d/b/a Earhart Trucking, by his Attorney, Arthur J. Diskin, hereby files this Petition for Reconsideration of the Tentative Decision entered February 13, 1986, at the above docket number. The subject of the decision was an application for temporary authority to transport coal for North Cambria Fuel, Inc., from its mines and tipples in the counties of Cambria, Jefferson, Indiana, and Clearfield, to other points in said counties. In support of this Petition, the petitioner avers the following:

1. An application for permanent authority was filed on or about November 1, 1985, and was published in the Pennsylvania Bulletin on November 30, 1985. Various protests were filed, but all of them were withdrawn, with the exception of a protest of Bulk Transportation Services, Inc.



2. A hearing was held in Pittsburgh on April 9, 1986, before Honorable Robert Meehan, Administrative Law Judge. The only protestant was Bulk Transportation Services, Inc., which presented a witness at the said hearing. The applicant, Norman M. Earhart, testified on his own behalf, and Girard Bloom, vice president of North Cambria Fuel, Inc., testified. The record was closed on that date.

3. The application is simple and uncomplicated. The applicant proposes to transport coal for North Cambria Fuel, Inc., from its mines and tipples in the counties of Cambria, Jefferson, Indiana, and Clearfield, to other points in said counties. There is only one shipper and one commodity involved. The applicant testified that he has been transporting coal for North Cambria Fuel, Inc., since he obtained his original certificate in 1974. The present rights authorize transportation in Indiana, Westmoreland, Armstrong, and Allegheny Counties. (Page 16 of record) The volume of business for North Cambria Fuel, Inc., under the present authority is between \$70,000 and \$80,000 per month. (Page 37) This application is simply an extension of territory for the same shipper, North Cambria Fuel, Inc. Applicant presently holds authority in the counties of Indiana, Westmoreland, Armstrong, and Allegheny. The counties involved in this application are Cambria, Jefferson, Indiana, and Clearfield. Since applicant presently holds authority in Indiana County, the practical effect of this application is to grant additional authority in three counties--Cambria, Jefferson, and Clearfield. There will be no change in the commodity (coal) and no change in the specified shipper (North Cambria Fuel, Inc.).

4. An application was filed for emergency temporary authority and regular temporary authority which was protested by Bulk Transportation

Services, Inc. The Tentative Decision, which is the subject of this Petition, was entered February 13, 1986, and stated that there were "five protests of record." Since that date, February 13, 1986, four of those protests were withdrawn, namely Thomas H. Loughry; Wayne W. Sell Corporation; Ritchey Trucking, Inc.; and C. L. Feather, Inc. The fifth protestant, Bulk Transportation Services, Inc., has remained as a protestant. There are no longer five protests of record.

Therefore, the basis for the denial of the temporary authority on February 13, 1986, is no longer valid, and only one objection remains against the granting of either temporary or permanent authority.

5. The authority of Bulk Transportation Services, Inc., is defective in connection with this application. Said authority does not authorize transportation between all points in the counties of Cambria, Jefferson, Indiana, and Clearfield, which are the subject counties involved here. The testimony of Robert Rorabaugh, on behalf of Bulk Transportation Services, Inc., admits that his company does not have authority to serve the northern half of Jefferson County. (Page 86) Secondly, Bulk Transportation Services, Inc., does not have authority to serve the northern part of Clearfield County, which would be about one-third of that county. (Pages 86-87) Thirdly, Bulk Transportation Services, Inc., does not have authority to serve the extreme western or southwestern part of Armstrong County. (Page 87) From the territorial standpoint, the rights of Bulk Transportation Services, Inc., do not include all of the four counties involved here. When asked what he would do if he got a call from North Cambria Fuel, Inc., to transport in territory not authorized to his company, Mr. Rorabaugh said the following:

"A. The only thing to do would be to inform them that we didn't have the authority to cover that area." (Page 87)

From the territorial standpoint alone, Bulk Transportation Services, Inc., does not have authority to serve all points in all four counties. The testimony of Mr. Bloom was that he could not use the service of this protestant in all of the territory involved here. (Page 99) He further stated that in the coal business which his company conducts in the four counties, the job sites constantly change. His company has active operating mines in all four counties at the present time. (page 36) His company also has leases and contracts in other portions of these four counties where new mines will be opened after the present mines are depleted. (Page 36) Thus, a carrier without complete authority in these four counties is of no use to North Cambria Fuel, Inc.

6. Bulk Transportation Services, Inc., admittedly has not served North Cambria Fuel, Inc., for at least ten years, (If indeed they ever served North Cambria Fuel, Inc.). Mr. Rorabaugh testified that he has been with the company for 29 years. (Page 81) He said, "I vaguely remember that we transported some coal for them." (Page 84) He thinks that the last time his company transported for North Cambria Fuel, Inc., was in 1975. He does not remember ever having solicited Mr. Bloom or North Cambria Fuel, Inc., until November or December, 1985, when he contacted an employee of North Cambria Fuel, Inc., because he was losing the account of Barnes & Tucker Coal Company.

"Q. When you found out that Barnes & Tucker was going to stop using your service for whatever reason, you said, well, now, it's time to start looking for new accounts, is that correct?"

"A. Yes."

"Q. And one of the companies that you called was North Cambria?"

"A. Yes." (Page 85-86)

It is clear, therefore, that if Bulk Transportation Services, Inc., were not losing the business of Barnes & Tucker Coal Company, they never would have called North Cambria Fuel, Inc., to solicit their business.

(Page 85) In fact, the only point in calling North Cambria Fuel, Inc., was to obtain a "backhaul." (Page 74) Mr. Rorabaugh said the following:

"A. It was April 4, I believe I talked to Mr. Bloom and discussed any need for trucking including the fact that we are available for backhauls if we start a power plant haul. That has been it from my point." (Page 74)

Bulk Transportation Services, Inc., is not interested in being a primary trucker for North Cambria Fuel, Inc., but is only interested in "backhauls." Mr. Bloom testified on a rebuttal that he could not legally use the service of Bulk Transportation Services, Inc., in the complete four counties, and "if they wanted any of my business, they should have solicited it a long time ago . . ." (Page 99-100) He said the following:

"Q. Apparently, it is the position of Mr. Rorabaugh that since they are losing two Barnes & Tucker accounts, that now they want you as a customer. How do you feel about that?"

"A. No, I don't need them." (Page 100)

Mr. Bloom has a perfect right to be indignant about the use of Bulk Transportation Services, Inc. They have not transported anything for his company for over ten years. They have not solicited his business for over ten years. It is only due to the loss of the Barnes & Tucker account that they are making any effort to solicit this business. This high-handed attitude on the part of Bulk Transportation Services, Inc., deserves no sympathy whatsoever from the Commission.

7. Bulk Transportation Services, Inc., has not transported anything whatsoever, by its own admission, for over ten years, for the supporting shipper. There will be absolutely no financial impact on Bulk Transportation Services, Inc., by the granting of either temporary authority or permanent authority. 52 Pa. Code Section 41.14(c) provides:

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

The burden imposed by this subsection is upon any protestant(s).

Application of Richard L. Kinard, Inc. (October 19, 1984) A-00095829,
F. 1, Am-D.

There has been no showing that there will be any impairment of the operations of Bulk Transportation Services, Inc., by the granting of either permanent or temporary authority.

8. The Commission Policy, promulgated in 1982, said this:

"In determining whether to adopt the proposed policy, the Commission's purpose is to further the public interest. Section 1103 of the Public Utility code, 66 Pa. C.S. §1103, refers to the 'service, accommodation, convenience, or safety of the public' (emphasis supplied). While the Commission has in the past sought to further the public interest by protecting regulated carriers, it must be remembered that this protection was only a means to an end. The public convenience is paramount."

12 Pa. Bulletin 4283 (December 18, 1982).

The Kinard case (supra) is the most-cited decision and clearly sets forth the principle that the mere fact that there is an existing service available does not require the Commission to deny a new application. The only interest on the part of the protestant that would compel the denial of an application would be a showing that his business would be "endangered or impaired" if he lost the transportation in

question. We have a situation where the protestant, Bulk Transportation Services, Inc., has not, by its own admission, transported for this shipper for at least ten years. It has not earned a penny in revenue from this shipper during that period of time. There can be no financial harm done to Bulk Transportation Services, Inc., by the granting of this authority. With respect to the law:

"The primary object of the public service laws is not to establish a monopoly or to guarantee the security of investments in public service corporations, but first and at all times to serve the interests of the public." Yellow Cab Co. et al. v. Pa. P.U.C., 161 Pa. Superior Ct. 41, 50, 54 A.2d 301, 306 (1947).

The Pennsylvania Commonwealth Court in Seaboard Tank Lines, Inc., v. Pa. P.U.C., _____ Pa. Cmwlth. _____, 502 A.2d 762 (December 23, 1985), found that the Commission Policy was lawful and constitutional. The linchpin of that policy is that "inadequacy of present service" is no longer a requirement of proof. Even though there is existing truck service, that in itself no longer requires a denial of an application. As the Commission stated in the Kinard case, motor carrier authority will be granted unless the protestant shows that its financial condition will be endangered or impaired. The protestant here, Bulk Transportation Services, Inc., has not shown one penny of financial impairment by the granting of these rights.

9. This document is a Petition for Reconsideration of the order denying temporary authority. We request that the Commission reconsider its order and grant the temporary authority as requested. The record shows that there are no longer five protestants, but only one. The record shows that this particular protestant does not have the complete territorial authority required here. This protestant, by its own admission, has not transported anything for the supporting shipper for


at least ten years, if indeed it ever transported for North Cambria Fuel, Inc. This protestant itself has shown that there will be no financial impairment to this protestant. The protestant has taken a high-handed attitude and is demanding that the Commission deny this application for temporary, as well as permanent, authority, not because of any long-standing desire on its part to serve North Cambria Fuel, Inc., but simply to fill in a gap caused by the loss of the business of Barnes & Tucker Coal Company. For ten years, this protestant ignored North Cambria Fuel, Inc., and, by its own admission, it is only due to the loss of other business that it is now interested in North Cambria Fuel, Inc.

We respectfully urge the Commission to take action to grant temporary authority for the reasons above stated.

Respectfully submitted,

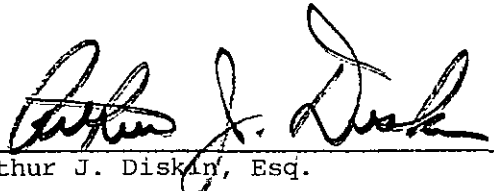
NORMAN M. EARHART, t/d/b/a
EARHART TRUCKING

BY:


Arthur J. Diskin, Esq.
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have, this date, sent copies of the within document to William J. Lavelle, Esq., Attorney for Bulk Transportation Services, Inc.; and to Robert Meehan, Administrative Law Judge. Dated in Pittsburgh this 9th day of May, 1986.


Arthur J. Diskin, Esq.