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May 15, 1986

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Bureau of Transportation  
 Pa. Public Utility Commission  
 P. O. Box 3265  
 Harrisburg, PA 17120

MAY 16 1986

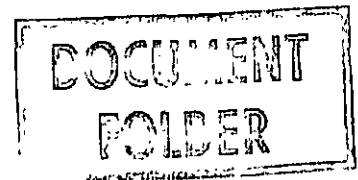
SECRETARY'S OFFICE  
 Public Utility Commission

IN RE: Application of Norman M. Earhart, t/d/b/a  
 Earhart Trucking; A. 65936, F. 3, Am-A

Gentlemen:

Enclosed are the original and nine copies of the brief on behalf of the applicant.

Three copies are being sent to William J. Lavelle, Esq., as counsel for the only protestant of record, and one copy is being sent to Administrative Law Judge Robert P. Meehan.



Kindly acknowledge receipt of the enclosed.

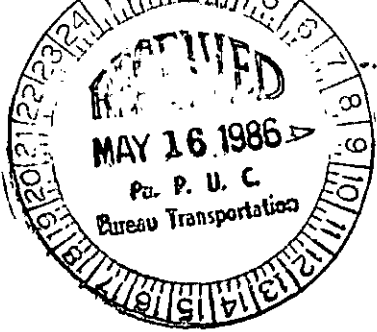
Very truly yours,

*Arthur J. Diskin*  
 Arthur J. Diskin

AJD/cmm

Enclosures

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

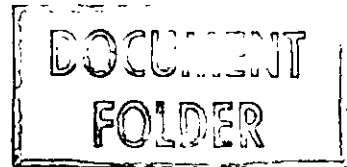
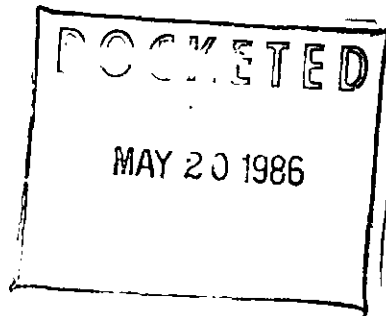


BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of  
NORMAN M. EARHART, t/d/b/a EARHART TRUCKING  
Docket No. A. 65936, F. 3, Am-A

**RECEIVED**  
**MAY 16 1986**  
SECRETARY'S OFFICE  
Public Utility Commission

BRIEF ON BEHALF OF APPLICANT



DUE DATE: May 19, 1986

Arthur J. Diskin, Esq.  
402 Law & Finance Building  
Pittsburgh, PA 15219  
(412) 281-9494  
Attorney for Applicant

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Application of  
NORMAN M. EARHART, t/d/b/a EARHART TRUCKING  
Docket No. A. 65936, F. 3, Am-A

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BRIEF ON BEHALF OF APPLICANT

I.

CONCISE STATEMENT OF THE CASE

This application was filed on or about November 1, 1985, and was published in the Pennsylvania Bulletin on November 30, 1985.

The application requests the right 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.

Protests were initially filed by C. L. Feather, Inc.; Wayne W. Sell Corporation; Ritchey Trucking, Inc.; and Bulk Transportation Services, Inc. All of the protests have been withdrawn with the exception of Bulk Transportation Services, Inc. (herein called Bulk Transportation).

A hearing was held on Wednesday, April 9, 1986, at the Pittsburgh State Office Building before Administrative Law Judge Robert Meehan.

The applicant and the supporting shipper testified, and a witness appeared for Bulk Transportation. The testimony was concluded at the said hearing, and the application is ready for disposition.

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II.

QUESTIONS INVOLVED

1. Where the applicant already possesses P.U.C. authority and devotes most of its business to service for the supporting shipper, and where this application involves simply an extension of territory for the same shipper, should the application be approved? Answer: Yes.

2. Where the applicant has established his fitness, both financial and legal, to receive additional authority, is the applicant qualified to receive this additional authority? Answer: Yes.

3. Where the supporting shipper testified that he knows of no comparable service available from any carrier and, more particularly, has not utilized the service of the only protestant, Bulk Transportation, does the protest have any weight? Answer: No.

4. Where Bulk Transportation has failed to carry its burden of proof to show any adverse impact whatsoever by the granting of this authority, does the protest deserve any consideration? Answer: No.

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III.

THE TESTIMONY ON BEHALF OF THE APPLICANT

Norman M. Earhart testified that he has held authority since 1974 (Exhibit 1). This authority authorizes transportation of coal, among other commodities, between points in the counties of Indiana, Westmoreland, Armstrong, and Allegheny, provided no haul shall exceed a distance of thirty-five (35) miles from point of origin to point of destination. He receives about \$800,000 a year from North Cambria Fuel, Inc., for services under the P.U.C. authority. He does not have an I.C.C. authority. (10)\*

His terminal is at New Alexandria, Pa., in Westmoreland County.

He has been serving North Cambria Fuel since 1974. He owns 4 dump vehicles consisting of 2 straight tri-axle dump trucks and 2 tractor-trailer dump units. He also operates 17 dump vehicles under permanent leases. These vehicles are utilized exclusively in transportation under his authority.

He has a complete safety program whereby the vehicles are checked daily for lights, tires, brakes, air hoses, etc., and has not been involved in any serious, major, or fatal accidents. (7)

He testified that under this proposed authority the additional business would amount to an increase of about 25 percent. (13) He proposes to transport coal between points in the four counties, Cambria, Jefferson, Indiana, and Clearfield. The origins are the mines and tipples of North Cambria Fuel located in Hamilton, Jefferson County (15); Lycippus, Westmoreland County (22); Norvelt, Westmoreland County (23);

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\*Numbers in parentheses refer to page numbers of transcript.

Hesbon, Indiana County (23); Sheriff's Pride, Clearfield County (32); Mahaffey, Cambria County (32); Hastings, Cambria County (32); Johnstown, Cambria County (32); Stahlstown, Westmoreland County (32); Mine No. I-22, Indiana County (32); Mine No. Indiana-22, Indiana County. (33)

The destinations are primarily the Conrail rail facilities near Blairsville, Indiana County, where the coal is loaded onto trains and shipped to Pennsylvania Power & Light Company at Harrisburg. (35) In addition, shipments will be going to Penelec Power Plants at Homer City and New Florence, Indiana County, and Shelocta, in Armstrong County. (43)

The shipper testified that Mr. Earhart grosses about \$70,000 a month now for transportation, and the potential under the new rights, as well as the present authority, would amount to about \$90,000 a month. (45) There will be no adverse effect on any trucker if these rights are granted. (45)

There is actually nothing different about the proposed transportation from the present transportation except the addition of several new locations. Under his present authority Mr. Earhart can serve Indiana, Westmoreland, Armstrong, and Allegheny Counties, completely, with a 35-mile point-to-point limitation. The only effect of the new authority will be the addition of Cambria, Jefferson, and Clearfield Counties (plus Indiana County, which is included in the present authority).

The following are the facts:

1. The commodity remains the same, namely coal.
2. The shipper remains the same, namely North Cambria Fuel.
3. The transportation characteristics are the same, namely the transportation of coal in either dump trucks or dump trailers.

4. The only "change" is the addition of three counties.

The supporting shipper is North Cambria Fuel, represented by Girard G. Bloom, Vice President. (28) His office is Indiana, Pa. He is in charge of the selection of the carriers that his company uses. (28) North Cambria Fuel is a surface mining company that does a large business in Pennsylvania. The customers of this company are primarily large users of coal, including public utility companies. At the present time the primary customer is Pennsylvania Power & Light Company, and the coal is shipped to the Harrisburg plant by rail. North Cambria Fuel employs about 350 people, of which 300 are engaged in the mining operations and about 50 in the management and office duties.

Mr. Bloom stated the various mining and loading facilities at Sheriff's Pride, Mahaffey, Hastings, Hesbon, Ligonier, Stahlstown, Lycippus, Hamilton, and Mine I-22, Indiana County. These facilities are either mines or tipples. The coal is processed by blending to comply with contract requirements for sulphur and ash content. (33)

He stated that coal from four or five different jobs is taken into rotary breakers where the coal is blended to the specifications. (33) Time is critical because the unit train from Blairsville to Harrisburg consists of over 100 cars which must be loaded on schedule and delivered on schedule. With regard to the time factor, he said the following:

"A. Well, I am talking within hours because of inclement weather, inclement stripping conditions. Everything is a factor. In this business, there is nothing for sure. It is not off a stockpile. It is right out of the solid and whenever we get it uncovered and it is the right specification of coal, it has to be moved and not in a day or two days, but right now." (35)



After a strip mine is depleted, his company has leases where new operations are commenced. (36)

He said that the service of Earhart is "terrific." (37) He uses additional truckers, but none to the extent of his use of Earhart. (38)

With regard to Bulk Transportation, he testified that the last time he used Bulk Transportation or Merlo, who owns Bulk Transportation, "it was in 1974 or '75." (39) Despite the fact that notice of the application appeared in the Pennsylvania Bulletin on November 30, 1985, Bulk Transportation did not contact his company until April 4, 1986, when Bulk Transportation asked if there was any "return work." (39)

Apparently, this company was looking only for "return" loads.

Since 1974 and 1975 until recently nobody from Merlo or Bulk Transportation contacted North Cambria Fuel. North Cambria Fuel never used Merlo or Bulk Transportation for transportation in that 11-year period. (41) From a practical standpoint, Mr. Bloom knows nothing about Bulk Transportation or Merlo, how many trucks they have, what they charge, where they serve, or any other pertinent facts. (42)

From the operations standpoint, Mr. Bloom gives Mr. Earhart from one hour to three or four hours to perform pickup and delivery service. (44)

He has never had any problems with Mr. Earhart in meeting these time demands, and Mr. Earhart will perform service in the same time frame with the new rights. (44)

IV.

THE TESTIMONY OF THE PROTESTANT

Robert Rorabaugh is a dispatcher and not an officer or stockholder of either Merlo or Bulk Transportation. (64, 83) He said, "I vaguely remember that we transported some coal for them (North Cambria Fuel) in 1974 and 1975." (84) From that time until recently, he never called North Cambria Fuel to solicit their business. (85) The only reason he called to solicit business was that "we are losing Barnes & Tucker", meaning that the Barnes & Tucker Coal Company is discontinuing its use of Bulk Transportation and Merlo. (93)

With regard to the revenue of Bulk Transportation, Mr. Rorabaugh refused to give any facts or financial figures whatsoever concerning the gross revenue, net profit, or any other financial figures:

"Q. Actually, in terms of your revenue, how much business do you do a year?"

"A. I don't have those figures."

"Q. Well, can you give me a drug store guess if you don't know for sure?"

"A. I don't know."

"Q. Do you do one million, ten million, fifty million dollars or what?"

"A. Are you talking only in the trucking business?"

"Q. Yes, the business we are talking about here today. Do you have any idea?"

"A. No, I don't." (93, 94)

This application requests authority to transport between all points in Cambria, Jefferson, Indiana, and Clearfield Counties. The rights of Bulk Transportation-Merlo do not cover these four counties. Mr. Rorabaugh admitted that the rights do not cover the northern part of Clearfield County, consisting of one-third of Clearfield County. (86) The rights do not cover the northern half of Jefferson County. (86) The rights do not cover the extreme western and northwestern part of Armstrong County. (87) This protestant does not have the authority that is involved in this case:

"Q. What would you do if you got a call from a shipper, let's specifically call it North Cambria Fuel, to pick up in a portion of Jefferson County that you are not allowed to serve?"

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

"Q. Would that same answer apply to Clearfield County?"

"A. Yes."

"Q. And Armstrong County?"

"A. Western Armstrong."

"Q. I mean the territory that you cannot legally serve?"

"A. Right."

"Q. I assume that you would pick up the traffic in the territory that you are authorized to serve, is that correct?"

"A. Yes."

"Q. So there are portions of the counties involved here that you legally cannot serve, is that correct?"

"A. That's correct." (87,88)

With regard to the burden of proof, the protestant brought in a total of four exhibits:

1. Their P.U.C. rights.
2. A map showing their authority.
3. Their equipment list.
4. The tonnage moved for various shippers.

Exhibit 4 is very interesting. The exhibit purports to show transportation for two Barnes & Tucker mines, one "Westrick" mine, one Bethlehem Mine #33, and one designated as B.S.C.O.--Johnstown, or a total of five specific shippers. None of the shippers in Exhibit 4 relate in any manner to North Cambria Fuel. (77)

"Q. Did any of the traffic shown on this Exhibit 4 move for the account of North Cambria Fuel?"

"A. No." (77)

Counsel for protestant said that the purpose of the exhibit was to show "the extent of the tonnage and the revenue that will be lost by Bulk Transportation" if they lose the Barnes & Tucker account. (79, 80)

On cross-examination, the witness, Mr. Rorabaugh, said that if Barnes & Tucker closes, he is going to lose their business. (85) He admitted that he is not going to lose any business of North Cambria Fuel because they have never performed any such service. (85) The interesting part of Mr. Rorabaugh's testimony is in what he failed to produce:

"Q. Actually, in terms of your revenue, how much business do you do a year?"

"A. I don't have those figures." (93)

It is curious that since this company took the trouble to prepare and produce four exhibits, including the elaborate Exhibit 4, that they did not produce any figures to show their total revenue. As the record stands, the figures shown in Exhibit 4 that purport to show business to be "lost" from Barnes & Tucker bear no relationship to the revenue of this company, since there are no revenue figures in the record.

Even if this protestant produced revenue figures, the fact that it was going to lose business from Barnes & Tucker would have absolutely no bearing here, since Barnes & Tucker is not involved in this application at all.

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V.

THE APPLICABLE LAW

Commencing in January 1983, and applying to applications since then, the Commission has adopted a Transportation Regulatory Policy which no longer requires an applicant to demonstrate the inadequacy of existing service (52 Pa. Code Section 41.14).

Under the old rules, if a carrier were "ready, willing, and able" to serve, the Commission frequently decided that the shipper had to use the existing service "until it was tried and found wanting."

The Transportation Regulatory Policy has changed all that.

The legality of the Policy was recently tested in the Pennsylvania Commonwealth Court. The Pennsylvania Commonwealth Court, in Seaboard

Tank Lines, Inc., v. Pa. P.U.C., \_\_\_\_\_ Pa. Cmwlth. \_\_\_\_\_ 502 A2d. 762

(December 23, 1985), ruled that the Commission Policy was lawful and constitutional.

Under the Commission Policy, the Kinard case is frequently cited as the main decision on this subject. That case is A-0095829, F. 1, Am-D (October 19, 1984), Application of Richard L. Kinard, Inc. The decision reiterates the Commission Policy that "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 the protestant."

(Kinard, supra)

As stated, this Policy has been declared lawful and constitutional by the Pennsylvania Commonwealth Court in Seaboard Tank Lines, Inc.

Applying the above to the facts at hand, the protestant has failed to show any evidence that "the entry of a new carrier into the field would endanger or impair the operations" of the protestant.

The fact is that this is not a case of "the entry of a new carrier into the field." On the contrary, all we have here is an extension of territory of an existing carrier. There has been no showing that any of the transportation involved has ever been performed by the protestant. These facts are so apparent and clear that there is no reason to belabor this point.

VI.

CONCLUSION

We do not understand what Bulk Transportation is doing in this case. Admittedly, since 1975 they never transported for North Cambria Fuel. They never solicited North Cambria Fuel until very recently. They have never earned a penny from transportation for North Cambria Fuel since 1975. There is even a question as to whether they actually performed any service prior to 1975 for North Cambria Fuel because Mr. Rorabaugh only "vaguely remembers" such transportation. (84)

There is no question of the fact that the applicant, Earhart, is fit, morally and financially, to receive the additional authority.

There is no question about the need for the proposed service.

There is no question about the fact that the granting of the application will not divert any traffic from Bulk Transportation.

There is no question about the fact that the granting of the application will not adversely affect Bulk Transportation financially.

For these reasons, there is no basis on which to deny the application, and we respectfully urge that it be approved.

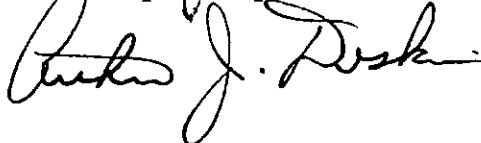
Respectfully submitted,

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

BY:


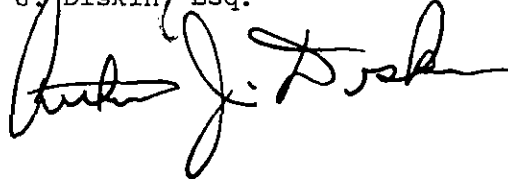


Arthur J. Biskin, Esq.  
Attorney for Applicant



CERTIFICATE OF SERVICE

I hereby certify that I have submitted copies of the within brief to Administrative Law Judge Robert Meehan, and to counsel for protestant, as required by Commission regulations, this 15<sup>TH</sup> day of May, 1986.

  
\_\_\_\_\_  
Arthur J. Diskin Esq.  




**ORIGINAL**

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RICHARD R. WILSON  
DENNIS J. KUSTURISS

May 16, 1986

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

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MAY 16 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 original and nine copies of Brief of Bulk Transportation Services, Inc.

Copies of the Brief have been served on 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 us in the self-addressed, stamped envelope provided for that purpose.

**FOLDER**

Sincerely yours,

VUONO, LAVELLE & GRAY

*William J. Lavelle*  
William J. Lavelle

pz  
Enclosures

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

ORIGINAL

BEFORE THE  
Pennsylvania Public Utility Commission

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

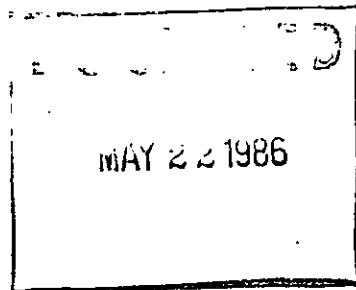
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NORMAN M. EARHART T/D/B/A EARHART TRUCKING

MAY 16 1986

SECRETARY'S OFFICE  
Public Utility Commission

BRIEF OF BULK TRANSPORTATION SERVICES, INC.



WILLIAM J. LAVELLE, ESQ.  
Attorney for  
BULK TRANSPORTATION  
SERVICES, INC., Protestant

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

Due Date: May 19, 1986

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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BRIEF OF BULK TRANSPORTATION SERVICES, INC.

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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 tipplens 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. Protestant now  
files its Main Brief in opposition to the application.

II. STATEMENT OF THE QUESTIONS INVOLVED AND THE  
POSITION OF PROTESTANT

The basic question to be determined is whether or not approval of the application is necessary or proper for the service, accommodation, convenience or safety of the public. (66 Pa. C.S.A. §1103(a))

In deciding this fundamental question, the Commission must also consider the following subsidiary issues:

1. Is the Applicant fit, financially and otherwise, to provide the proposed service?
2. Does the testimony of the supporting shipper establish that approval of the application will serve a useful public purpose, responsive to a public demand or need?
3. Does the testimony demonstrate that approval of the application would endanger or impair the operations of existing carriers such as Protestant to an extent that the granting of the authority would be contrary to the public interest?

It is the position of Protestant that Applicant has not demonstrated its fitness to provide the proposed service. In 1985 the Commission instituted a complaint proceeding against Applicant for transporting coal for North Cambria Fuel between points not authorized by its certificate. Furthermore, Applicant did not provide a balance sheet or income statement, the only evidence of financial fitness being an estimate of its gross revenue in 1985. Applicant's fitness, both financial and otherwise, has not been demonstrated.

Protestant also submits that the evidence does not establish a public need for the proposed service, nor that approval of the application will serve a useful public purpose. On the contrary, there is adequate existing service available to North Cambria Fuel presently. Approval of the application will not materially enhance the position of North Cambria Fuel nor will it serve a useful public purpose.

On the other hand, approval of the application will deprive Protestant of an opportunity to provide service for North Cambria Fuel. In view of the circumstances surrounding Protestant's operations, that will endanger and impair Protestant's operations which will be contrary to the public interest.

III. SUMMARY OF EVIDENCE AND PROPOSED  
FINDINGS OF FACT

Protestant submits that the following findings of fact are supported by the evidence of record:

1. Applicant is Norman M. Earhart t/d/b/a Earhart Trucking. (4)\*

2. Applicant holds a certificate of public convenience at Docket No. A-00065936, F. 3 to transport various commodities including coal between points in the Counties of Indiana, Westmoreland, Armstrong and Allegheny, no haul to exceed a distance of thirty-five (35) miles from point of origin to point of destination. (Applicant's Ex. 1) (5)

3. Applicant has a terminal and maintenance facilities in New Alexandria. It does minor repair work at that facility. Major repair work is performed by Mack Watt Sales in New Alexandria. (7)

4. Applicant owns two tri-axle dump trucks, two tractors and two dump trailers. It also leases from owner-operators and one fleet owner fifteen tri-axle dump trucks, two tractors and two dump trailers. (6, 9, 20)

5. If necessary, Applicant would purchase or lease additional equipment. (11-12, 19)

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

6. Applicant serves North Cambria Fuel five and one-half days a week, with service available on weekends, holidays and at night if necessary. (10)

7. Tri-axle dump trucks are generally required since tractor-trailer combinations have difficulty getting into and out of the mine sites during the winter. (16-17)

8. Applicant handles approximately 120 truckloads of coal per day for North Cambria Fuel. Each vehicle makes about four-five trips per day. All of the traffic is now moving to the Blairsville tipple. (18, 24)

9. Applicant is paid about \$70,000 a month, or \$800,000 a year, by North Cambria Fuel. In 1985, Applicant's approximate gross annual revenue was \$900,000. (6, 10)

10. There are no Commission complaints currently pending against Applicant although in January, 1986, it paid a \$200 fine for violating the terms of its present operating authority by handling coal from Cambria County to the Blairsville tipple for North Cambria Fuel. (8-9, 26-27)

11. North Cambria Fuel presently has one customer, Pennsylvania Power and Light Company, at Brunner's Island near Harrisburg. (29-30, 35)

12. Coal is supplied to PP&L by rail from North Cambria Fuel's tipple and rail loading dock located in Blairsville, Indiana County. Coal is blended at the tipple and moves in five-six unit trains a month to the Harrisburg area. (32, 34, 35)



13. North Cambria Fuel also operates a rail loading dock at Sheriff's Pride near Glenn Campbell in southwestern Clearfield County. This is the destination of an unspecified amount of trucked coal from several mines in Clearfield, Jefferson and Cambria Counties. (31-32, 51, 53, 62)

14. As pertinent to this application, North Cambria Fuel operates strip mines at Hastings and Johnstown, Cambria County; Hesbon, Indiana County; Hamilton, Jefferson County; and Mahaffey, Clearfield County. (32) Most of the coal from these mines is trucked to the Blairsville tipple. (35, 54, 62)

15. The lifespan of a strip mine varies from three months to ten years, with an average life of two years. (36)

16. North Cambria Fuel has an unknown number of non-operational mines under lease at undisclosed points and the witness had no knowledge of where they were located or when they might be opened. (36-37, 45, 56)

17. North Cambria Fuel indicated that it might in the future have shipments of coal to Penelec Power Plants in Shelocta, New Florence and Homer City, all of which are located in Indiana County which the Applicant can presently serve. (43, 55-56)

18. The coal being trucked to Sheriff's Pride is currently handled by Loughery, Ritchey, and D & C Trucking. (38, 52, 54) North Cambria Fuel acknowledged that these carriers could well have other operating authority to serve some or all of the points in the application territory. (57-58)

19. North Cambria Fuel estimates that Earhart's tonnage would increase by about 25% if the application is approved, but since the opening of new mines is speculative and some of the current mines may eventually be terminated, the estimate is without foundation. (45)

20. Bulk Transportation (Merlo) was last used by North Cambria Fuel in 1974 or 1975. The witness for North Cambria Fuel was aware of a solicitation call from Bulk Transportation on April 4, 1986. (39-41)

21. North Cambria Fuel did not investigate the availability of any other motor carrier service before supporting the application. Its position is that motor carriers should come to it and solicit its business. (57)

22. Despite the availability of the service of Bulk Transportation, North Cambria Fuel's position is that it doesn't need its services. (100, 101)

23. Bulk Transportation holds authority at Docket No. A-00101351, F. 1, Am-A, Paragraph 4 to transport coal between points within a forty-five (45) airline mile radius of the limits of the Borough of Nanty Glo, Cambria County. That area includes all points in Cambria and Indiana Counties, the southern half of Jefferson County, and the southern two-thirds of Clearfield County which are involved in this application. (Protestant's Ex. 1 and 2) (65-70, 86)

24. Bulk Transportation maintains its office and dispatch facilities at Mineral Point, five miles north of Johnstown in Cambria County. (70)

25. Protestant operates 88 tri-axle dump trucks of the type preferred by the shipper, seven tandem dump trucks, 38 tractors and 33 dump trailers. (Protestant's Ex. 3) (71-72)

26. Protestant currently operates on a five day per week basis, but its service is available 24 hours a day, seven days a week including weekends and holidays. (72) It normally receives calls for service the night before, but has radio contact with its equipment in order to respond within a short period of time. (73) It can and presently does handle shipments the same day it receives a call for service, and is able to divert trucks in transit in accordance with shipper instructions. (73) It regularly assigns vehicles to accounts which handle multiple shipments each day. (Protestant's Ex. 4) (76)

27. Barnes & Tucker Coal Company has been a major customer of Bulk Transportation and its related company Charles J. Merlo, Inc. for many years. In November, 1985 Bulk Transportation received notice that the Barnes & Tucker Mine No. 20 was closing. More recently it received notice that within two or three months the Barnes & Tucker Mine No. 24 would be closing. Bulk Transportation has been supplying Barnes & Tucker with 20-25 trucks per day to serve these two mines. (74-76)

28. The revenue generated by the Barnes & Tucker mines between September, 1985 and March, 1986 was \$377,929.96. On an annual basis this amounts to \$647,879.92 in gross revenue which will all be lost within a matter of several months. (Protestant's Ex. 4) (77-80)

29. Upon receiving notice of the imminent shutdown of the Barnes & Tucker mines, Bulk Transportation began soliciting other accounts for business in November, 1985. The Bulk Transportation witness contacted Harry Carlinsky of North Cambria Fuel in November or December, 1985 to inquire about available traffic. The witness for North Cambria Fuel was personally contacted on April 4, 1986 concerning the availability of traffic. Protestant is willing to provide service to and from any destinations located within its operating authority. (73-74, 84-86)

IV. ARGUMENT

1. APPLICANT HAS FAILED TO DEMONSTRATE THAT APPROVAL OF THE APPLICATION WILL SERVE A USEFUL PUBLIC PURPOSE, RESPONSIVE TO A PUBLIC DEMAND OR NEED.

A. The Application is Controlled By the Standards Set Forth in the Transportation Regulatory Policy.

This application is governed by the standards set forth in the Transportation Regulatory Policy, 52 Pa. Code §41.14. Those entry standards are as follows:

§41.14. Evidentiary criteria used to decide motor common carrier applications.

(a) An applicant seeking motor common 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.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

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

Applicant has failed to establish that there is a public demand or need for its proposed service throughout the four

county area. Moreover, it has failed to demonstrate that approval of the application will serve any useful public purpose. Denial of the application is warranted in view of the applicant's failure to meet its threshold burden of proof.

B. Applicant Has Failed to Demonstrate That There is a Public Demand or Need for the Proposed Service.

North Cambria Fuel does have movements of coal between limited points in the four county application area. By virtue of the shipper's support of the application, a loose interpretation of the standards would suggest that there may be a demand, if not a need, for the proposed service.

However, Protestant does not believe that that is a proper interpretation of the need standard. In order for there to be a legitimate demand or need for a proposed service, it must be demonstrated that there is in fact something more than a nominal amount of freight moving between points in the application territory. If there is no freight moving in the application area, even the testimony of 100 shippers would not establish a demand or need for the service. In Application of Richard L. Kinard, Inc., Docket No. A-00095829, F. 1, Am-D (Opinion and Order entered October 22, 1984), the full Commission at page 6 stated that "The mere introduction of shipper support testimony would not be enough to satisfy solely on this basis the section 41.14(a) burden".

By the same token, evidence of traffic moving between a very limited number of points within a broad application area does not establish a public demand or need for service between all points in the application territory. In this case, as will be shown, there is no evidence concerning the volume of traffic or frequency of shipments that would be available to the applicant within the application area moving to and from points beyond the scope of its present authority. Nor is there evidence of more than a handful of origins and destinations. These deficiencies with respect to present traffic are not compensated for by any reasonably definite evidence concerning future needs. The evidence of new mines that might be opened at some undisclosed time in the future at some unspecified location is far too indefinite and speculative to demonstrate a future need for the applicant's service at any point.

Insofar as the four county application area is concerned, North Cambria Fuel has strip mines which would be the origin of the traffic only at Mahaffey, Clearfield County, Hastings and Johnstown, Cambria County, Hamilton, Jefferson County, and Hesbon, Indiana County. (32) From those five origin points, the bulk of the traffic moves and will continue to move to the tipple and rail siding at Blairsville, Indiana County. (32, 54, 62) The only other destination of an indeterminate amount of traffic would be the North Cambria Fuel rail loading dock at Sheriff's Pride, Clearfield County. (31-32, 51, 53, 62)

None of the testimony pertaining to mine sites in Westmoreland or Armstrong Counties is relevant since neither county is involved in this application. Nor is the testimony concerning movements from the Hesbon mine sites to Blairsville of any significance since the applicant already holds authority to perform this service. There is some testimony that North Cambria Fuel may at some future time ship coal to certain Penelec plants at Shelocta, New Florence or Homer City. There is nothing to indicate that such movements will ever actually transpire, and in any event, Applicant now holds authority to serve all of those points since they are in Indiana County.

As for other mines located in the four counties that may at some time be opened by the shipper, the testimony is too indefinite to be given any weight. When asked about these mines the North Cambria Fuel witness was unable to state where they were located or how many there were, stating that "that information is not really available to me". (37)

When carefully evaluated, the evidence discloses that the shipper has movements of coal within the application territory only from five origin points to two destination points. There is no evidence at all concerning the volume of traffic or frequency of shipments from any of those origin points to either of the two destination points. In view of this indefinite testimony, Protestant submits that there is insufficient evidence to establish a demand or need for the proposed service.



C. Applicant Has Failed to Demonstrate That Approval of the Application Will Serve a Useful Public Purpose.

In Kinard, the Commission affirmed Administrative Law Judge Christianson's interpretation of the Section 41.14(a) standard as requiring proof that approval of the application will serve a useful public purpose. There is no evidence in this case to even suggest that existing motor carrier service is inadequate. Consequently, the Applicant had the burden of showing a useful public purpose by addressing the alternatives to inadequacy.

There is no evidence at all that approval of this application will serve a useful public purpose as that term has been defined in the Kinard decision. No different type of service is proposed. This is simply a point to point truckload movement of coal. There is no evidence that the Applicant's service will be more efficient than that of other carriers, either for its benefit or that of the shipper. Its service is available on an around the clock basis if necessary and it will respond to requests for service within several hours. But Bulk Transportation likewise offers service on a 24 hour per day, seven day per week basis, can devote a substantial amount of equipment to a single shipper, and responds to calls for service within several hours, diverting trucks already in transit as necessary. (72, 73, 76)

Applicant did not present any evidence concerning the offering of lower rates. There is no need for its service on

the basis of a future need for the reasons already discussed above. Applicant's service is not being considered as a backup to any other carrier. There is no evidence at all to the effect that the shipper requires Applicant's service in order to be more competitive with other coal shippers.

No evidence was presented that the Applicant has any interstate operating authority with which this new authority would be in any way connected. Applicant's authority does not contain any inappropriate gaps or artificial restrictions. This application therefore does not have as a purpose the rectification of fragmented authority. It is simply a request by the Applicant to expand in new territories. There is no benefit to be gained by the Applicant from approval of this application, as that criteria is used in the Kinard decision. There is no evidence to suggest that the Applicant's operations will be made more efficient by approval of this application.

In short, there is no evidence at all which would warrant a conclusion that approval of this application will serve a useful public purpose. The Applicant has therefore completely failed to meet its burden of proof under Section 41.41(a) of the Commission's regulations. For that reason, the application should be denied without any further consideration.

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

One of the Applicant's burdens is to demonstrate that it is financially able to provide the proposed service. Financial

stability depends on presenting to the Commission clear evidence of its financial standing. In this case the Applicant presented neither a balance sheet nor an income statement. It simply offered oral testimony to the effect that in 1985 its gross revenues were approximately \$900,000. (6) That evidence does not disclose whether the Applicant operated at a profit in 1985. Nor is there any evidence to show that the Applicant has a positive net worth, is in a position to meet current obligations as they come due, or is in any way financially able to provide expanded service for the supporting shipper.

Also to be considered is the fact that the Commission recently fined the Applicant for transporting shipments of coal for North Cambria Fuel outside its authorized territory. (8-9, 26-27) While this one complaint may not show that the Applicant lacks a propensity to operate legally, it does indicate that the Applicant is not above ignoring the law and the Commission's regulations. That factor should be considered as an additional factor weighing against approval of the application.

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

Bulk Transportation holds operating authority to serve all points in Indiana and Cambria Counties, the southern half of Jefferson County and the southern two-thirds of Clearfield County. (Protestant's Ex. 1) (65-70, 86) All of the origins and destinations of the shipper's traffic are within the scope

of the Protestant's authority. It is therefore in a position to handle all of the shipper's transportation needs in this four county area.

The shipper purportedly requires tri-axle dump trucks. Bulk Transportation operates 88 such vehicles as compared to 17 operated by the Applicant. (Protestant's Ex. 3) (6, 9, 20, 71-72) There is no service being proposed by the Applicant which Bulk Transportation is not already in a position to provide.

One of the Protestant's main accounts, Barnes & Tucker, is in the process of shutting down its operations. Between September, 1985 and March, 1986, that account produced \$377,930 in revenue for Bulk Transportation. This amounts to almost \$650,000 on an annual basis. (Protestant's Ex. 4) (77-80) The loss of that substantial amount of revenue will free up the 20-25 trucks that Bulk Transportation has been using to serve Barnes & Tucker. That equipment is available to serve the supporting shipper, North Cambria Fuel.

The adverse impact that approval of this application will have on Bulk Transportation stems from the fact that the latter will not have an opportunity to fully utilize its authority or equipment. It is losing some \$650,000 in revenue annually and idling 20-25 vehicles. The loss of that revenue and the idling of that amount of equipment will clearly impact on the ability of Bulk Transportation to continue to render an adequate service

to the public. That result can be avoided in part if Bulk Transportation is first given an opportunity to provide service for North Cambria Fuel.

Sound regulatory policy demands that under circumstances such as this, carriers already certificated by the Commission be given an opportunity to utilize their authority and equipment before another carrier is authorized to provide a duplicative service, particularly in light of the almost non-existent need for additional service. The public interest will best be served if this application is denied and Protestant is given an opportunity to handle this traffic. The absence of any real need for additional service is perhaps best exemplified by the shipper's testimony that it doesn't need the services of Bulk Transportation. (101) If it doesn't need the Protestant's service, even though that would meet all of its needs, then on what basis could it possibly need the Applicant's service?

V. PROPOSED CONCLUSIONS OF LAW

Protestant respectfully requests that the Administrative Law Judge make the following conclusions of law and deny the application in its entirety:

1. The Commission has jurisdiction of the subject matter of the application and the parties.

2. The matter is properly before the Commission.

3. The Applicant has failed to demonstrate that the proposed service specified in the application would serve a useful public purpose responsive to a public demand or need.

4. The Applicant has failed to demonstrate that it possesses the financial ability to provide the proposed service.

5. The Applicant has failed to demonstrate that it will operate legally in accordance with the law and the Commission's regulations.

6. Protestant has established that the granting of the application would endanger and impair its continued operations to such an extent that, on balance, the granting of authority would be contrary to the public interest.

7. Approval of the application is neither necessary nor proper for the service, accommodation, convenience or safety of the public.

8. The application should be denied in its entirety.

Respectfully submitted,



WILLIAM J. LAVELLE, ESQ.

Attorney for

BULK TRANSPORTATION SERVICES  
INC., Protestant

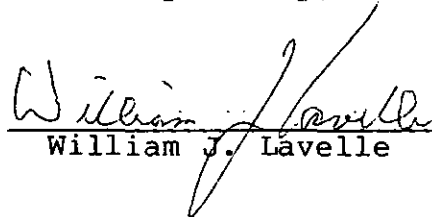
VUONO, LAVELLE & GRAY  
2310 Grant Building  
Pittsburgh, PA 15219  
(412) 471-1800

Due Date: May 19, 1986

CERTIFICATE OF SERVICE

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

Dated at Pittsburgh, PA this 16th day of May, 1986.

  
\_\_\_\_\_  
William J. Lavelle

MAIL

LAW OFFICES

VUONO, LAVELLE & GRAY

2310 GRANT BUILDING  
PITTSBURGH, PA. 15219

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

May 15, 1986

Re: Norman W. Earhart, t/d/b/a  
Earhart Trucking  
Docket No. A. 00065936, F. 3, Am-A (TA)

RECEIVED

MAY 19 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 original and two copies of the Motion to Dismiss Applicant's Petition for Reconsideration and Reply to Petition for Reconsideration.

Copies of the Motion to Dismiss Applicant's Petition for Reconsideration and Reply to Petition for Reconsideration have been served on 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 us in the self-addressed, stamped envelope provided for that purpose.

Sincerely yours,

VUONO, LAVELLE & GRAY

*William J. Lavelle*  
William J. Lavelle

mm

Enclosures

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



Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAY 1 1986

SECRETARY'S OFFICE  
Public Utility Commission

DOCKET NO. A-000065936, F. 3, Am-A (TA)

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

MOTION TO DISMISS APPLICANT'S PETITION FOR RECONSIDERATION  
AND  
REPLY TO PETITION FOR RECONSIDERATION

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 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.

On or about November 4, 1985, Applicant also filed a corresponding application for temporary authority. Public notice of both the temporary authority application and the permanent authority application was given in the Pennsylvania Bulletin on November 30, 1985. Protests were filed by five motor carriers including Bulk Transportation Services, Inc. (Bulk Transportation or Protestant).

MAY 2 1986

By Tentative Decision adopted on February 6, 1986 and entered on February 13, 1986, the Commission denied the application for temporary authority. The Tentative Decision included the following ordering paragraph:

That unless exceptions are filed within twenty (20) days of the date the order is entered, the order shall become final.

By letter dated March 7, 1986, the Secretary of the Commission advised the parties that the Tentative Decision had become final "since no exceptions were filed".

On or about May 9, 1986, Applicant filed a Petition for Reconsideration of the Tentative Decision entered February 13, 1986. Bulk Transportation now files its Motion to Dismiss Applicant's Petition for Reconsideration and, in the alternative, its Reply to the Petition for Reconsideration.

II. MOTION TO DISMISS PETITION FOR RECONSIDERATION

Bulk Transportation hereby moves to dismiss the Petition for Reconsideration filed by the Applicant on the ground that the Commission has no jurisdiction or power to entertain the Petition at this time. In support of its Motion, Protestant submits the following:

The Tentative Order entered on February 13, 1986 specifically stated that the Order would become final unless exceptions were filed within twenty (20) days of February 13, 1986. Applicant failed to file exceptions within the prescribed time limit, and the Commission notified the parties on March 7, 1986 that the Tentative Decision had become final.

Section 5.533(b) of Title 52 of the Pennsylvania Code provides that in all proceedings not referred to an Administrative Law Judge, exceptions may be filed within fifteen days after the Tentative Decision is issued unless some other exception period is provided. Here, the Commission provided a twenty day exception period.

Section 5.534 of Title 52 of the Pennsylvania Code provides that in all proceedings not referred to an Administrative Law Judge, Commission review shall be obtained "by the filing of exceptions under §5.533(b) (relating to procedure to except to initial, tentative and recommended decisions)."

Section 5.536(c) of Title 52 of the Pennsylvania Code provides that:

(c) A Tentative Decision, issued by the Commission, subject to exceptions, shall become final, without further Commission action, if no exceptions are filed under §5.533(a) (relating to procedure to except to initial, tentative and recommended decisions).

The Commission's Rules pertaining to the filing of exceptions to Tentative Decisions are specific. Applicant did not file exceptions to the Tentative Decision within the allotted time period and the Order therefore became final. In similar situations, the Courts and the Commission have considered the Commission's regulations and the controlling statutory provision set forth in Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h). It has been held that failure to file timely exceptions eliminates the right of the Commission to entertain further pleadings in a proceeding unless two or more commissioners request that the Commission review the decision within fifteen days after the decision is issued.

Inasmuch as the Commission's Tentative Decision became a final order on or about March 5, 1986, Applicant's only other recourse would have been to file a Petition for Relief Following a Final Decision, pursuant to §5.572 of Title 52 of the Pennsylvania Code. Sub-section (b) provides, however, that such a Petition "shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final". The Petition therefore would have been due on or about March 20, 1986. Since Applicant's Petition for Reconsideration was not

filed until May 9, 1986, it did not comply in any way with the governing Commission regulations.

For the above reasons, Bulk Transportation requests that the Commission dismiss Applicant's Petition for Reconsideration of the Tentative Decision entered February 13, 1986.

### III. REPLY TO PETITION FOR RECONSIDERATION

Protestant submits that Applicant's Petition for Reconsideration does not set forth any basis upon which the Commission should reconsider or reverse its earlier decision denying the temporary authority application. The application involves a request to transport coal for North Cambria Fuel, Inc. from its mines and tipples in Cambria, Jefferson, Indiana and Clearfield Counties to all other points in those four counties. It is significant that on or about April 15, 1986, Applicant filed a second set of applications requesting emergency and regular temporary authority. Those applications sought limited authority to transport coal for the supporting shipper from a mine in Lower Yoder Township, Cambria County and a mine in the Village of Hamilton, Perry Township, Jefferson County, to the Conrail rail site in the Township of Burrell, Indiana County. Although those applications have been withdrawn, it is significant that Administrative Law Judge Robert P. Meehan, by Order dated May 8, 1986, found that "it does not appear that Applicant has established a sufficient basis that would support the approval of the ETA application".

Judge Meehan conducted the hearing on the related application for permanent authority which was held in Pittsburgh on April 9, 1986. He heard all of the testimony in support of and in opposition to the permanent application. He reviewed the latest emergency temporary authority application which set forth

essentially the same arguments for approval that are contained in Applicant's Petition for Reconsideration. Having the benefit of all of the evidence and Applicant's arguments, Judge Meehan nevertheless found that there was no need established for emergency temporary authority from two origin points to one destination point. In view of that finding, it is inconceivable that there could be a need for temporary authority in a much broader territory.

Applicant appears to be laboring under a misconception as to the basis on which the Commission may grant temporary authority. Without belaboring the points raised in Applicant's Petition, Protestant submits that temporary authority cannot be granted simply because (a) the application is simple and uncomplicated; (b) the applicant is presently serving the supporting shipper; (c) several protests to the permanent application have been withdrawn; (d) Bulk Transportation does not hold authority to serve all points in the four subject counties; (e) Protestant has not served the supporting shipper for some time; (f) Protestant has recently solicited the shipper's business as a result of losing the business of another long-time customer; or (g) the shipper is indignant and harbors some personal animosity toward Protestant. None of these arguments, even if accepted as true, justify approval of temporary authority.

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. Applicant's Petition does not show that this proposed 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. This sub-section also 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".



Paragraph 5 of Applicant's Petition attempts to justify approval of the temporary authority application on the ground that Protestant does not hold authority to serve the entire four-county area. There are page references provided to the transcript of the hearing held on April 9, 1986 in connection with the related permanent authority application. The difficulty is that the Petition, while accurate as to the fact that Protestant does not serve all points in Jefferson and Clearfield Counties, erroneously implies that the shipper has an immediate need for motor carrier service involving the northern portions of Jefferson and Clearfield Counties. That is simply not the case.

The shipper's testimony concerning the present movements of coal is set forth at pages 31-37 of the transcript. The cross-examination of the shipper witness pertaining to the origins and destinations of present traffic is set forth in the transcript at pages 47-56. The testimony of Protestant's witness concerning its operating authority is set forth in the transcript at pages 67-70. Collectively, the testimony discloses that all of the present origins and destinations of the shipper's traffic are within the scope of the Protestant's operating authority. Applicant cannot very well justify a grant of temporary authority on the ground that Bulk Transportation does not serve points in northern Clearfield or northern

Jefferson Counties when the shipper doesn't even have traffic moving to or from points in those areas.

The possibility of opening new mines is extremely speculative. There is no evidence that new mines will be opened in the immediate future, and when the shipper witness was asked how many mines could be opened if others are depleted, he testified "That information is not really available to me. That is in the Engineering Department". (page 37) Finally, on page 3 of the Petition Applicant asserts that Protestant does not have the authority to serve portions of Armstrong County. Whether that is true or not is immaterial since this application does not involve Armstrong County.

Applicant also devotes paragraphs 7 and 8 of its Petition to a discussion of the 1982 Transportation Regulatory Policy and the discussion thereof in several recent decisions. It is important to note that the Policy Statement and Decisions deal with the standards applicable to applications for permanent operating authority. They have nothing to do with the standards that govern applications for temporary authority. The pertinent standards are as discussed above.

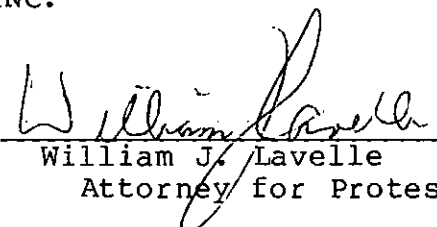
Applicant has presented no persuasive reasons why this temporary authority application should be resurrected and approved at this time. There is nothing presented by the Applicant which would support approval of temporary authority.

IV. CONCLUSION

For the reasons set forth above, Protestant respectfully requests that its Motion to Dismiss Applicant's Petition for Reconsideration be granted. If the Motion is denied, Protestant in the alternative then requests that the Commission reaffirm its prior Tentative Decision and again deny the application for temporary authority.

Respectfully submitted,

BULK TRANSPORTATION SERVICES,  
INC.

By:   
William J. Lavelle  
Attorney for Protestant

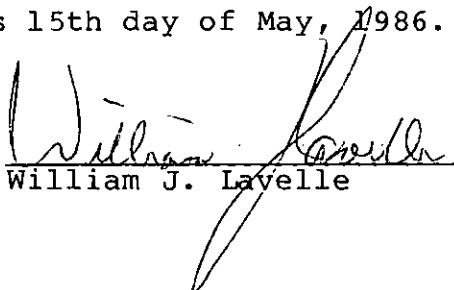
VUONO, LAVELLE & GRAY  
2310 Grant Building  
Pittsburgh, PA 15219  
(412) 471-1800

Due Date: May 19, 1986

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Motion to Dismiss Applicant's Petition for Reconsideration and Reply to Petition for Reconsideration upon all parties of record.

Dated at Pittsburgh, Pa. this 15th day of May, 1986.

  
William J. Lavelle

# PENNSYLVANIA PUBLIC UTILITY COMMISSION



## RECEIPT

The addressee named hereunder has paid Pennsylvania Public Utility Commission for the following bill, subject to final collection of check or money order tendered for such payment.

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

Date May 22, 1986

CR 118674 A

In re application of Norman M. Earhart  
t/a Earhart Trucking  
A-00065936, F.3, Am-A.....\$75.00

MAY 22 1986

PAID

Revenue account 01780-17601-102 (cd)

Checks \$75.00 Currency \_\_\_\_\_

Utility account 50:26

ck 2782

C. Joseph Meisinger  
For Department of Revenue

ORIGINAL

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

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May 22, 1986

MAY 25 1986  
SECRETARY'S OFFICE  
Public Utility Commission

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

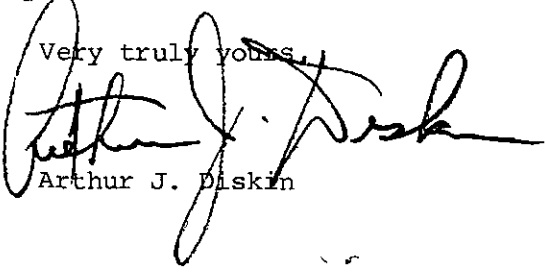
IN RE: Application of Norman M. Earhart, t/d/b/a Earhart  
Trucking; Docket No. A. 65936, F. 3, Am-A

Dear Sir:

Enclosed are the original and nine copies of the Reply Brief on behalf of the applicant.

Three copies are being sent to William J. Lavelle, Esq., counsel for the only protestant of record; one copy is being sent to Administrative Law Judge Robert P. Meehan.

Kindly acknowledge receipt of the enclosed.

Very truly yours,  
  
Arthur J. Diskin

AJD/cmm

Enclosures

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

FOLDER

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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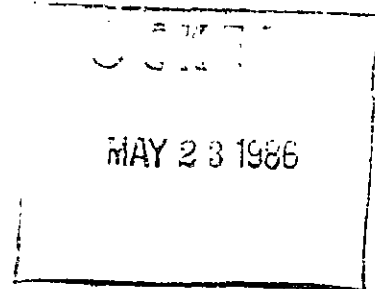
Application of  
NORMAN M. EARHART, t/d/b/a EARHART TRUCKING  
Docket No. A. 65936, F. 3, Am-A

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RECEIVED

MAY 23 1986  
SECRETARY'S OFFICE  
Public Utility Commission

REPLY BRIEF ON BEHALF OF APPLICANT



DUE DATE: June 3, 1986

Arthur J. Diskin, Esq.  
402 Law & Finance Building  
Pittsburgh, PA 15219  
(412) 281-9494  
Attorney for Applicant

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

---

REPLY BRIEF ON BEHALF OF APPLICANT

This reply brief is devoted to specific points raised in the main brief of Bulk Transportation Services, Inc. (herein called Bulk Transportation), filed on or about May 19, 1986.

The entire thrust of the main brief of the protestant, Bulk Transportation, is that there is some sort of "duty" on the part of the Commission to deny this application and to order the shipper, North Cambria Fuel, Inc., to start utilizing the service of Bulk Transportation.

We cannot let this argument go unanswered.

The principal argument seems to be that Bulk Transportation "has established that the granting of the application would endanger and impair its continued operations to such an extent that, on balance, the granting of authority would be contrary to the public interest."

We pointed out in our main brief that, first of all, Bulk Transportation never put in any evidence as to what its revenues were or its profits or losses, if any.

Secondly, we pointed out that Bulk Transportation went to a lot of trouble and expense to accumulate four exhibits but neglected the required exhibit, namely facts and figures showing its revenues, profits, or losses.

We therefore feel that we have to re-emphasize in this reply brief the fact that the position of Bulk Transportation is completely untenable. In its other arguments Bulk Transportation argues that "the evidence does not establish a public need for the proposed service."

Secondly, that "approval of the application will not serve a useful public purpose."

Thirdly, "approval of the application will deprive the protestant of an opportunity to provide service for North Cambria Fuel, Inc."

Fourthly, that approval "will endanger and impair Protestant's operations."

We will answer these arguments.

1. "PUBLIC NEED". This is not a case involving a "public" need; on the contrary, it involves only an extension of territory for one shipper, which the applicant has been serving since 1974. We do not have to belabor this point. There are no other shippers involved, so we are dealing here with simply an extension of territory for one shipper. The "need for service" has been well established by the supporting shipper, who stated the locations of the mines and tipples in the four counties involved and who described his need for transportation service. Therefore, as far as the evidence of need is concerned, we are not dealing with a generalized and indefinite "public"; on the contrary, we are dealing with a single shipper only, who has



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