

clearly stated and established the need for the service of the applicant. It has also been proved that the protestant, Bulk Transportation, has not transported anything for this shipper since 1975. There is a serious question as to whether it ever transported for this shipper since the protestant's witness admitted that he only "vaguely remembers" transportation for North Cambria Fuel.

2. "USEFUL PUBLIC PURPOSE". Again, we are not dealing with serving the general "public." We are dealing strictly with service to a single shipper. There is no need to belabor this point.

3. "ADEQUACY OF EXISTING SERVICE". The "existing service" of the protestant, Bulk Transportation, is completely unknown to this shipper. The protestant's witness admitted that he had not solicited the traffic of this shipper since 1975 until very recently, and that was only due to the "loss of business of Barnes & Tucker." If he were not losing the business of Barnes & Tucker, he would not have solicited the business of this shipper. The facts are clear that since 1975, a period of over ten years, Bulk Transportation ignored the existence of North Cambria Fuel, even though North Cambria Fuel is one of the largest coal companies in Pennsylvania.

4. "DEPRIVING BULK TRANSPORTATION OF THE OPPORTUNITY TO SERVE NORTH CAMBRIA FUEL, INC." Bulk Transportation has never been "deprived" of an opportunity to serve North Cambria Fuel. For over ten years it has completely ignored the existence of North Cambria Fuel, and admittedly, the only reason it sought to do any business with North Cambria Fuel was the so-called "loss of business of Barnes & Tucker." (Incidentally, this "loss of business" of Barnes & Tucker has not been proved since the witness said they "may lose the business.") There is

nothing in the record to prove that the business has actually been lost. (85) This is an irrelevant and immaterial factor in any event.

From a practical standpoint, whether Bulk Transportation served Barnes & Tucker or not, it could have solicited the business of North Cambria Fuel had it so desired. There has been nothing to stop Bulk Transportation from seeking out this business. The entire argument about the loss of business of Barnes & Tucker is spurious because every trucking company is always interested in adding to its business. Normally, a trucking company will not wait until it is "losing" business from a shipper before seeking out new business.

5. "ENDANGERING AND IMPAIRING PROTESTANT'S OPERATIONS". This is the most incomprehensible argument of them all because the current law requires proof from the protestant that its business will be endangered by the entry of the carrier.

We said in our main brief that this is not an "entry of a new carrier" but simply an extension of territory of an existing carrier. This applicant is not seeking the right to serve Barnes & Tucker or any other shipper. The only shipper involved is the same one that it has been serving since 1974. Bulk Transportation has not earned a penny from North Cambria Fuel since 1975, if indeed it ever earned a penny from this shipper. The "endangerment" argument is untenable. How can there be any "endangerment" unless it is shown that Bulk Transportation is performing service for North Cambria Fuel and will lose substantial revenue if this application is granted? This is not the case.

In summary, the arguments of Bulk Transportation reflect a curious and desperate attempt to try to defeat this application without showing any basis therefor. We could understand the position of Bulk Transportation if it had been serving North Cambria Fuel. However, why it is spending all this time and effort in trying to defeat this application is a complete mystery. The law does not support any of the arguments of Bulk Transportation.

APPLICANT IS FIT AND PROPER
TO RECEIVE ADDITIONAL AUTHORITY

The brief of Bulk Transportation argues that the applicant presented neither a balance sheet nor an income statement, and, further, that applicant had been fined for transportation outside its authorized territory.

With regard to the fines, the applicant admitted that in 1985 a complaint was filed involving two movements for North Cambria Fuel and that the complaint was settled. (8) The Commission has taken no further action of any kind against Mr. Earhart, and the record in the complaint proceeding has been closed.

The very fact that this application has been filed to add additional territory to the applicant's rights is proof of his good faith in attempting to comply with Commission regulations. The payment of a fine for two violations in 1985 is no disqualification, or any reflection on his fitness. See Fullington Auto Bus Co., Inc., 38 Pa. P.U.C. Reports, 406; Follmer Trucking Co., 41 Pa. P.U.C. Reports, 53; Allegheny Mobile Communications, 41 Pa. P.U.C. Reports, 422, 436.

With regard to his financial statements and motor vehicles, his annual reports have been continuously filed with the Commission and are a matter of record. The applicant testified that it is not necessary to invest in any additional equipment to handle the additional traffic involved in this extension of territory, but if additional vehicles are needed, there are owner-operators who are willing to lease their vehicles to him. (12) In view of this, the question of his financial condition is not important since he can add as many leased vehicles as he needs without any additional investment on his part. Therefore, with regard to "fitness", the fact that the applicant paid two fines is no bar to receiving this additional authority; and secondly, no additional vehicles have to be purchased, and his annual reports show that he is in a healthy financial condition. He certainly is fit and proper to receive additional authority.

THE CURRENT LAW AND DECISIONS ON THIS SUBJECT

By Order adopted November 19, 1982, and entered November 22, 1982, the Commission drastically changed the test for granting common carrier applications and, in so doing, indicated clearly a desire to reduce the protection previously afforded to existing motor carriers. In that regard, the Commission stated in pertinent part:

The Commission stated in its July 16, 1982, order that the evidentiary requirements used in adjudicating motor common carrier applications are derived from the "monopoly" theory of regulation, and that these standards are inappropriate with respect to motor carriers, which are not natural monopolies. Furthermore, the present standards are overly protective for a mature and fundamentally healthy

industry and tend to restrain healthy competition, reduce the industries operational and marketing flexibility, misallocate economic resources, and discourage innovation. In addition, Federal policy on this matter has changed due to the Interstate Commerce Commission's Policy Statement on Motor Carrier Regulation at MC-121 and the enactment of the Motor Carrier Act of 1980.

In light of these considerations, the Commission proposed to alter its current three part test for granting common carrier authority. Under the current test, an applicant must establish a public need for the proposed service, the inadequacy of the existing service, and its own technical, financial, and legal fitness. See Chemical Leaman Tank Lines, Inc. vs. Pennsylvania Public Utility Commission, 201 Pa. Superior Ct. 196, 191 A.2d 876 (1963), B.B. Motor Carrier, Inc. v. Pennsylvania Public Utility Commission, 36 Pa. Commonwealth Ct. 26, 389 A.2d 210 (1978). The Commission proposed to alter this test by eliminating the applicant's burden of showing the inadequacy of the existing service. Instead, a protestant would assume the burden of showing that the entry of a new carrier would endanger the operations of an existing carrier to such an extent that, on balance, granting the application would be contrary to the public interest.

The Commission further stated in its Order:

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 added). 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.

The Commission further stated in its Order:

The Commission believes that it has not only the power but also the duty to keep its entry policy attuned to modern realities. As the United States Court of Appeals recently stated in upholding the Interstate Commerce Commission's power to alter its entry standards in M.C. 121:

Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adopt their rules and practices to the Nation's needs in a volatile, changing

economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.

Even before the enactment of the Transportation Regulatory Policy, the Commission indicated a need to relax entry standards.

In Application of Eazor Express, Inc., 53 Pa. P.U.C. 374 (1979), the Commission enunciated the need to re-examine entry requirements, stating:

This Commission, and other Commissions including the Interstate Commerce Commission, have recently been in the process of reexamining the motor carrier industry and re-evaluating policies concerning motor carrier application proceedings. We are placing increasing emphasis on economic analysis and Commission discretion over the level of competition which appears to best serve the public interest. At the same time we are placing less emphasis on the protection of existing carriers from additional competition. This process of reexamination had lead federal courts and the Interstate Commerce Commission to change policies which had remained fundamentally unchanged for decades. See P.C. White Truck Line, Inc. v. Interstate Commerce Commission, 551 F.2d 1326 (D.C. Cir., 1977), Liberty Trucking Company Extension - General Commodities, 130 MCC 243 (1978), General Commodities, 130 MCC 243 (1978), affirmed and clarified 131 MCC 573 (1979) B.J. McAdams, Inc., Extension, Russellville Frozen Foods, 130 MCC 294 (1978) and Colonial Refrigerated Transportation, Inc., Extension - Florida to 32 States, 131 MCC 63 (1978).

The Commission further recognized this more liberal view of motor carrier regulation in Application of Motor Freight Express, 54 Pa. P.U.C. 48 (1980), which was decided before the enactment of the Transportation Regulatory Policy, where the Commission stated:

Commission policy and court precedent tend to protect common carriers from competition and have established a showing that existing carriers are providing inadequate service as the standard prerequisite for approval of additional motor carrier operating authority. However, the developing law in Pennsylvania has not established an applicant's proof of service inadequacies as the determinative element in all circumstances and does not require the Commission to always favor protection over competition. (citations omitted)

The Commission further explained:

This broader view of motor carrier entry control is reflected in various recent Commission decisions and can be found in early court precedents. See, for instance, Modern Transfer Co., Inc. v. Pa. P.U.C., 139 Pa. Superior Ct. 197 (1939), where the court recognized efficiency as a valued element in Commission control of motor carrier competition and noted that legislature, in enacting the Public Utility Law, undertook not only to regulate utilities but also to regulate the use of the highways.

In Application of A-P-A Transport Corp., Docket No. A. 91795, F. 2 (Order entered September 21, 1983), the Commission adopted the Initial Decision of the Administrative Law Judge granting statewide authority to A-P-A to transport property. In his Ruling on Exceptions dated July 26, 1983, Administrative Law Judge Robert A. Christianson stated:

I also join a considerable body of precedent and conclude that it is better to grant the application essentially as filed (and amended) in the expectation that Pennsylvania's transportation system will be improved by this action than to deny the application (in whole or in part) to protect existing carriers in the public interest. Yellow Cab Co. of Pittsburgh v. Pa. P.U.C., 50 Pa. Commonwealth Ct. 448 (1980).

Judge Christianson also noted:

I do not want outmoded regulatory patterns (traditionally, balkanization of Pennsylvania had to be accepted by shippers as a price of regulation) to hamper Pennsylvania commerce and put Pennsylvania shippers at a disadvantage with respect to interstate shippers or shippers operating in other states.

In Application of Richard L. Kinard, Docket No. A. 95829, F. 1, Am-D (Order entered October 22, 1984), the Commission adopted the Initial Decision of the Administrative Law Judge establishing a "definitive interpretation" of the Transportation Regulatory Policy. In the Kinard case, the Commission determined that there were certain "alternatives" to the former "inadequacy test" and that these alternatives were: (1) different service; (2) efficiency; (3) lower rates;

(4) future need; (5) backup service; (6) shipper competition; (7) I.C.C. authority; (8) rectification of authority; (9) benefit to applicant.

In Application of Richard L. Kinard, supra, the Commission stated:

We considered monopoly regulation to inhibit the industry's operational and marketing flexibility, propagate inefficient allocation of economic resources, and, with the increasing divergence of Federal and State regulation, cause additional regulatory burdens for motor carriers. In view of these factors, we proposed to encourage competition through the proposed rulemaking by excluding the "inadequacy" evidentiary standard previously adhered to.

In sum, the Commission has been applying much more liberal entry standards to recent application proceedings, realizing that there is no longer the need to protect existing carriers from competition, thereby promoting a healthier, more efficient motor carrier industry.

There is clearly a need for applicant's service and the approval of the application will serve a useful public purpose, responsive to a public demand or need.

Applicant must establish a need for the proposed service. However, it is well established that applicant must only show that the proposed service is reasonably necessary for the accommodation or convenience of the public.

In Carl I. Beiber, Inc. v. Pennsylvania Public Utility Commission, 3 Pa. Cmwlth. 236, 240, 281 A.2d 351, 354 (1971), the Commonwealth Court stated the need test as follows:

"The applicant is not required to demonstrate actual proof of necessity or propriety as long as the proposed service is reasonably necessary for the accommodation or convenience of the public. McNaughton, supra; Zurcher v. Pa. P.U.C., 173 Pa. Super. 343, 98 A.2d 218 (1953). In McNaughton, we upheld the Commission 'although the evidence presented by (the applicant) was "fragmentary" and the record of performance by the protestants "satisfactory".'

On the issue of need, 52 Pa. Code §41.14(a) provides: "An applicant seeking motor carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need."

It is also not necessary for an applicant to prove a demand for service in every part of the territory involved. Commonwealth, Public Utility Commission v. Purolator Corp., 24 Pa. Cmwlth. Ct. 301, 355 A.2d 850, 852 (1976).

In the Purolator case, the Commonwealth Court further stated at page 853:


We do not believe the legislature, in enacting the Public Utility Law, intended to benefit established carriers by erecting artificial barriers to the entry of new competitors. It is, rather, the public interest and convenience which the law seeks to protect. The amount of competition which will best serve that interest is a matter within the discretion of the P.U.C. (citations omitted)

To establish a need, it is not necessary that the proposed service be indispensable. Modern Transfer Co. v. Pennsylvania Public Utility Comm., 182 Pa. Super 110, 115, 125, A.2d 463, 466 (1956).

"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).


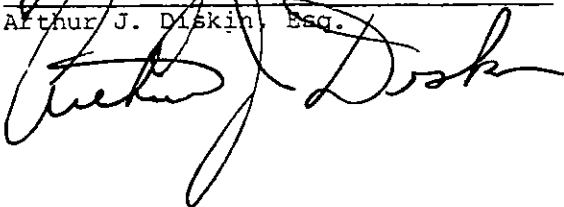
Respectfully submitted,

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 submitted copies of the within brief to Administrative Law Judge Robert P. Meehan, and to counsel for protestant, as required by Commission regulations, this 28TH day of May, 1986.


Arthur J. Diskin, Esq.


May 30, 1986

IN REPLY PLEASE
REFER TO OUR FILE

Arthur J. Diskin
Attorney at Law
402 Law & Finance Building
Pittsburgh, PA 15219

A-00065936, F. 3, Am-A (Second TA) - Application of Norman M. Earhart,
t/d/b/a Earhart Trucking.

Dear Sir:

The application of Norman M. Earhart, t/d/b/a Earhart Trucking for temporary authority has been captioned as attached and will be submitted for review provided no protests are filed on or before June 23, 1986. If protests are filed, you will be advised as to further procedure.

You are further advised that the above application will be published in the Pennsylvania Bulletin of May 31, 1986.

Very truly yours,

David Ehrhart
Supervisor - Application Section
Bureau of Transportation

DE:RP:rs

cc: Applicant
R.D. 1
New Alexandria, PA 15670

DOCUMENT
FOLDER

DOCKETED
APPLICATION DOCKET
JUN 2 1986
ENTRY No.

A-00065936, Folder 3, Am-A (Second TA) NORMAN M. EARHART, t/d/b/a EARHART TRUCKING (R.D. 1, New Alexandria, Westmoreland County, Pennsylvania 15670) - second temporary authority - coal, for North Cambria Fuel Company, Inc., from its mines designated as job site 189 located in the township of Lower Yoder, Cambria County, to the Conrail rail site in the township of Burrell, Indiana County and from job site designated as job site 191, located in the village of Hamilton, Perry Township, Jefferson County, to the Conrail rail site in the township of Burrell, Indiana County. APPLICATION FOR PERMANENT AUTHORITY WAS PUBLISHED IN THE PENNSYLVANIA BULLETIN, VOLUME 15, NO. 48, SATURDAY, NOVEMBER 30, 1985. Attorney: Arthur J. Diskin, 402 Law and Finance Building, Pittsburgh, PA 15219.

LM:gm
5/9/86

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

SERVICE OF NOTICE OF MOTOR CARRIER APPLICATIONS

DATE _____

SERVICE _____

MAY 31 1986

BUREAU OF TRANSPORTATION
COMMON CARRIER

MAY 1986

A-00065936
F. 3
Am-A

Application of Norman M. Earhart, t/d/b/a Earhart Trucking, second temporary authority, coal, for North Cambria Fuel Company, Inc., from its mines designated as Job Site 189 located in the township of Lower Yoder, Cambria County, to the Conrail rail site in the township of Burrell, Indiana County and from job site designated as Job Site 191, located in the village of Hamilton, Perry Township, Jefferson County, to the Conrail rail site in the township of Burrell, Indiana County. APPLICATION FOR PERMANENT AUTHORITY WAS PUBLISHED IN THE PENNSYLVANIA BULLETIN, VOLUME 15, NO. 48, SATURDAY, NOVEMBER 30, 1985.

LM:mm
5/19/86

Application received: 5/1/86
Application docketed: 5/8/86

NA

DOCUMENT
FOLDER

DOCKETED
APPLICATION DOCKET
JUN 2 1986
ENTRY No. *[Signature]*

Protests due on No Hearings _____
Protests due on Hearings - (5 days prior to date of hearing)
Notice of the above application was mailed to all certificate holders and railroad companies in the service area as noted above.

TA ONLY JUN 23 1986

ORIGINAL

LAW OFFICES
VUONO, LAVELLE & GRAY

2310 GRANT BUILDING
PITTSBURGH, PA. 15219

(412) 471-1800

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

June 3, 1986

Re: Norman M. Earhart t/d/b/a Earhart Trucking
Docket No. A-00065936, F. 3, Am-A
Our File 1773P-70

RECEIVED

JUN 3 - 1986
SECRETARY'S OFFICE
Public Utility Commission

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

Dear Mr. Rich:

We enclose for filing with the Commission the original and nine copies of the Reply Brief of Bulk Transportation Services, Inc.

Copies of the Reply Brief have been served as all parties of record.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Sincerely yours,

VUONO, LAVELLE & GRAY

William J. Lavelle
William J. Lavelle

pz

Enclosures

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

FILED

BEFORE THE
Pennsylvania Public Utility Commission

RECEIVED

JUN 3 - 1986
SECRETARY'S OFFICE
Public Utility Commission

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

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

REPLY BRIEF OF BULK TRANSPORTATION SERVICES, INC.

JUN 4 - 1986

FOLDER

WILLIAM J. LAVELLE, ESQ.
Attorney for
BULK TRANSPORTATION SER-
VICES, INC., Protestant

Of Counsel:
VUONO, LAVELLE & GRAY
2310 Grant Building
Pittsburgh, Pennsylvania 15219

Due Date: June 3, 1986

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-00065936, F. 3, Am-A
NORMAN M. EARHART T/D/B/A EARHART TRUCKING

REPLY BRIEF OF BULK TRANSPORTATION SERVICES, INC.

I. STATEMENT OF THE CASE

On or about November 4, 1985, Norman M. Earhart t/d/b/a Earhart Trucking (Earhart or Applicant) filed an application for an amendment to his certificate of public convenience. Notice of the application was published in the Pennsylvania Bulletin on November 30, 1985. Protests to the application were filed by a number of carriers including Bulk Transportation Services, Inc. (Protestant).

By the application, Applicant seeks authority to operate as a common carrier, by motor vehicle, as follows:

To transport as a Class D carrier, 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.

The application was assigned for hearing before Administrative Law Judge Robert P. Meehan. The hearing was held on April 9, 1986 in Pittsburgh, PA. Testimony in support of the application was supported by the Applicant and North Cambria Fuel,

Inc., the sole supporting shipper (North Cambria or shipper).
Testimony in opposition to the application was presented by
Protestant. At the conclusion of the hearing, the Judge granted
the parties an opportunity to submit briefs. Applicant and
Protestant filed Main Briefs. Protestant now files its Reply
Brief in opposition to the application.

II. ARGUMENT

Protestant's Main Brief contained a detailed summary of the evidence, an analysis of the governing law, and a legal argument relating the law to the facts of this case. We do not propose to reargue Protestant's position in this Reply Brief. Rather, we will discuss the general approach taken by the Applicant in its Main Brief and refer to certain matters which require clarification.

1. APPLICANT HAS FAILED TO DEMONSTRATE THAT IT HAS MET ITS BURDEN OF PROOF.

Other than briefly summarizing the testimony, Applicant has made no attempt to show that the evidence demonstrates a public demand or need for the proposed service, or that approval of the application will serve a useful public purpose. Applicant conveniently ignores Sections 41.14(a) and (b) of the Pennsylvania Code which sets forth the Applicant's burden of proof. Its entire discussion focuses on Section 41.14(c) which deals with the burden of proof imposed on the Protestant. Applicant never addresses the issue of whether approval of the application will serve a useful public purpose, and at page 12 of its Main Brief, baldly asserts that "there is no question about the need for the proposed service". Protestant submits that there is a very serious question about the need for the proposed service or whether it will serve a useful public purpose.

Regardless of whether an application seeks authority to serve only one shipper, as in this case, or the public generally, the Applicant still must meet its burden of proof. Applicant goes so far as to state at page 11 that this is not a case of the entry of a new carrier into the field but rather only an extension of territory of an existing carrier. While that observation is made in connection with its discussion of the third criteria under the Transportation Regulatory Policy, it indicates a belief on the part of the Applicant that an extension of authority by an existing carrier is somehow not a new service and is to be judged by more lenient standards. We strongly disagree with the Applicant on this point.

Any carrier seeking authority to expand the commodities that can be transported, extend the territory in which service can be rendered, or eliminate a restriction in an existing certificate, is seeking new operating authority. To the extent of the expansion of the operating rights, it constitutes the entry of a new carrier into the field. And it makes no difference whether the Applicant proposes by the new authority to serve a single shipper or the public generally, it still must meet its burden of proof set forth in Sections 41.14(a) and (b) of the Pennsylvania Code.

In Section 1-B of the Argument, we showed that the Applicant has failed to demonstrate that there is public demand or need for the proposed service. In Section 1-C, we showed that

the Applicant has failed to demonstrate that approval of the application will serve a useful public purpose. Inasmuch as the Applicant has failed to meet the very elementary part of its burden of proof, we submit that the application should be denied in its entirety.

2. APPLICANT HAS FAILED TO DEMONSTRATE EITHER FINANCIAL FITNESS OR A PROPENSITY TO OPERATE LEGALLY.

In its Main Brief, Applicant does not even address the second part of its burden of proof other than at page 12 where it states that "There is no question of the fact that the Applicant, Earhart, is fit, morally and financially, to receive the additional authority".

In Section 2 of the Argument in Protestant's Main Brief, we attempted to demonstrate that Applicant had failed to meet the second part of its burden. Applicant in its Reply Brief may attempt to rebut the Protestant's position. Protestant, however, stands by the position taken in its Main Brief with respect to these issues.

3. APPROVAL OF THE APPLICATION WILL ENDANGER AND IMPAIR THE OPERATIONS OF BULK TRANSPORTATION.

As pointed out previously, Applicant's entire Main Brief is directed to the third part of the Transportation Regulatory Policy. It is Protestant's position that its burden is not to show merely diversion of traffic by the supporting shipper to the Applicant. In fact, the Commission has indicated that that

type of showing will not necessarily support Protestant's position. In this case, Protestant has presented evidence to show that circumstances have changed drastically and that its future operations are in jeopardy. It holds authority to provide all of the service needed by the supporting shipper at the present time. The availability of that service is a matter which the Commission should take into consideration, particularly in view of the Protestant's difficult situation caused by the loss of a substantial amount of its business due to the closing by a major customer.

Just as sound regulation of the motor carrier industry may not be served by the creation of monopolies, so also sound regulation may not be best served by the certification of an additional carrier when adequate existing service is already available to the shipping public, or North Cambria Fuel in this particular situation. Nothing is to be gained and it is unsound to certificate a new carrier to replace an already authorized carrier.

Protestant requests that the Administrative Law Judge carefully consider the argument set forth in Section III of Protestant's Main Brief on this issue.

4. CERTAIN MATTERS RAISED IN APPLICANT'S MAIN BRIEF REQUIRE CLARIFICATION.

At pages 3 and 4 of Applicant's Main Brief, in summarizing the origins of the shipper's transportation, there are references to Lycippus, Norvelt and Stahlstown, all in Westmoreland

County. Westmoreland County is not involved in this application and therefore reference to those origin points does not support the Applicant's position that there is a need for service.

On page 4 of Applicant's Main Brief, it refers to Mine No. I-22 and Mine No. Indiana-22 as being two origin points in Indiana County. Protestant believes that that is a single facility rather than two, and that it is a description of the railroad siding at Blairsville, which is not an origin but rather a destination of the truck traffic. In any event, Applicant already holds authority to serve all points in Indiana County.

On page 4 of Applicant's Main Brief, there is a reference to a potential future destination at Shelocta in Armstrong County. Protestant's guides and directories indicate that Shelocta is located in Indiana County which the applicant can already serve. If in fact Shelocta is located in Armstrong County, then reference to that point is immaterial since Armstrong County is not involved in this application.

On page 8 of Applicant's Main Brief, in questioning the ability of Protestant to meet the shipper's need, it is stated that it cannot serve the extreme western and northwestern part of Armstrong County. As indicated above, Armstrong County is not involved in this application so the absence of such authority has no bearing on this application.

On page 12 of Applicant's Main Brief a question is raised as to whether Protestant or a related company ever served the supporting shipper since the witness only "vaguely remembers" such transportation. Applicant should not seriously challenge the performance of that service since the witness for North Cambria Fuel also testified that the related company, Merlo, was used in 1974 or 1975. (38-39*)

*Numbers in parenthesis preceded by "Ex." refer to exhibits. All other numbers in parenthesis refer to the transcript of testimony.

III. CONCLUSION

For the reasons set forth herein and in Protestant's Main Brief, it is respectfully requested that the Administrative Law Judge make the conclusions of law set forth on page 20 of Protestant's Main Brief, and thereafter deny the application in its entirety.

Respectfully submitted,

William J. Lavelle
WILLIAM J. LAVELLE, ESQ.

Attorney for
BULK TRANSPORTATION SER
VICES, INC., Protestant

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

Due Date: June 3, 1986

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing Reply Brief of Bulk Transportation Services, Inc. upon all parties of record in accordance with the Rules of Practice.

Dated at Pittsburgh, PA this 3rd day of June, 1986.

William J. Lavelle

William J. Lavelle