



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

ISSUED:

March 16, 1990

IN REPLY PLEASE
REFER TO OUR FILE

William A. Chesnutt, Esquire
McNees, Wallace & Nurick
P.O. Box 1166
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A-00108155

DOCUMENT
FOLDER

Application of Central Transport, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Michael C. Schnierle. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this Decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of Exceptions/Reply Exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (Name of Party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

cc: ALJ Schnierle/Office of ALJ/Bureau of Transportation/Law Bureau/Mr. Bramson/OSA/
Chairman/Commissioners

Very truly yours,

fao
Encls.
Certified Mail
Receipt Requested

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Chief Administrative Law Judge

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Central Transport, Inc.

Docket No.
A-00108155

DOCKET
FOLDER

INITIAL DECISION

Before
Michael C. Schnierle
Administrative Law Judge

DOCKETED
MAR 21 1990

March 5, 1990

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Central Transport, :
Inc. A Corporation of the State : Docket No.
of North Carolina, for the right : A-00108155
to transport, as a common carrier, :
property, in bulk, in tank and :
hopper-type vehicles, between :
points in Pennsylvania. :

INITIAL DECISION

Before
Michael C. Schnierle
Administrative Law Judge

History of the Proceedings

On March 21, 1988, Central Transport, Inc. (Central or Applicant) filed an application seeking Commission authorization to transport:

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

Notice of the application was published in the Pennsylvania Bulletin on June 11, 1988. Twenty common carriers and one contract carrier (Samuel Coraluzzo, Co., Inc.) filed timely protests.

The Applicant subsequently filed several restrictive amendments, which resulted in the withdrawal of all but six of the protestants. As amended, the application seeks the following authority:

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

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

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

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

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

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

(Applicant's Supplemental Exhibit 5).

The remaining protestants are Chemical Leaman Tank Lines, Inc. (Chemical Leaman), Crossett, Inc. (Crossett), Marshall Service, Inc. (Marshall), Matlack, Inc. (Matlack), Oil Tank Lines, Inc. (Oil Tank Lines), and Refiners Transport & Terminal Corp. (Refiners).

Hearings were held on November 1, 2, 9, and 18, 1988, and on February 7, 14, 15, 1989, and on June 28, 1989. The hearings resulted in a transcript of 701 pages. Sixty exhibits were offered into evidence, of which 56 were admitted into evidence. Central Exhibits 33 and 34, and Matlack Exhibits 6 and 7 were not admitted into evidence.

Briefs have been filed by all of the parties except Chemical Leaman and Oil Tank Lines and the case is now ripe for decision.

Summary of the Evidence

W. David Fesperman is the Director of Traffic Services of Central Transport, Inc. Central is a motor common and contract carrier of bulk commodities operating in interstate and foreign commerce pursuant to authority issued by the Interstate Commerce Commission at MC-118831. Central also operates in intrastate commerce in the states of Georgia, North Carolina, South Carolina, Tennessee, and West Virginia. (Central Exhibit 1, pp. 2-3). Central operates 22 terminals systemwide. (Central Exhibit 7, p. 1).

Central presently has facilities at Karns City (Butler County) in western Pennsylvania, Paulsboro, New Jersey, and at Baltimore, Maryland, from which it provides service to points in Pennsylvania for traffic moving in interstate commerce, and from which it would provide equipment for service in intrastate commerce in Pennsylvania should this application be approved. Central does not now hold authority to render service in Pennsylvania. (Central Exhibit 1, p. 5). Central is not affiliated with any other carrier holding authority from the Pennsylvania Public Utility Commission. (Central Exhibit 7, p. 2).

During calendar year 1987, Central Transport transported 3,370 loads from points in Pennsylvania to points outside the state. Those loads generated \$3,974,976.62 in

revenue. During that same period, Central delivered to points in Pennsylvania from points outside the state, 2,128 loads, generating \$2,318,635 in revenue. During calendar year 1987, Central handled 15 loads, generating revenues of \$8,629.96, for which both the origin and the destination of Central's participation in the move were points in Pennsylvania. For the period January through June, 1988, Central handled 2,570 loads for which either the origin, the destination, or both, were points in Pennsylvania; that traffic generated a total of \$3,003,057.30 in revenue. (Central Exhibit 1, pp. 5-6). During the period October, 1987, through September, 1988, Central originated and/or delivered 5,095 loads at Pennsylvania points. Those loads generated \$5,922,533 in revenue. (Central Exhibit 7, pp. 2-3). Between October, 1987 and September, 1988, Central rendered service for 84 different shippers and 242 different consignees. (Central Exhibit 7, p. 3).

Fesperman sponsored Central Exhibit 1B, which is a summary of the Central shipments to and from Pennsylvania by location between October, 1987, and September, 1988. Central's Exhibit 1B, which shows loads and revenues involving Pennsylvania from October, 1987, through September, 1988, contains revenue from other services besides transportation, such as tank cleaning services and trailer spotting services. (N.T. 95). Generally, where Exhibit 1B shows revenue but no load, the revenue is for an

accessorial charge. (N.T. 95-96). As a percentage of its operating revenue, the revenue generated by Central cleaning facilities is probably 1/10 of 1 percent. (N.T. 101). Central's Exhibit 1B is a list of shipments handled in Pennsylvania in interstate commerce; it is not meant to precisely describe what Central will transport between points in Pennsylvania should this application be approved. (N.T. 123-124).

As of September 26, 1988, Central operated 369 company-owned linehaul tractors and 121 owner/operator-owned tractors. (Central Exhibit 1C). Central operates a total of 778 trailers systemwide. With the exception of one flatbed trailer and one safety training trailer, the balance of the trailers are trailers designed to transport bulk commodities, such as tank trailers, pneumatic dry bulk trailers, and dump trailers. (Central Exhibit 1D). If Central is granted operating authority from the Commission, Central will utilize the equipment that it bases at its Karns City terminal along with equipment unloading in Pennsylvania, New Jersey, Eastern Ohio, or other nearby locations, for transportation in Pennsylvania. (Central Exhibit 1, pp. 10-11). Central has a total of 39 trailers assigned to its Karns City terminal, 14 trailers assigned to its Paulsboro, New Jersey terminal, and 20 trailers assigned to its Baltimore, Maryland terminal. (Central Exhibit 2).

Central has a facility for the cleaning of tank trailers at its Karns City terminal. Cleaning of Central's trailer equipment will be accomplished either at Central's Karns City terminal or at a commercial cleaning facility, depending on the location of the trailer when it is unloaded, the location of the loading point for the next load, the scheduled loading and unloading times, the driver's hours of service available, and the product that needs to be cleaned. (Central Exhibit 1, pp. 11-12). Neither of the other two Central terminals which are near Pennsylvania (Paulsboro, New Jersey and Baltimore, Maryland) have cleaning facilities. At those locations, Central uses public commercial facilities for cleaning its trailers. (N.T. 42). In most cases, cleaning costs are part of the rate charged to the shipper for transportation. Central has a relatively short list of commodities where the cleaning costs are assessed as an additional charge because they are higher than Central is willing to absorb as part of the transportation rate. Generally, such additional cleaning charges are negotiated with specific customers. (N.T. 44-45).

Central maintains a preventative maintenance program which is described in Central Exhibit 1E. (Central Exhibit 1, p. 11). Central follows certain specific procedures for hiring all drivers. Central maintains training programs for new drivers which focus on the transportation and handling of hazardous as

well as non-hazardous loads. (Central Exhibit 1F; Central Exhibit 1, p. 13). Between 1983 and 1987 Central won a number of safety and service awards from shippers and from trucking associations. (Central Exhibit 1G).

Central is a non-union carrier, in that its employees are not represented by a collective bargaining agent. (N.T. 57). Central pays its linehaul drivers a percentage of revenue, depending upon seniority. The drivers also get a percentage of the accessorial charges. (N.T. 59-60). Although Central pays its employee drivers a percentage of revenue, it does withhold income tax and social security. (N.T. 127). Central distinguishes between its employee drivers and owner-operator drivers who are treated as independent contractors. (N.T. 127).

Central anticipates transporting similar commodities in intrastate commerce that it presently transports in interstate commerce. That service would focus on the bulk transportation market. (Central Exhibit 1, pp. 9-10). In particular, Central's service would be focused upon the bulk transportation of chemicals, including dry bulk products, for industry. (N.T. 32-33). More than 50% of the chemical traffic anticipated by Central is considered to be hazardous by the U. S. Department of Transportation (US DOT) or the Environmental Protection Agency (EPA). (N.T. 33-34). The average load transported by Central

runs between 4,500 and 6,500 gallons. Central has a few aluminum trailers which have a capacity of 8,500 gallons. (N.T. 29).

At this time, Central has not determined a specific schedule of rates to be charged for its Pennsylvania intrastate services. Central would apply its tariff respecting accessorial services that it now applies for interstate commerce, as well as for intrastate commerce in other states. Central's charges for cleaning, detention, use of pumps, extra drivers, weekend layovers, Sunday service, spotting of trailers and stopoffs are more favorable than those maintained in Pennsylvania intrastate commerce by Matlack. (Central Exhibit 1, p. 14).

Central furnished balance sheets as of December 31, 1986, December 31, 1987, and June 30, 1988. Central also supplied income statements for calendar years 1986 and 1987, as well as for the first six months of 1988. Central's balance sheet as of June 30, 1988, shows total assets of \$29,716,899 and total liabilities of \$3,967,978. Stockholders equity, consisting of common stock and retained earnings, was \$25,748,921. Central's income statement for the six months ending June 30, 1988, shows net income after allowance for income taxes of \$1,839,061, on operating revenues of \$26,511,262. (Central Exhibit 1H). Since December 31, 1987, Central has been free of any long-term debt. As of December 31, 1987, Central's ratio of current assets to current liabilities was 3.85 to 1.00, a more

favorable ratio of current assets to current liabilities than six of the protestant carriers. (Central Exhibit 1, p. 15).

Central carries \$5,000,000 of insurance coverage for bodily injury, property damage, and cargo coverage, plus umbrella coverage of \$10,000,000. (Central Exhibit 7, p. 7).

Fesperman testified that he is aware of no proceedings in which this Commission or any other state regulatory commission asserts that Central is operating in intrastate commerce without proper authority. He testified that there are no proceedings pending before the ICC or initiated by the "FHWA" seeking suspension or revocation of Central's operating authority on grounds of failure to substantially comply with safety regulations. (Central Exhibit 7, p. 7).

Fesperman testified that a grant of authority to render intrastate transportation in Pennsylvania would allow Central to offer a more efficient service to its customers in Pennsylvania and the surrounding area. A grant of Pennsylvania intrastate authority would permit Central to coordinate interstate and intrastate loads so as to avoid empty mileage. (Central Exhibit 7, pp. 7-8).

Evidence was presented regarding shipments handled by Central between two points within Pennsylvania. These movements, which numbered approximately 22 in 1988, fell into four categories. (N.T. 48). Several of the movements originated at

Unitank Terminal Services in Philadelphia and moved to various points in Pennsylvania. Unitank is a terminal storage facility. (N.T. 49). Central regards this transportation as taking place in interstate commerce, because the materials transported, various chemicals, had prior interstate movements by water by which they arrived at the Unitank facility. (N.T. 49-50). Fesperman testified that he did not know where the products came from when they moved by water, or how long they remained at Unitank prior to being moved by Central to other points in Pennsylvania. He also testified that he did not know who owned the products when they were transported by water and that he did not know when the products were sold to the final consignee. (N.T. 50-51). Fesperman testified that they had sought and received a legal opinion that Central's transportation of such products between points in Pennsylvania was considered to be in interstate commerce. (N.T. 52).

Fesperman believes that the transportation of chemicals to Unitank by water originates at a foreign point. (N.T. 130). It is Fesperman's understanding that so long as such material moves into Pennsylvania from another state or country, regardless of whether it comes by water, rail, or motor transportation, and regardless of how much or how little time the material spends in storage prior to being transported to another point within Pennsylvania, the intrastate portion of the transportation would

be a continuation of a movement in interstate commerce. (N.T. 134-135). A legal opinion to that effect was obtained by Central from its attorney in Washington, D.C., Steve Heisley. The opinion was obtained approximately three weeks prior to the hearing in this matter on November 1, 1988, during a telephone conversation. (N.T. 135-136). Central contends that it can render the transportation from Unitank under its ICC contract carrier authority. It does have a contract with Interstate Chemical which is the consignee of the shipments from Unitank. (N.T. 137). Interstate is a middleman which ships directly from Unitank to its customers. (N.T. 137-138). Central intends to continue to render transportation from Unitank to points in Pennsylvania on the basis of the legal opinion that the transportation is a continuation of a movement in interstate commerce until such time as it is advised or instructed otherwise. (N.T. 68-69).

The second category of intrastate movement in Pennsylvania involved the transportation of water between points in the Pittsburgh area in January, 1988, subsequent to the catastrophic collapse of the Ashland oil fuel tank. The transportation was apparently performed for the Allegheny County Emergency Management Agency. (Matlack Exhibit 1). It was Central's understanding that the Public Utility Commission authorized tank carriers to transport water during the emergency

which resulted from the contamination of the rivers by the spilled fuel oil, whether or not they held authority from the Commission to do so. (N.T. 54-55).

The third category of Pennsylvania intrastate transportation involved the transportation of material between two points on the property of the Kopper's plant in Petrolia, Pennsylvania. That transportation was conducted entirely within the plant boundaries and was not conducted over any public highway. (Matlack Exhibit 1; N.T. 55-56).

The fourth category of intrastate transportation involved one load of phosphoric acid which was transported from Morrisville, Pennsylvania, to West Middlesex, Pennsylvania. (N.T. 57). In that case, the shipper, Interstate Chemical Company of Brookfield, Ohio, told Central that the load was destined to Ohio. After the truck was loaded, Central was notified that the load was reassigned to Interstate Chemical in West Middlesex, Pennsylvania. Because the material had already been loaded into the trailer, Central transported it. That move took place on May 11, 1988. (N.T. 56-57).

On July 15, 1986, Central was assessed a fine for transporting corrosive material through a tunnel on the Pennsylvania Turnpike. (N.T. 81; Refiner's Ex. 1). Central deducted the fine from the pay of the driver of the vehicle because Central has a policy that if the fine results from a

violation of company procedures, the driver or operator is responsible for the fine. (N.T. 82). On May 12, 1988, Central was fined in Pennsylvania because its vehicle was lacking a driver vehicle report. (N.T. 82-83; Refiner's Ex. 1). In that case the fine was deducted from the salary of the operator. (N.T. 83). On December 23, 1986, a Central truck was cited in Pennsylvania for failure to display hazardous materials placards properly and for a violation concerning brakes. (N.T. 84). In that case, the fine was not deducted from the driver's salary because the violations, including the placard violation, resulted from vehicle defects which were not the driver's responsibility. (N.T. 85). A driver who feels that he should not be penalized for a violation has the right to appeal the Operating Department's decision to the management of the Company. (N.T. 85; Refiner's Ex. 1).

Central has generated no revenue in the City of Warren, Warren County, Pennsylvania, between October, 1987, and September, 1988. (N.T. 104). Central has had no past business with United Refining Company in the City of Warren. (N.T. 104).

Fesperman is familiar with the difference between motor carrier regulation in Pennsylvania and motor carrier regulation by the ICC. (N.T. 126). Fesperman is familiar with the restrictive amendments filed by Central as Supplemental Exhibit 5. He understands that the description in the

restrictive amendment prohibiting the transportation of limestone and limestone products also prohibits the transportation of lime. Central is agreeable to the restrictions contained in the restrictive amendments. (N.T. 64-65, 129).

Jerry Skidmore is the director of cleaning and waste treatment systems for Central. He has held that position for approximately four and 1/2 years. His responsibilities are to ensure that tank cleaning is carried out properly and to ensure that waste treatment is handled by economical and approved methods. Previously he worked for Coastal Tank Lines where his responsibilities were similar. (N.T. 660-661).¹

Skidmore does not deal with spills which occur on the highway. Central employs an environmentalist, who, with Central's safety department, deals with trailer spills. (N.T. 662). Central does not maintain a rapid response team to deal with spills, but rather contracts out such work to professional people who handle spill cleanup in the area in which a spill takes place. (N.T. 663).

¹During the first day of hearing, one of the protestants, Matlack, attempted to cross-examine Central's operating witness, David Fesperman, regarding alleged environmental violations such as hazardous substance violations. (N.T. 14, 26-29). Central objected to the relevancy of the line of questions. (N.T. 14-16). Central also indicated that Fesperman was not knowledgeable in some of the areas of inquiry. (N.T. 15, 16, 19-20). Accordingly, Central made available the witness Skidmore to respond to questions posed by Matlack regarding possible environmental or similar violations. (N.T. 609).

On June 4, 1986, at Central's terminal at Charlotte, North Carolina, two Central employees died of asphyxiation after being sent into a tank trailer to clean it. (N.T. 673, 677-678, Matlack Exhibit 3, p. 2). While the coroner determined that methylene chloride was responsible for the deaths, the witness testified that it was not determined that the methylene chloride had been in the tank. The witness further testified that methylene chloride had not been the product carried in the tank immediately prior to the men being sent in to clean it. (N.T. 678). At the time the workers were asphyxiated, they were wearing no protective equipment and no oxygen masks or similar equipment. (N.T. 678).

As a result of that incident, the North Carolina Department of Labor issued a citation against Central for violation of several occupational safety and health statutes and federal regulations. (Matlack Exhibit 3, pp. 6-7). The citation was resolved by a stipulation agreement between Central and the North Carolina Department of Labor which resulted in a consent order being issued. The agreement between Central and the Department of Labor provided, inter alia:

Stipulations

Effective upon approval of this Settlement Agreement, the parties to this action hereby agree and stipulate to the following settlement of the matters at issue herein:

1. As part of this Settlement, Respondent agrees to withdraw its notice of contest to the Citation and promptly pay the proposed penalty of \$1,800.

2. Respondent further agrees to implement and enforce a confined space entry program for all employees who may enter and work in the interior compartments of tanker trailers. Until the adoption of a confined space entry standard by OSHA, it is recommended that Respondent adopt and enforce a program consistent with the NIOSH Criteria Document for Working in Confined Spaces. In any event the confined space entry program to be implemented and enforced by Respondent shall provide for:

(a) Training and instructions on the hazards involved, the necessary precautions to be taken, and the appropriate personal protective and emergency rescue equipment required for entry into, work in, and rescue from confined spaces such as the interior compartments of tanker trailers.

(b) Atmospheric testing/monitoring of the interior compartments of tanker trailers prior to entry, and if necessary continuously during work therein, to ensure that the atmosphere is safe.

(c) An entry permit system prohibiting entry until the atmosphere of the interior compartment has been tested and a determination has been made as to what protective measures are necessary and required for safe entry.

(d) Adequate ventilation, prior to entry and during work in the interior compartments of tanker trailers, to ensure that the atmosphere is safe.

(e) The use of appropriate personal protective and emergency rescue equipment where hazardous atmospheres may be encountered during entry, work in, or rescue from interior compartments of tanker trailers.

(f) A trained observer with the capability to safely effect rescue operations stationed at the point of entry in continuous contact with any employee entering the interior compartment of a tanker trailer.

(g) A written confined space entry program addressing each of the above.

3. Respondent further agrees to establish and maintain a respiratory protection program in accordance with the requirements of 29 CFR 1910.134 which shall include:

(a) A written program adequately addressing the proper selection, use, maintenance and inspection of respirators.

(b) Training, instructions and testing on the safe and proper use, selection, care, inspection and maintenance of available respirators for each employee who may be required to use respirators during normal and/or emergency operations.

(Matlack Exhibit 3, pp. 9-11).

Skidmore testified that Central had begun implementing its safety program prior to the deaths in 1986. (N.T. 689-690).

On April 14, 1988, the North Carolina Department of Labor issued a citation against Central for failure to comply with portions of the consent order. However, subsequent to a hearing before an administrative law judge, the administrative law judge dismissed the citation and the complaint of the Department of Labor based upon it. The basis of the dismissal was the administrative law judge's conclusion that Central had made a good faith effort to comply with the consent agreement,

and that its failure to comply resulted, at least in part, from a miscommunication between Central and the Department of Labor. (Matlack Exhibit 4).

Since the incident involving the two fatalities in 1986, four other Central employees have been injured in the course of cleaning tanks. The witness testified that to his knowledge, none of those injuries were sufficiently serious as to require hospitalization. (N.T. 683-684). None of the injuries were of an inhalation nature. (N.T. 685).

As a result of an inspection on December 3, 1986, the South Carolina Department of Labor issued a citation on January 29, 1987, charging that Central, at its Greenville, South Carolina terminal, failed to comply with certain occupational safety and health laws and regulations pertaining to the washing of tank trailers. (Matlack Exhibit 3, pp. 18-24). This situation also concerned the failure of Central to require its employees to wear appropriate protective equipment and respirators. (N.T. 689). This citation was resolved by a settlement agreement between Central and the South Carolina Department of Labor. In the agreement, Central specifically did not admit the allegations contained in the citation. However, Central did abate all of the items noted in the citation, primarily by implementation of a confined space entry program. (Matlack Exhibit 3, pp. 25-27; N.T. 689-690).

On July 31, 1986, Central received a US DOT driver vehicle examination report indicating that Central's vehicle was transporting hazardous material without a properly prepared shipping paper. The report also disclosed an out-of-service violation on the tractor in that the brakes were out of adjustment. (Matlack Exhibit 3, pp. 16-17).

On April 22, 1987, the Pennsylvania Department of Environmental Resources (DER) issued a notice of violation to Central for failure to comply with hazardous waste generator, transporter, and treatment facility requirements with respect to the tank cleaning facility at Karns City. (Matlack Exhibit 3, pp. 30-32). According to the inspection reports upon which the notice of violation was based, the violations occurred because Central failed to recognize the waste generated by its tank cleaning facility as a hazardous waste. (See, e.g., Matlack Exhibit 4, p. 35). Skidmore explained the Karns City tank cleaning facility has a waste treatment facility which pretreats the water used to clean tanks, after which it is transported to the City of Parker sewer system. (N.T. 690). The problem occurred because Central was using the tank cleaning facility to clean trailers that had transported "priority pollutants categorized as 'P' or 'U' materials". (N.T. 691). DER takes the position that if a cleaning facility is used to clean any products on the priority pollutant list, then all of the waste

water from that facility must be treated and disposed of as a hazardous substance. (N.T. 691). Skidmore testified that the situation arose because at the time, Karns City was a new facility, and Central was not familiar with DER's interpretation of the disposal laws and regulations in Pennsylvania. (N.T. 690-691). Central has dealt with the situation by simply not using the Karns City facility to clean hazardous materials that are categorized as "P" or "U" materials. (N.T. 691; Matlack Exhibit 3, p. 42).

Matlack attempted to introduce, as Matlack Exhibits 6 and 7, two newspaper articles regarding Central Transport. Central objected on the basis of hearsay. (N.T. 692-694). I sustained the objection because Matlack was unable to produce any witness with personal knowledge of the alleged incidents reported in the newspaper articles. (N.T. 692-697).

George Keller testified in support of the application on behalf of Witco Corporation. Keller is the Central Regional Traffic Manager for Witco Corporation. (Central Exhibit 8). Witco operates a petroleum refinery in Petrolia (Butler County), Pennsylvania, where it produces products such as petroleum oil, wax, petrolatums, and white oil. (N.T. 148). Witco also operates a refinery at Bradford (McKean County), Pennsylvania, at which it produces products such as motor (lubricating) oil, waxes, and petrolatums. (N.T. 149). Witco also operates a

facility at Trainer (Chester County), Pennsylvania. (Central Exhibit 8). Between October, 1987, and September, 1988, Central transported 431 loads from Petrolia to 21 different states. During that same period, Central transported 84 loads from Bradford to 11 different states; during the same period, Central transported 26 loads from Trainer, Pennsylvania, to three different states. (Central Exhibit 8).

Between July, 1988, and September, 1988, Witco shipped 87 loads from Petrolia to 17 different Pennsylvania destinations located in 13 different counties. Of those 87 loads, 86 were transported by four different motor common carriers (including Matlack and Leaseway); the remaining load was transported by the customer itself. (Central Exhibit 9). During that same three-month period, Witco shipped 942 loads from its Bradford facility to 52 different Pennsylvania destinations located in 32 different counties. Of these shipments, 709 were transported by eight different motor common carriers (including Chemical Leaman, Crossett, Leaseway, and Oil Tank Lines); the balance were transported either by Witco or by its customer. Leaseway is a holding company which owns Refiners (a protestant herein) and Fleet, another company which renders service to Witco. (Central Exhibit 10; N.T. 153-155). Central Exhibits 9 and 10 are representative of the traffic generated by Witco from those facilities to points in Pennsylvania. (N.T. 150, 155). With

respect to the shipments shown on Central Exhibits 9 and 10, if a shipment is not a customer pickup, Witco arranges for the shipping. (N.T. 162).

At its Petrolia facility, Witco predominately requires single stainless steel insulated equipment of the M.C. 307 type. It also uses some compartmented tanks of the same type, namely insulated stainless steel. Central can supply such equipment. (N.T. 151). Witco ships primarily food grade material from its Petrolia facility. The principal product is white oil, a colorless, odorless, tasteless petroleum that is used as a base in pharmaceuticals and such products as lipstick and baby oil. It also ships other petroleum products that are used for such things as bakery goods and chewing gum wrappings. All of these products are susceptible to contamination. Witco requires its carriers to supply very clean and dry trailers. If the equipment cannot pass a rigorous inspection, it is rejected and sent back to the carrier to have it cleaned if possible. If it is not possible to have it cleaned and returned in a timely fashion, Witco calls another carrier that has clean equipment because Witco's customers cannot tolerate any unnecessary delay in receiving their product. (N.T. 152-153). Witco has just completed a \$27 million project at its Petrolia facility which has increased production substantially, necessitating more shipments. (N.T. 150).

Witco does not require the equipment used at its Bradford facility to meet the same standards which it requires at its Petrolia facility. From its Bradford facility, Witco ships predominately lubricating oil and not food grade material. In Bradford, Witco requires more compartmented tanks than it does at Petrolia. (N.T. 151).

Keller stated that Witco is supporting Central to provide service between points in Pennsylvania primarily "to see that we are fully covered with all viable carriers." (N.T. 157). He further stated that Witco would like to have a greater choice among carriers so that it could afford to be more choosy about dealing with carriers that become a problem in terms of rejected trailers or failure to meet Witco's schedule. (N.T. 157, 159). Witco is supporting Central because it has a new cleaning facility and terminal located approximately a mile from Witco's plant in Petrolia. (N.T. 157). Matlack's closest facility to Petrolia is approximately an hour and ten minutes away in Neville, Ohio. (N.T. 157-158). Matlack has a terminal within one quarter mile of Witco's Bradford plant. (N.T. 158). Chemical Leaman has a terminal in Warren that is approximately 35 miles from both Bradford and Petrolia. (N.T. 158).

Keller stated that if the application is granted, Witco would use Central's service to points in Pennsylvania from both

the Bradford and Petrolia locations. Keller did not indicate the projected extent of such use. (N.T. 159).

Valgene Frye is the Traffic Manager for Pennzoil Products Company. (Central Exhibit 11). Pennzoil operates a petroleum refinery at Karns City (Butler County), Pennsylvania. (N.T. 165). From its Karns City facility, Pennzoil ships white oil and petrolatums. (N.T. 165). Pennzoil also operates a facility at Rouseville (Venango County), Pennsylvania from which it ships primarily kerosene, and also some petrolatums and neutral oil. (N.T. 167).

Frye sponsored Central Exhibit 11 which is a summary of the interstate traffic moving via Central from Pennzoil's Karns City and Rouseville facilities during the period October, 1987, through September, 1988. During the time period covered by the exhibit, Central transported 484 loads for Pennzoil from Karns City to 19 different states. Central also transported 61 loads from Rouseville destined to nine states. Pennzoil is satisfied with the service and trailer equipment received from Central for service rendered in interstate commerce. (N.T. 169). Central supplies the type of trailer equipment required and in the condition that Pennzoil needs it. (N.T. 169). 90% of the shipments outbound from Karns City move in interstate commerce. Only approximately 10% of those shipments move in intrastate

commerce within Pennsylvania; that 10% represents approximately 50 loads per month. (N.T. 174-175).

Frye also sponsored Central Exhibit 12 which is a summary of intrastate Pennsylvania traffic originating in Karns City during the period January through October, 1988. During the period covered by the exhibit, Pennzoil shipped 504 loads averaging 40,000 to 44,000 pounds to 22 different destinations located throughout Pennsylvania. The common carriers which participated in the traffic shown on Exhibit 12 were Fleet, Montgomery and Matlack. (N.T. 165). Of the 504 shipments shown on Exhibit 12, 108 (transported to Carnegie) were customer pickups and 47 (transported to Rouseville) were transported by Pennzoil itself. (N.T. 166). In general, the commodities transported in the loads shown on Exhibit 12 were petroleum and petrolatums. (N.T. 166). When Pennzoil refers to Fleet, it includes Refiners, an affiliated company, which is a protestant in this proceeding. (N.T. 185).

Although Frye testified that he is responsible for selecting the carriers used for outbound service from the Karns City facility (N.T. 170), he acknowledged that some of Pennzoil's customers designate particular carriers for their shipments. For example, the customer at West Elizabeth, Pennsylvania requires the use of Fleet or Refiners. Similarly, the customer at Carnegie, when it does not pick up its shipments itself,

designates Fleet as the primary carrier and Matlack as the backup. (N.T. 186). The Carnegie carrier designation has been in place for approximately two years (N.T. 187); that customer designation will be followed even if this application is granted. (N.T. 186-187).

Frye sponsored Central Exhibit 13 which is a summary of intrastate loads inbound to Karns City for the period January through September, 1988. Pennzoil had 4,447 inbound shipments during the period of time covered by the exhibit from six different locations. However, of the 4,447 loads, 3,762 moved from Rouseville to Karns City, and 3,232 of those loads were transported by Pennzoil itself. Only 530 of the loads from Rouseville to Karns City were handled by common carriers, primarily Refiners. (N.T. 166-167). With respect to traffic moving from the other origins, most of it is also transported by Pennzoil itself, but Pennzoil uses common carriers for that transportation when its own fleet cannot handle it. (N.T. 167). Moreover, approximately 95% of the loads transported by common carrier from Rouseville to Karns City consisted of kerosene. (N.T. 167). Kerosene has been excluded from the scope of the authority sought, by restrictive amendment. (Central Exhibit 5). The balance of the commodities transported on Central Exhibit 13, petrolatums, naphtha, and neutral oils, are within the scope of the authority as restrictively amended. (N.T. 168). Of the

other shipments shown on Central Exhibit 13, all of the loads from Bradford are transported either by Witco (the shipper) or by Crossett. 90 to 95% of the traffic moving from Petrolia to Karns City is transported by Pennzoil in its own trucks. (N.T. 187-188). The same is true of the shipments moving from Emlenton to Karns City shown on Central Exhibit No. 13. (N.T. 188). It is likely that Pennzoil will continue to transport the vast bulk of these shipments in its own trucks regardless of the disposition of this application. (N.T. 188). The shipments shown on Central Exhibit 13 which moved from Pittsburgh to Karns City were transported by Refiners. (N.T. 188-189). All of the shipments shown on Central Exhibit 13 which moved from Freeport to Karns City were transported by Pennzoil's own trucks, and that will continue to be the case regardless of the outcome of this application. (N.T. 189).

Pennzoil is supporting this application, despite its use of Refiners, Fleet, Montgomery and Matlack, because Pennzoil "is continually growing and we have to look out for our best interests to make sure that we have adequate equipment to transport the material that we are producing and selling". (N.T. 170). Frye testified that the terminal and cleaning facilities which Central maintains in Karns City are about one half mile from Pennzoil's facility. (N.T. 171). Pennzoil has a lot of short-notice shipments and Central is able to respond quickly.

(N.T. 171). If Central had been authorized to perform service between points in Pennsylvania during the period January through October, 1988, Pennzoil would have tendered some of that traffic to them. (N.T. 171). With respect to the traffic moving inbound as shown on Central Exhibit 13, Pennzoil may have utilized Central's services on a last-minute basis as a substitute for Pennzoil's own equipment. (N.T. 172).

Frye also sponsored Central Exhibit 14 which is captioned "Service Failures via Fleet, Matlack, Montgomery to Carnegie, Pennsylvania". (N.T. 172). That exhibit is a list of nine occasions between January 20, 1988, and October 20, 1988, when Central requested, but was unable to obtain, compartmented tank trucks from one or more of the enumerated carriers to transport a shipment from Karns City to Carnegie, Pennsylvania. Frye testified that this was important to Pennzoil because the customer, Carnegie, is one of Pennzoil's best customers. (N.T. 172-173). He further testified that the customer's needs require the use of compartmented trailers which frequently are not available from the carriers enumerated on the exhibit (Fleet, Matlack, and Montgomery). Frye indicated that Pennzoil was interested in Central's service because they would have compartmented equipment available to Pennzoil for this shipper's service. (N.T. 172-173). Central Exhibit 12 indicates that between January and October, 1988, out of 144 shipments to

Carnegie, only 36 moved via common carriers. Furthermore, the customer at Carnegie has specified the carriers which it wants Pennzoil to use if it does not use its own truck. The customer has specified Fleet, with Matlack as a second choice. (N.T. 186). Pennzoil follows that designation and would continue to do so even if this application is granted. (N.T. 186-187).

Pennzoil maintains a fleet of equipment at Karns City; it operates 12 tractors and approximately 20 tank trailers. None of them are multi-compartmented trailers. (N.T. 177). Only approximately five to ten per cent of Pennzoil's Pennsylvania loads are sent out in compartmented trailers. (N.T. 177). Pennzoil uses its fleet primarily to haul material inbound; Pennzoil's fleet hauls very little out of its refinery. (N.T. 177).

Thomas F. McGrath is the Corporate Traffic Manager for McCloskey Corporation. (N.T. 205). McCloskey maintains a facility in Philadelphia which manufactures industrial resins and solvents; these products are used by manufacturers in the paint and coating industries. (N.T. 207-208). The products which McCloskey ships generally must be shipped in insulated trailers because the product is usually shipped at a temperature between 125 and 185 degrees. That temperature has to be maintained until the product is delivered. If the product is not maintained at that temperature level, the product will not flow

freely, which creates problems in unloading. Sometimes the product cannot be unloaded if it coagulates. (N.T. 209-210).

McCloskey makes appointments with carriers for loading the tank trucks. McCloskey's physical facilities are very restricted and when a carrier is late in making a pickup, it delays the loading procedure and frequently creates a situation in which McCloskey has to keep people on overtime to load the product. Such delays may delay the delivery of the shipment. Delays in loading outbound shipments also interfere with the receipt of inbound raw materials. (N.T. 211-212). The tank trucks are loaded from storage tanks at McCloskey's facility. Loading a trailer usually takes about two hours. Frequently, the product has to be heated to the correct temperature before it can be loaded. (N.T. 224). McCloskey prefers to have the carriers arrive at the appointed time for loading, but feels that a carrier should arrive within half of an hour of its appointed time. (N.T. 223). McCloskey can load the product anytime during a 24-hour period except between midnight Saturday and 7:00 Sunday morning. McCloskey will call people in if necessary to load products. McCloskey tries to give carriers at least 24 hours advance notice to supply a trailer for loading. Generally, McCloskey never gives less than 18 hours notice. The notice is given by telephone to a carrier's dispatcher. (N.T. 224-225).

McCloskey requires the use of compartmented trailers for various reasons. First, it occasionally ships more than one product to the same customer. McCloskey also ships stop-off shipments to more than one customer. (N.T. 209). Such stop off shipments can include combined intrastate and interstate loads. (N.T. 206). McCloskey would benefit by having access to the insulated and compartmented trailers operated by Central in order to use that equipment on moves between points in Pennsylvania. (Central Exhibit 15). McGrath did not know whether Central has compartmented trailers situated at its nearest terminals. (N.T. 236-237).

For intrastate shipments, McCloskey has used primarily Matlack and Chemical Leaman. McCloskey also used a carrier known as McNulty Bulk Transportation, but stopped doing so when it learned that McNulty did not have intrastate operating authority. (N.T. 212). McCloskey never has been solicited for outbound traffic by Oil Tank Lines, Crossett, or Refiners Transport. (N.T. 211).

McGrath testified that Matlack has not been used on Pennsylvania intrastate traffic since May, 1988 because McCloskey had experienced "so many missed pickups and late pickups and late deliveries on the part of Matlack that we had to discontinue their service as a result of customer complaints and pressure from the sales department." (N.T. 212-213). A list of late

pickups by Matlack and by Chemical Leaman between December 23, 1987, and October 26, 1988, was sponsored by McGrath as Central Exhibit 17. A review of that list shows 14 late pickups of which 10 were attributable to Matlack. Of the ten attributable to Matlack, the pickups ranged in degree of lateness from 50 minutes to six hours after the appointed time. The four late pickups attributed to Chemical Leaman generally ranged from 45 minutes to an hour late. (Central Exhibit 17). The witness could not identify which of the shipments on Central Exhibit 17 resulted in customer complaints. He stated that there may not have been customer complaints if the shipments were not delivered late despite the fact that they were loaded late. (N.T. 228).

McGrath acknowledged under cross-examination that at one time he had discussions with a representative of Matlack regarding a rate increase which Matlack intended to implement. McGrath testified that he attempted to persuade the Matlack representative to reduce the amount of the increase for transportation from McCloskey's plant in Los Angeles, California. He maintained that he did not attempt to have him make any reduction in rates for transportation from the Philadelphia facility. He acknowledged telling the Matlack representative that if Matlack pursued the California rate increase, then McCloskey would have to change carriers. At that time, McCloskey

began using McNulty, an uncertificated carrier, to render transportation from its Philadelphia facility. (N.T. 233-235).

Between October, 1987, and September, 1988, McCloskey used Central to transport one load outbound from Philadelphia to Somerset, Massachusetts, one load inbound from Cincinnati, Ohio and three loads inbound from Baltimore, Maryland. (Central Exhibit 15). In interstate commerce, McCloskey has also used Matlack, Tripamak, Liquid Transporters, Dana Transport Systems, Schwermann, and Quality Carriers. (N.T. 214-215). Interstate shipments constitute approximately 70% of the total volume of McCloskey's outbound shipments. (N.T. 219). Of those interstate shipments, approximately 65% travel in compartmented trailers. (N.T. 220). Of the 30% of McCloskey's outbound traffic that moves in intrastate commerce, 70-75% travels in compartmented trailers. (N.T. 220). As part of Central Exhibit 15, McCloskey submitted a list of stopoff shipments which required the use of compartmented trailers which moved in intrastate commerce in Pennsylvania between January, 1988 and July, 1988. Also as part of Central Exhibit 15, McCloskey submitted a customer list which indicates that it has customers throughout Pennsylvania. During the period December, 1987, through October, 1988, McCloskey shipped 35 shipments in intrastate commerce in Pennsylvania, amounting to 33,733,146 pounds, of which 27,337,586 pounds were resins and solvents. (Central Exhibits 15 and 16).

Refiners transports products inbound to the McCloskey plant from points in Pennsylvania. (N.T. 246-247). McCloskey does not control the inbound transportation of bulk products to its plant because the products are all purchased on a delivery basis. (N.T. 244). The suppliers of the inbound raw materials control that transportation. (N.T. 247).

McCloskey would prefer to use a carrier that has a terminal location within 50 to 75 miles of its plant. (N.T. 248). McGrath did not know whether Refiners had a terminal within that area. (N.T. 248). McGrath did not know where Central's terminals, if any, were in relationship to McCloskey's plant in Philadelphia. (N.T. 236). McGrath is aware that the closest Matlack terminal to McCloskey's facility is approximately five miles away. (N.T. 225-226).

McGrath is not familiar with the protestant Marshall. (N.T. 250). When made aware of the fact that Marshall's relevant operating authority only extends to points within 35 miles of Philadelphia, McGrath stated that McCloskey probably would not use them because of the limited operating authority. (N.T. 250). McCloskey does not ship products to the facilities of Sun Refining and Marketing Company. (N.T. 251).

The materials shipped by McCloskey are primarily alkyd and water soluble resins and polyvinyl acetate. (N.T. 254). McGrath did not believe that a restriction prohibiting the

transportation of petroleum and petroleum products would preclude the transportation of McCloskey's resins and solvents. (N.T. 254-255).

McGrath testified that McCloskey is supporting the application of Central because it (McCloskey) is limited to the services of basically one carrier, Chemical Leaman. McCloskey would like to have the services of other carriers available to it. If Central is awarded operating authority, McCloskey will determine some percentage share of the business that Central would be tendered. (N.T. 213).

William F. Dahms, Sr. is the Manager of Traffic and Distribution for E. F. Houghton & Co. located in Valley Forge, Pennsylvania. (Central Exhibit 18). Houghton has a facility in Fogelsville (Lehigh County), Pennsylvania, which is engaged in the manufacture and distribution of oils and greases. (N.T. 259). Those products are shipped from that facility to various points in Pennsylvania including Emigsville, Marietta, Steelton, York, Frazer, Red Lion, Ransom, Mehoopany, Downingtown, Hanover, Jenkintown, Corry, Lancaster, Harrisburg, Reading, Oil City, and Erie. Over a period of a year, Houghton makes approximately 80 to 90 shipments from its Fogelsville facility to points in Pennsylvania. (N.T. 260). Houghton deals strictly with industrial firms, such as U. S. Steel, Bethlehem Steel, and Hammermill Paper Company. (N.T. 261). The Fogelsville facility

receives inbound products in the nature of chemicals, raw materials, and oils, from Bradford, Oil City, Petrolia, and Marcus Hook, all in Pennsylvania. (N.T. 261). For its outbound traffic from Fogelsville to points in Pennsylvania, Houghton requires single-shell, stainless steel insulated trailers. (N.T. 262). Central has the type of trailer equipment that Houghton needs. (N.T. 262).

Houghton has used Central's service in interstate commerce on 12 occasions between October, 1987, and September, 1988. Central handled seven loads of fatty acid and fatty acid esters inbound to Fogelsville from Cincinnati, Ohio; one load of petroleum naphtha inbound from Sewaren, New Jersey; one load of tall oil from Savannah, Georgia and one load of tall oil from Charleston, South Carolina. (Central Exhibit 18). Houghton is satisfied with the service that it received from Central in interstate commerce. (N.T. 262-263).

For outbound service from Fogelsville to points in Pennsylvania, Houghton has been using Matlack and Chemical Leaman at the present time. (N.T. 263). Crossett, a protestant in this case, does bring material into the Fogelsville plant. (N.T. 263). Houghton has no complaints about the service it has received from Crossett on inbound shipments. (N.T. 278). Neither Crossett nor Marshall have solicited outbound transportation business from Houghton. (N.T. 263). Houghton has

utilized Oil Tank Lines on inbound movements from Marcus Hook, Pennsylvania to the Fogelsville plant. (N.T. 264). Houghton is using Oil Tank Lines on an inbound basis to supplement the rail transportation of raw materials from the Sun Oil Refinery. (N.T. 275-277). Houghton has no complaints about the service that it receives from Oil Tank Lines. (N.T. 276). Dahms anticipates that the service from Marcus Hook by Oil Tank Lines will continue even if this application is approved. (N.T. 276).

The nearest Central terminal to the Fogelsville facility is in Paulsboro, New Jersey. (N.T. 262). That terminal is roughly 60 miles from the Fogelsville facility. (N.T. 271). Refiners has a terminal in Allentown which is about eight miles from the Fogelsville facility. (N.T. 270-271). Dahms testified that he was not aware until the day of the hearing that Refiners had intrastate authority to transport commodities such as those shipped by Houghton. (N.T. 268). He acknowledged that Refiners has solicited Houghton's interstate business, but could not recall whether Refiners had solicited Houghton's intrastate business. (N.T. 268-272).

Generally, Houghton pays the freight on inbound shipments and chooses the carriers. (N.T. 266, 273, 278). Most of Houghton's outbound shipments are collect. (N.T. 266). On those shipments, the customer has the final say in choosing a

carrier. (N.T. 273). Nevertheless, Houghton chooses the carrier for approximately 90% of the outbound shipments. (N.T. 279).

Dahms reviewed the restrictive amendment filed by Central and stated that the restrictive amendment would not preclude the transportation of any of the products which Houghton would ship with Central. (N.T. 261-262).

Dahms testified that they are supporting Central's application because Houghton feels that there is a need to have an extra carrier to furnish equipment in response to last-minute requests for service. (N.T. 264). Dahms testified that if the application is granted, Houghton would use Central as a fill-in carrier. (N.T. 264-265).

Betty McKay is employed in the Order Department of Harry Miller Corporation in Philadelphia. Her responsibilities include selecting carriers for the transportation of traffic outbound to points in Pennsylvania. (Central Exhibit 19). Miller ships cleaning compounds and petrolubes. Shipments are sent to Reading, Pennsylvania and Allenport, Pennsylvania. (N.T. 282). Miller ships to Reading about once every two months; Miller ships to Allenport once every three months. (N.T. 283). Miller's shipments require a tank trailer with a capacity of least 5,000 gallons. (N.T. 283). Miller has used Matlack for its shipments to Allenport and to Reading. (N.T. 283). On the

shipments to Reading and Allenport, Miller pays the freight charges. (N.T. 292).

Miller ships approximately 12 shipments per month in interstate commerce. (N.T. 289). Central has rendered service for Miller in interstate commerce. Central transported 10 loads of cleaning compounds outbound from Miller's Philadelphia facility during the period October, 1987 through September, 1988. Six shipments were transported to Burns Harbor, Indiana, one to Chesterton, Indiana and three to Warren, Ohio. During the same period, Central transported three inbound loads of lubricating oil from Florence, Kentucky. (Central Exhibit 19).

The transportation performed for Miller by Central has been performed at a backhaul rate, which is a lower rate which a carrier uses to get its equipment back to the area where it wants it to be stationed. (N.T. 287-288).

There are two persons in McKay's department which select carriers for outbound traffic. McKay is one and Kate Holmes is the other. (N.T. 285). McKay has never heard of Crossett or Marshall. She has heard of Chemical Leaman, but could not recall using them herself. (N.T. 284). Kate Holmes may have used Chemical Leaman. (N.T. 286). Although McKay was not familiar with Oil Tank Lines (N.T. 284), she did acknowledge having seen them making deliveries at Miller's facility. That

service is inbound service which she does not schedule. (N.T. 291). McKay had never heard of Refiners. (N.T. 290).

Miller is supporting the application because it would like to have an alternate carrier to Matlack to use if a shipment must be made on short notice. (N.T. 284). Central would be used as a backup carrier when needed. (N.T. 290).

William M. Hansbury is the Plant Manager for Para-Chem Southern, Inc., at its facility located in Philadelphia. In his position, he is familiar with and responsible for the transportation inbound to and outbound from the Philadelphia plant. (Central Exhibit 20). From its Philadelphia plant, Para-Chem ships liquid latex to Hazleton, Pennsylvania and to points within the city of Philadelphia. (N.T. 294). It ships to Hazleton approximately twice a week. (N.T. 294-295). It ships to points in Philadelphia approximately once every five weeks. (N.T. 294). 95% of the deliveries of liquid latex to Hazleton and to Philadelphia are made in Para-Chem's own equipment at the present time. (N.T. 295, 297). At its Philadelphia facility, Para-Chem receives approximately five inbound loads per month of a resin solution from Neville Island in the Pittsburgh area. (N.T. 294). The trailer required for both inbound and outbound transportation is an insulated 5,000-gallon, single-compartment trailer. (N.T. 295).

The inbound shipments from Neville Island are presently handled by a company called Backhaul Transport, a broker out of New Jersey. (N.T. 295, 308). Hansbury testified that he thought Backhaul held a PUC broker license. (N.T. 308). Backhaul is an ICC property broker. Beeline is the name of a carrier that Backhaul uses. (N.T. 298-299). Para-Chem pays the freight on the transportation by Beeline and Backhaul from Neville Island to Philadelphia. (N.T. 298). All billing is done through Backhaul, the broker. Backhaul is presently using another carrier besides Beeline; the witness did not know the name of the carrier. (N.T. 299). As far as the witness knew, Beeline has intrastate authority. (N.T. 299-300).

During the period October, 1987 through September, 1988, Central transported 36 loads inbound to Para-Chem's Philadelphia facility from Charlotte, North Carolina and 36 loads inbound from Simpsonville, North Carolina. (Central Exhibit 20). Hansbury testified that Central operates the type of trailer equipment needed by Para-Chem for its products and it would be beneficial to Para-Chem if the service of Central were made available to it between points in Pennsylvania. (Central Exhibit 20). Para-Chem uses its own equipment for interstate as well as intrastate deliveries. Para-Chem's equipment is not always available to perform intrastate deliveries. Para-Chem would use Central as a backup to its own equipment. (N.T. 296).

Liquid latex must be kept at a certain temperature for unloading. (N.T. 300-301). Liquid latex must be cleaned out of the tank before you load anything else into it. (N.T. 301). Normally, a cold water rinse is required to clean liquid latex from a tank truck. (N.T. 302).

Para-Chem plans to continue using its own trucks for outbound transportation. (N.T. 304-305). If Central is granted authority, it would be used as a backup to Para-Chem's own equipment for outbound service; Para-Chem may use Central for inbound service from Pittsburgh or Neville Island. (N.T. 306). The restrictive amendment agreed to by Central would not preclude the transportation of Para-Chem's products and materials. (N.T. 307-308). Liquid latex is not a petroleum product. (N.T. 305-306).

Joseph R. Knouse is the Manager of Transportation for Calgon Corporation in Pittsburgh. (Central Exhibit 21). Calgon's primary facility is located in Ellwood City, Pennsylvania where it manufactures water treatment chemicals. (N.T. 318-319). Calgon ships water treatment chemicals both within and beyond the state of Pennsylvania. The primary destination in Pennsylvania is the city of Pittsburgh. Calgon also ships periodically to Mehoopany, New Castle, Spring Grove, and Whitehall. (N.T. 319). Between Ellwood City and Pittsburgh, Calgon ships approximately 15 to 20 truckloads per month. To

each of the other locations, including Bradford, Calgon ships approximately one truckload per month. (N.T. 319-320). On these outbound shipments, Calgon pays the freight and chooses the carrier. (N.T. 320). For this service Calgon requires an insulated stainless steel trailer. On most occasions, a single compartment trailer is sufficient, but occasionally Calgon needs a multi-compartment trailer. (N.T. 320). Presently, the majority of Calgon's intrastate shipments are transported by Schneider National Bulk Carriers (Schneider). (N.T. 321).

During the period between October, 1987, and September 1988, Central handled 42 loads outbound from Calgon to 19 different states. (Central Exhibit 21). Calgon has been satisfied with the service rendered by Central in interstate commerce. (Central Exhibit 21). Knouse testified that it would be a benefit to Calgon to have Central available as a backup carrier for Pennsylvania intrastate traffic that is now handled by Schneider National Bulk Carriers, Inc. (Central Exhibit 21). Calgon would also like to have Central available for intrastate transportation to increase the competition. If Central's application is granted, Calgon will use Central primarily as a backup carrier. (N.T. 321).

The water treatment chemicals shipped by Calgon are liquids. From a commodity standpoint, they are considered synthetic resins. They are polymers. Some of the chemicals are

used for the purpose of treating sludge, others are used by water companies for water treatment. (N.T. 322-323). These chemicals are not petroleum products. (N.T. 323).

Calgon receives inbound bulk shipments into its Ellwood City facility, but that traffic is controlled by Calgon's suppliers. (N.T. 324).

Schneider received the authority needed to serve Calgon in early 1987. Calgon supported that authority, which is a statewide authority with some commodity restrictions. (N.T. 326). Prior to 1988, Calgon used Refiners as a backup carrier. (N.T. 327). Chemical Leaman and Matlack are also available to Calgon as backup carriers. (N.T. 327). Knouse testified that Central would give Calgon "one more option from a competitive standpoint." (N.T. 327). At least for the past year, Calgon has not made use of Refiners as a backup carrier. (N.T. 328).

Chemical Leaman has the capability to handle Calgon's intrastate traffic in Pennsylvania. Chemical Leaman has rendered service to Calgon on intrastate moves in the past. (N.T. 329). Calgon had no service problems with Chemical Leaman's service. Chemical Leaman is a backup carrier for Calgon at the present time. (N.T. 329). At the present time, all of Calgon's shipments are being handled satisfactorily by its primary carrier. (N.T. 330).

Mary Ann Noga is the Traffic Manager for the Valspar Corporation located in Pittsburgh, Pennsylvania. (Central Exhibit 22). Valspar manufactures a can coating for the food and beverage industry. The material is a protective coating for cans and packages of all sorts so that foods or beverages can be preserved in the packaging. (N.T. 333). The can coating material is classified as a paint by the Department of Transportation. (N.T. 338). The material is shipped in liquid form from plants in Pittsburgh and Rochester (Beaver County), Pennsylvania. From Rochester, Valspar ships primarily to Lebanon, Pennsylvania and occasionally to Fogelsville and Philadelphia. Rochester occasionally ships material to the Pittsburgh plant as well. (N.T. 333). At this point in time, all of Valspar's shipments from Rochester are going either to Philadelphia, Pennsylvania or to Valspar's Pittsburgh facility. Valspar has had no shipments to Lebanon or Fogelsville since 1987, although those are still considered viable accounts. (N.T. 338-339). From its Rochester facility, Valspar ships between 24 and 30 intrastate shipments per year. Valspar ships to the same locations from its Pittsburgh facility but because the Pittsburgh facility is smaller than the Rochester facility, the shipments would be fewer. (N.T. 327). For its transportation within Pennsylvania, Valspar has been using Matlack at the present time. (N.T. 335-336). Valspar has used

Chemical Leaman in the past, but not recently. (N.T. 343). Valspar uses primarily Central for its interstate shipments. (N.T. 335-336, 342).

During the period October, 1987, through September, 1988, Central transported 20 loads outbound from Pittsburgh and 318 loads outbound from Rochester to 20 different states. (Central Exhibit 22).

Valspar needs stainless steel insulated trailers for its product. Occasionally Valspar requires three-compartment trailers. (N.T. 334). The trailers must be very clean. If the trailer is not clean, Valspar rejects the equipment. If for any reason the material is shipped in a trailer which is not sufficiently clean, it would be contaminated and would create serious problems. (N.T. 334). Central has equipment suitable for Valspar's transportation requirements. Central is able to meet Valspar's requirements with respect to the cleanliness of trailers. If this application is granted, Valspar would use Central for more competition on its outbound movements to locations in Pennsylvania and as a backup carrier. (N.T. 336).

Matlack dedicates some equipment specifically to the Valspar account. (N.T. 340). Although Refiners has the authority necessary to serve Valspar and has quoted rates to Valspar for service to Pennsylvania points, Valspar does not consider Refiners to be a backup carrier at this time.

(N.T. 340-341). Noga testified that Valspar chooses its carriers on the basis of whether they have appropriate authority and what is the level of their rates. She further testified that "since the number of shipments that we have right now is very limited, we stay primarily with the carriers that we use at this time, and as you know, they are Central and Matlack" (N.T. 342).

Everett Marshall, III is the Vice President of Marshall Service, Inc. (N.T. 351-352). Marshall holds authority from the Commission at A-101153 and at A-101153, F.1, Am-A through Am-D. (Marshall Exhibit 1). Although Marshall's right at A-101153, F.1, Am-D authorizes the transportation of property between points in the City and County of Philadelphia subject to certain restrictions which are not relevant to this case, Marshall does not presently exercise that authority to its full extent. Marshall is basically a bulk commodity hauler. (N.T. 388). Marshall has approximately 30 employees, including 16 drivers, 6 people in the office, and 8 in the shop. (N.T. 357). Marshall also has a couple of part-time employees. (N.T. 357).

Marshall's primary concern with Central's application is that it would conflict with Marshall's rights at A-101153, F.1, Am-C and Am-D; Marshall is most concerned about conflict with its right at Amendment C. (N.T. 362).

The witness testified that two of Marshall's present customers which are supporting shipper witnesses in this

proceeding are E. F. Houghton, and Quaker Chemical² in Conshohocken. He testified that Marshall has not received calls for service from these supporting shipper witnesses since the beginning of this application proceeding. (N.T. 363). The service provided during 1988 to E. F. Houghton and to Quaker Chemical was interstate service. (N.T. 374-375). He acknowledged that he has not called upon any of the supporting shipper witnesses for traffic since the beginning of this proceeding. (N.T. 363). Marshall holds Interstate Commerce Commission authority to transport commodities in bulk between the 48 states. (N.T. 371-372).

The witness sponsored as Marshall Exhibit 3 a traffic study describing a portion of the intrastate Pennsylvania shipments handled by Marshall between July 6, 1988, and December 9, 1988. (N.T. 364; Marshall Exhibit 3). Although the commodity description for each of the shipments listed on Marshall Exhibit 3 is simply "petroleum product", that description includes antifreeze, glycol, lubricating oil and some specialty oils. (N.T. 365). The movements shown on Marshall Exhibit 3 were chosen by Marshall's bookkeeper. They were not chosen on the basis of any particular formula or pattern. The witness could

²Despite this testimony by Marshall, no supporting witness appeared on behalf of Quaker Chemical.

not tell if any of those movements were for either E. F. Houghton or for Quaker Chemical. (N.T. 374).

The witness sponsored as Marshall Exhibit 4 a comparative balance sheet as of December 31, 1986, and 1987, and comparative income statements for the twelve-month periods ending December 31, 1986 and December 31, 1987. (N.T. 366). The witness sponsored a similar exhibit containing a comparative balance sheet as of October 31, 1987 and 1988, and a comparative income statement for the ten-month periods ending October 31, 1987, and 1988. (N.T. 367; Marshall Exhibit 5). Marshall Exhibit 5 also contains a comparative income statement for the ten-month periods ending October 31, 1987, and 1988, limited to Marshall's Pennsylvania intrastate operations. For the ten months ending October 31, 1988, Marshall had a net operating profit of \$76,037 on total operating revenues of \$1,817,022. Its Pennsylvania intrastate operation had shown a net operating loss of \$76 over the same period on revenues of \$153,339. (Marshall Exhibit 5; N.T. 367-368). Marshall reported to the Commission for calendar year 1987 total operating revenues of \$2,166,570 and intrastate operating revenues of \$115,971. (Central Exhibit 23; N.T. 372). Marshall's Pennsylvania intrastate revenue typically runs approximately 7 to 7 1/2 percent of its overall revenues. (N.T. 368-369). Marshall testified that if Central's application is granted, its Pennsylvania intrastate revenues would be subject

to diversion. (N.T. 369). He testified that Marshall's Pennsylvania intrastate revenue is important to Marshall because "[t]he more money you make, the better it is." (N.T. 370).

Marshall has competition for its intrastate Pennsylvania business at the present time. Marshall experiences competition from Oil Tank Lines, Seaboard Tank Lines, Chemical Leaman, and Matlack with respect to intrastate transportation in Pennsylvania. (N.T. 377). Refiners is also a competitor. (N.T. 383). Marshall does not regard Crossett as a competitor. (N.T. 383-384). At the present time Central does not compete with Marshall either in intrastate or interstate commerce, to the best of the Marshall's knowledge. (N.T. 370).

John B. Repetto is the Vice President of pricing and traffic services for Chemical Leaman Tank Lines. (N.T. 392). Chemical Leaman specializes in the bulk transportation of both liquid and dry commodities in Pennsylvania and on an interstate basis. (N.T. 392-393). Chemical has Pennsylvania terminals at Glenmoore, Nazareth, Bethlehem, Mechanicsburg, Williamsport, Wilkes-Barre, Malvern, Evansville, Warren, Aliquippa, and Altoona. It has a cleaning and maintenance facility in Groveton. (N.T. 394-395).

Chemical Leaman's Glenmoore terminal handles food grade products and dry chemicals. The food grade products would not be affected by the approval of Central's application; the dry

chemicals would be. Chemical Leaman's terminal in Nazareth handles primarily cement, and also various chemical products. The chemical products would be affected by Central's application; the cement would not be. Chemical Leaman's terminal in Bethlehem, Pennsylvania would not be affected by approval of Central's application. (N.T. 397). Chemical Leaman's terminal in Mechanicsburg handles primarily petroleum products, and also a small quantity of chemical products; the chemical products would be affected by Central's application. (N.T. 397-398). The terminals at Williamsport, Wilkes-Barre, Malvern, and Aliquippa transport primarily chemical products; those terminals would be affected by approval of Central's application. The Warren, Evansville, and Altoona terminals would not be affected by approval of this application. (N.T. 398).

Chemical Leaman Tank Lines is a wholly-owned subsidiary of Chemical Leaman Corporation. Chemical Leaman Corporation is a publicly held company. (N.T. 398). Chemical Leaman Tank Lines was a publicly held company until approximately 1977, at which time it became a subsidiary of Chemical Leaman Corporation. (N.T. 399). Chemical Leaman Corporation also owns a real estate holding company called Chemical Properties, Tank Service Company, Chemical Leaman of Virginia, Klipsch Hauling, and New Bulk Services. (N.T. 399). New Bulk Services was created in 1986 to hold the operating authority of Coastal Tank Lines, which

Chemical Leaman purchased. (N.T. 415-417). In 1988, Chemical Leaman Corporation generated approximately \$245 million in revenues; Chemical Leaman Tank Lines accounted for \$225 million of that figure. (N.T. 399). Prior to the formation of New Bulk Services, Chemical Leaman Tank Lines generated approximately 99.5% of Chemical Leaman Corporation's revenues. (N. T. 399-400). Between 1971 and 1982, Chemical Leaman Corporation, and Chemical Leaman Tank Lines before it became a subsidiary, paid dividends on a regular basis. Since 1982, Chemical Leaman Corporation has not paid dividends. (N.T. 400). The witness testified that Chemical Leaman Corporation ceased paying dividends in 1982 because there was not enough money to pay stockholders a dividend. (N.T. 406). On cross-examination, the witness acknowledged that during 1987 Chemical Leaman took out a term loan in the amount of \$9 million for the purpose of repurchasing its common stock. (N.T. 431). The repayment terms of that loan called for an annual payment of \$2,250,000 of principal per year for four years. (N.T. 432-433).

In the past five or six years Chemical Leaman has closed five terminals within the state of Pennsylvania. Those terminals were Essington, Croydon, Conshohocken, Paris, and Perryopolis. (N.T. 401). The Essington terminal was primarily concerned with the transportation of petroleum and lubricating oil. It was providing service primarily for Philadelphia

Electric. (N.T. 402-403). With the advent of nuclear power, there was a diminished need by Philadelphia Electric for heavy oil, which led to the closing of the terminal. (N.T. 403). The Croyden terminal was closed because it was unable to generate a sufficient return on Chemical Leaman's investment in it. (N.T. 404). Chemical Leaman no longer provides intrastate service to the customers served by the Croyden terminal; some interstate service is provided by a terminal located in Bridgeport, New Jersey. (N.T. 404). The Paris and Perryopolis terminals each served primarily the steel mills in western Pennsylvania. (N.T. 404-405). They were closed as a result of plant closings by the steel mills. (N.T. 405). The terminal in Conshohocken which was closed approximately five years ago handled cement and dry chemicals. (N.T. 405). Prior to their closing, the Essington and Conshocken terminals were primarily engaged in intrastate commerce. The Croyden, Paris, and Perryopolis terminals were predominately engaged in interstate commerce. (N.T. 418).

In 1988, Chemical Leaman Tank Lines has opened new terminals in Laredo, Texas, Baton Rouge, Louisiana, and Coal Grove, Ohio. (N.T. 435). In 1987, Chemical Leaman opened a terminal in Ripley, Ohio. (N.T. 435-436). In 1986, Chemical Leaman added the Malvern terminal which it purchased from Coastal Tank Lines. (N.T. 415).

Repetto testified that if Central's application is approved he did not expect it to have a significant, immediate, adverse impact on Chemical Leaman. (N.T. 410). He further testified that over a longer period of time, one more competitor within the area would have an impact but not necessarily a significant, immediate impact. (N.T. 410). He testified that if the impact grew to a significant impact and affected the profitability of a terminal, Chemical Leaman would close the terminal if it could not provide an adequate return to the company. (N.T. 411-413).

As of December 31, 1987, Chemical Leaman had commitments to purchase revenue equipment and improve operational facilities in the amount of \$1,111,000. (N.T. 433-434).

In rebuttal to the testimony furnished by Chemical Leaman regarding the failure of its parent company to pay dividends since 1982, Central submitted Central Exhibits 24, 25 and 26. Central Exhibit 24 consists of Chemical Leaman's 1985, 1986, and 1987 assessment reports. The 1985 assessment report shows total gross operating revenues of \$160,943,612 and intrastate operating revenues of \$10,500,455. The 1986 assessment report shows total gross operating revenues of \$184,527,087, and Pennsylvania intrastate operating revenues of \$11,243,665. The 1987 assessment report shows total gross operating revenues of \$202,358,517 and Pennsylvania intrastate

operating revenues of \$11,202,615. (Central Exhibit 24). Central Exhibit 25 is a copy of Chemical Leaman Corporation's quarterly report (Form 10Q) to the Securities and Exchange Commission for the quarter ended October 2, 1988. Central Exhibit 26 is an income statement for Chemical Leaman Tank Lines for the periods ending December 31, 1986, December 31, 1987, and June 30, 1988. That shows that for the twelve months ending December 31 1986, Chemical Leaman Tank Lines had total operating revenue of \$184,527,087; it had total operating revenue of \$202,358,516 for the twelve months ending December 31, 1987. (Central Exhibit 26).

Central also submitted Central Exhibit 27 as rebuttal evidence. That exhibit consists of Chemical Leaman's answer to an interrogatory propounded by Central regarding various violations of the Public Utility Code or other laws or regulations pertaining to transportation since January 1, 1986. That exhibit indicates that on November 7, 1986, Chemical Leaman was cited for a leak of butyl acrylate in Dedham, Massachusetts from one of its tank trailers. It occurred while the driver was on layover at a motel. On November 23, 1986, Chemical Leaman was cited for a leak of a combustible liquid from a tank trailer; this leak occurred when Chemical's vehicle struck a black bear in the roadway at night, and ran off the roadway, and overturned. The accident occurred on I-80 in Jefferson County, Pennsylvania.

Chemical Leaman was cited on November 28, 1987, at the Port of Milwaukee, Wisconsin, for failure to follow prescribed procedures in transferring lubricating oil from its tank trailer to a ship. On February 1, 1988, Chemical was cited in Ironton, Ohio for failure to file DOT form 5800-1 within 15 days after discovery of an unintentional release of phenol. (Central Exhibit 27).

Oil Tank Lines, Inc. participated at some of the hearings through cross-examination of Central witnesses. Oil Tank Lines was scheduled to have its own witness testify at the hearing on February 8, 1989; however, the witness became unavailable to testify during the hearings. Consequently, Oil Tank Lines and Central entered into a stipulation which provided that in lieu of the testimony of Oil Tank Lines' witness, certain documentary evidence would be received into evidence as an exhibit. The documentary evidence which was thus admitted was a copy of Oil Tank Lines' Pennsylvania intrastate operating authority and the responses of Oil Tank Lines to interrogatories propounded by Central. (Oil Tank Lines Exhibit 1; N.T. 349-350). The stipulation and the accompanying exhibits were received into evidence. (N.T. 350-351).

Gary Wallin is the Traffic Manager for Crossett. (N.T. 449). Crossett is a regional carrier specializing in the transportation of petroleum and petroleum products in bulk in tank vehicles. (N.T. 450). Crossett is headquartered at Warren,

Pennsylvania. (N.T. 450). Crossett has approximately 150 full-time employees, including 28 office employees, 23 maintenance employees and 99 drivers. Additionally, Crossett utilizes approximately 50 independent owner-operators. (N.T. 451-452). Crossett pays its owner-operators somewhere between 60 and 80% of the revues derived from each load transported by the owner-operators. (N.T. 501-504). In 1987, Crossett employed 74 drivers. That number rose to 99 in 1988. (N.T. 490-491). Crossett owns facilities in Warren, including an office and maintenance complex and a facility for cleaning of tank trailers. (N.T. 452-453). Crossett also operates facilities in Bradford, Pennsylvania, and in Tonawanda, Falconer, and Rochester, New York. (N.T. 453, 458-459). Crossett operates 62 tractors, which it owns (Crossett Exhibit 2; N.T. 458-460), 150 trailers which it owns (Crossett Exhibit 3; N.T. 460-468), and 52 vehicles which are supplied by owner-operators under long term leases (Crossett Exhibit 4, N.T. 469-473).

The witness sponsored Crossett Exhibit 1 which contains a description of the Respondent's rights to transport between points in Pennsylvania. (N.T. 455; Crossett Exhibit 1). Although Crossett's rights are extensive, it specializes in the transportation of petroleum and petroleum products. (N.T. 455). Most of its intrastate business comes from the counties of Warren, McKean, and Venango. (N.T. 456). Crossett also holds

authority from New York State to render intrastate transportation in New York and from the ICC to render interstate transportation. (N.T. 459). Although Central has restricted its application against the transportation of many petroleum products (aviation gasoline, butane, diesel fuel, fuel oil (grades 2, 4, 5 & 6), gasoline, kerosene, motor fuel, propane, and turbo fuel), the scope of the authority sought by Central is such that it would authorize Central to transport several petroleum products which Crossett transports; some examples are lubricating oils, petrolatum, petroleum gases, resins, and naphtha. (N.T. 468-469, 480).

Crossett's annual revenues for a typical year are approximately \$13 million. (N.T. 474). Of that amount, Crossett's PUC revenues amount to \$5,250,000 to \$5,750,000. (N.T. 475). In 1985, Crossett had total operating revenues of \$10,980,220.62 and Pennsylvania intrastate operating revenues of \$3,573,149.49. In 1986, Crossett had total operating revenues of \$13,373,101.16 and Pennsylvania intrastate revenues of \$4,409,987.30. In 1987, Crossett had total operating revenues of \$13,234,052.51 and PUC intrastate revenues of \$5,611,717.06. (Central Exhibit 28). For the first six months of 1988 (period ending June 30, 1988), Crossett had total operating revenues of \$6,262,247.17 and a profit on that amount of \$354,805.19. (Crossett Exhibit 5; N.T. 474-475).

For the years ending December 31, 1986, and 1987, as well as for the six months ending June 30, 1988, Crossett suffered a net loss from operations. (Crossett Exhibit 5; N.T. 488-489). However, in each of those periods, Crossett showed an overall net profit because it had large amounts of income from interest and from "extraordinary items" (Account 8800). The witness could not detail what specific items are covered by Account 8800. (Crossett Exhibit 5; N.T. 489-490).

For the year ending December 31, 1988, Crossett had Pennsylvania intrastate operating revenues from traffic originating in the counties of McKean, Warren and Venango of \$4,496,081.30. (N.T. 476; Crossett Exhibit 6). That figure includes revenue from transportation of products which Central has excluded from its application by restrictive amendment. (N.T. 476). For the year ending December 31, 1988, Crossett had revenues from Warren, McKean and Venango County for the transportation of products which Central is seeking to transport of \$1,690,888.56. (Crossett Exhibit 7; N.T. 477-478, 486-488, 504-505). To the extent that Central, by this application, seeks to transport petroleum and petroleum products which are not excluded by restrictive amendment, between points in McKean, Venango and Warren Counties and from those counties to points in Pennsylvania, approximately one third of Crossett's Pennsylvania intrastate revenue is threatened by Central's application.

(N.T. 478). The loss of all or part of this Pennsylvania intrastate revenue would have an adverse effect upon Crossett's operations. (N.T. 479).

Witco, a supporting shipper in this proceeding, is a customer of Crossett. Crossett transports material from Witco's Bradford facility on a daily basis. One of Crossett's terminals is in Bradford. The products which Crossett transports for Witco include lubricating oils, petrolatum, resins, and naphtha, which are not excluded from Central's application. Crossett has had very few complaints from Witco about its service. (N.T. 480). Witco is an important shipper for Crossett. (N.T. 481). Crossett also transports petroleum products for Pennzoil Company, another supporting shipper in this proceeding. Crossett renders daily service for Pennzoil or its customers out of Pennzoil's facility at Rouseville, Pennsylvania, which is in Venango County. (N.T. 481). Pennzoil is also an important account for Crossett. (N.T. 482). Crossett has also provided service in the past and more recently for E. F. Houghton, another supporting shipper in this proceeding. For that shipper, Crossett hauls material from Bradford, Pennsylvania to Houghton's Fogelsville, Pennsylvania facility. (N.T. 482). Proportionately less of Crossett's intrastate revenue from Warren County is threatened by this application because the principal shipper there, United Refining

Company, ships products which are mostly excluded from the scope of the application by the restrictive amendment. (N.T. 487-488).

Crossett's interest in this proceeding would be satisfied if Central's application is restricted against the transportation of petroleum and petroleum products. (N.T.483). Crossett's interests would be largely satisfied even if the Commission grants this application including petroleum and petroleum products as long as the Commission excludes the counties of McKean, Venango, and Warren from the application as points as origin. (N.T. 484).

The trucking industry has become more competitive since 1981. (N.T. 492). Since that time, there have additional carriers added to the field. (N.T. 493). At the present time, Crossett competes with Matlack, Refiners, Propane Transport, Inc., George Maust, Chemical Leaman, Fleming Transport, Erie Petroleum and Five Star Transport. (N.T. 493). Some of those carriers have sought and obtained additional Pennsylvania intrastate authority since 1981. (N.T. 493). Crossett protested some of those applications. (N.T. 493-494). In some cases the carriers were awarded authority which was competitive with the operations of Crossett. (N.T. 494). Some carriers have restricted their applications against the transportation of petroleum and petroleum products in McKean, Venango, and Warren Counties as a result of Crossett's protest. (N.T. 506).

Crossett protests any application which threatens its position in Warren, McKean, and Venango Counties. (N.T. 506-507).

During the two-year period August 19, 1986, through June 6, 1988, Crossett paid four fines of \$67.50 each for vehicles with various defects including a tank leaking, brakes out of adjustment, unbalanced steering brakes, and no stop lights. During the same period, Crossett paid three fines of \$117.50 each for vehicle defects such as unbalanced steering brakes and no stop lights. In 1988, Crossett also paid a fine of \$100 to the US DOT for a spill resulting from a vehicle accident, and fines of \$1,000 and \$1,500 to the Pennsylvania Fish Commission and to the Pennsylvania Clean Water Fund relating to a spill from a vehicle accident. (Central Exhibit 29).

Keith B. Wilson is Regional Manager of Refiners. He is located at Oil City, Pennsylvania. (N.T. 515-516). Refiners' statewide intrastate authority to transport property in bulk, in tank vehicles, is shown by Refiners' Exhibit 2. (N.T. 516-517). Refiners also holds ICC authority to transport bulk commodities in interstate commerce. (N.T. 517).

Refiners' has a terminal at Oil City (Venango County), Pennsylvania, which has an office, maintenance facility, and tank cleaning facility. At its East Butler (Butler County), Pennsylvania terminal, Refiners has a maintenance facility, a tank cleaning facility and an office. The Sewickley (Allegheny

County), Pennsylvania terminal has a maintenance facility and an office. The terminals at Duncansville and Devault, Pennsylvania have offices, with management and dispatch. (N.T. 517-518, Refiners' Exhibit 3).

Refiners has a terminal in Wilmington, Delaware, approximately 15 miles from Philadelphia, which is a 25-28 truck operation. Another terminal in Hammonton, New Jersey, (about 30 miles from Philadelphia) also has multi-service facilities. Both terminals provide intrastate service to Pennsylvania shippers. (N.T. 518).

Refiners has a total workforce numbering 852 full-time employees, of which 196 are located in Pennsylvania, or 23 percent of the workforce. (N.T. 519; Refiners' Exhibit 4). Refiners has 53 MC 307 trailers serving Pennsylvania, many of which are compartmented. Most of them are insulated and are easily cleaned between the transportation of different products. In addition, they can be heated and, products can be reheated. (N.T. 522-523). Refiners has 109 MC 306 compartmented trailers serving Pennsylvania. This type of trailer is used primarily for gasolines, fuel oils, petroleum, lube oils and base stock, which do not require much cleaning between use for various products. (N.T. 522-523).

Refiners has been serving some of the supporting shippers in this proceeding since prior to 1970. In 1987 and the

first six months of 1988, Refiners served supporting shippers Witco, Pennzoil, Harry Miller and Calgon in intrastate service. (N.T. 531-532). On interstate shipments, Refiners served Witco, Pennzoil, E. F. Houghton and Calgon. (N.T. 532).

Witco and Pennzoil are very important shippers to Refiners in Western Pennsylvania. In 1987, Refiners carried 4,054 intrastate loads for Witco, producing revenue of \$722,023.89. For the first six months of 1988, Refiners carried 1,985 loads for Witco, producing \$360,076.80 in intrastate revenue. Fifty percent of the total revenue of Refiners' East Butler terminal comes from Witco traffic. Refiners has up to nine units providing inbound raw material transportation for Witco on an intrastate basis on a given day or week. These trucks operate five days a week, 24 hours a day. (N.T. 533-534). Refiners also provides interstate service to Witco, but for fewer loads. (N.T. 549-550).

Refiners handled 4,583 loads intrastate for Pennzoil in 1987, with revenue of \$1,269,431.03. Refiners handled 1,682 loads intrastate in the first six months of 1988 with revenue of \$454,176.00. Pennzoil represents approximately 40 percent of the business at Refiners' Oil City terminal. (N.T. 535). Refiners also provides interstate service for Pennzoil, but for fewer loads. (N.T. 549).

Loss of any significant amount of Pennzoil or Witco intrastate traffic would be very detrimental to Refiners' Oil City and East Butler terminals. Loss of a significant amount of that traffic would hamper Refiners' ability to serve the public and to continue operations at those points. (N.T. 535).

Refiners serves approximately 150 shippers on an intrastate basis in Pennsylvania on commodities involved in the application. (N.T. 536). Over the years, Refiners has made special efforts to serve Witco and Pennzoil. In 1970, Refiners entered into a joint arrangement with Witco to increase productivity at the plant and the productivity of Refiners. Refiners installed run-down tanks which allowed Refiners to unload tanks in 12 minutes, compared with the 45 minutes to one hour required prior to the installation of the run-down tanks. Refiners paid for the installation and Witco, over a period of time, bought the tanks from Refiners. (N.T. 536). In addition, Refiners purchased new trailers which were dedicated to handling Witco's white oil. (N.T. 536-537).

Pennzoil asked Refiners to provide special metered units for deliveries to Pennzoil's Jiffy Lube account. Refiners agreed to provide this service so that Refiners could make multi-stop deliveries to Jiffy Lube stations. (N.T. 537).

Refiners provides service for a large number of major shippers for products involved in this application. These

shippers include Ashland Oil, British Petroleum, Bolero Petroleum, Exxon Company, Quaker Chemical, Quaker State Oil Refining, Texaco, Sun Oil, and Union Chemical. (N.T. 537-538).

A number of the terminals of Refiners are subject to collective bargaining agreements including, specifically, the terminals at East Butler and Oil City. Drivers are compensated on both hourly and mileage bases depending on the trip. Today, the wage rate for drivers paid by the hour is \$10.60; this is less than the wage rate of \$12.68 per hour paid in 1982. (N.T. 540).

Wilson stated that Refiners faced stiff competition in the early eighties from people coming in, cutting rates, "most of it at that time being non-union." (N.T. 540). Refiners was having a difficult time operating and surviving under these conditions. Between 1981 and 1983, Refiners negotiated concessions in pay and benefits since it could not continue to operate under the contractual provisions then existing. In exchange for concessions, Refiners agreed with its employees to institute a Terminal Incentive Program where profits are shared with employees on a terminal-by-terminal basis. That program is still in effect. (N.T. 541).

Matlack, Chemical Leaman, Oil Tank Lines, Crossett and Marshall are the major competitors of Refiners for intrastate traffic in Pennsylvania. In addition, there are many small

jobber-type competitors such as Erie Petroleum, Five Star Trucking, Frenz Petroleum and Zappi. The oil companies also have their own fleets. (N.T. 541-542). Matlack, Chemical Leaman, Oil Tank Lines, Crossett and Marshall all compete with Refiners for the intrastate business of Pennzoil and Witco. (N.T. 548). Besides these services, Refiners must compete with "innumerable" others for Pennzoil's and Witco's interstate business. (N.T. 547-548).

Wilson testified that Refiners had approximately 25 drivers on layoff at its Oil City, East Butler, Sewickley and Altoona terminals. The total pool of drivers is approximately 135 persons. Between 10 and 20 percent of Refiners' equipment has been idle at East Butler and Oil City. (N.T. 542). Sewickley terminal has 22 units; on a daily basis, five units have been parked. Oil City has 35 tractors; on a daily basis, five are parked. East Butler has 21 tractors; on a daily basis two are parked. Hammonton has 30 units; on a daily basis, 10 are parked. (N. T. 546).

Wilson stated that Refiners is in a position to handle the continuing transportation needs of Witco and Pennzoil in intrastate commerce in Pennsylvania. Refiners will add additional equipment if requested to do so by either company. However, neither Witco nor Pennzoil has requested that Refiners secure any additional equipment of any type for intrastate

transportation in the last year. Refiners is also willing and hopeful of providing service to the other shippers who supported this application. (N.T. 543).

On September 2, 1988, Refiners executed a consent agreement with the Pennsylvania Department of Environmental Resources which provided for Refiners to pay a civil penalty of \$5,600.00 in connection with the discharge of inadequately treated industrial waste water from its Oil City tank cleaning facility into Oil Creek. (Central Exhibit 30). Refiners paid the fine. (N.T. 559-560). By order dated May 14, 1986, the Environmental Hearing Board imposed on Refiners a civil penalty of \$35,400 for transporting on several occasions during 1983 and 1984 hazardous waste for which it did not have a license, and for accepting hazardous waste for transport without a completed manifest. In its order, the EHB characterized Refiners' violations as being "of a low degree of severity." (Central Exhibit 31, pp. 3, 14).

David L. Michalsky is Director of Pricing for the Northern Bulk Group, which includes Refiners. (N.T. 571). Michalsky worked with Keith Wilson in making a revenue report summary showing bulk commodities transported by Refiners in Pennsylvania either to or from a Pennsylvania point. (N.T. 572-573). Michalsky presented Refiners' Exhibit 9, a two-sheet document for the year 1987 and the period January 1,

1988 through June 30, 1988, showing bulk commodities handled by Refiners in intrastate Pennsylvania commerce and in interstate commerce to or from a Pennsylvania point. Refiners Exhibit 9 shows all bulk commodity traffic and also contains a section limited to the precise commodities included in the application. (N.T. 573-575).

Refiners Exhibit 9 shows that Refiners has approximately 3.6 million dollars of revenue from intrastate transportation of the involved commodities on an annual basis. As shown on page 2 of Refiners Exhibit 9, Witco and Pennzoil accounted in total for 55 percent of the total intrastate transportation revenues earned on the involved commodities by Refiners in 1987, and 47 percent of Refiners' intrastate revenues in the first six months of 1988. None of the other supporting shippers tendered Refiners any traffic in 1988; of the other shippers, only Calgon tendered Refiners traffic in 1987. (Refiners Exhibit 9, p. 2). Michalsky testified that Refiners served 150 shippers of the involved commodities in intrastate commerce since he actually counted the shippers served. (N.T. 576-577).

Gerald H. Hoover is employed by Mitchell Transport, Inc. He is Group Financial Manager of the Bulk Materials Group, which includes Refiners Transport. He has held this position for three and 1/2 years. Refiners is a wholly-owned subsidiary of

Leaseway Transportation. (N.T. 587-588). Hoover sponsored Refiners Exhibit 10, a summary balance sheet and income statement for Refiners as of December 31, 1988. (N.T. 587).

Hoover testified that five management members of the Bulk Materials Group signed a letter of intent to acquire the Group from Leaseway Transportation, and the proposed acquisition was expected to occur during the first quarter of 1989. (N.T. 588). Sixteen different subsidiaries comprise the Bulk Materials Group. Thirteen of those subsidiaries, including Refiners, are part of the acquisition. (N.T. 588-589). Hoover will be chief financial officer of the new entity. (N.T. 589). When the transaction is final, the balance sheet of Refiners will be much stronger because the allocation methodologies now used to allocate costs among the Leaseway subsidiaries do not show actual costs that would be incurred on a stand-alone basis. (N.T. 590-592). Because Leaseway Transportation has a number of subsidiaries other than Refiners, the administrative and selling expenses of Refiners will be less under the revised structure. (N.T. 591-592). Refiners did not submit any financial data describing the condition of Leaseway on a consolidated basis with all of its subsidiaries. (N.T. 593).

Richard L. Frieze is employed by Refiners as Territory Sales Manager. (N.T. 598). Frieze introduced Refiners Exhibit 11, which is a letter dated October 15, 1986, from Frieze to

witness William F. Dahms of the E. F. Houghton Company by which Refiners made rate quotations, including rates for intrastate points, to Dahms. This letter contradicts Dahms' testimony (N.T. 268-269) that he was unaware of Refiners' intrastate service. Frieze further testified that Refiners has now begun to serve Dahms' company. (N.T. 599).

Freize also presented Refiners' Exhibit 12, a letter dated March 4, 1987, from Frieze to Valspar Corporation submitting rates for service. Frieze stated he had made sales calls upon the Valspar witness, Mary Ann Noga, as late as January, 1988, but Refiners did not receive any transportation requests from Valspar in 1987 or 1988. Frieze has also solicited the Harry Miller Corporation for traffic without success. (N.T. 600).

Martin C. Hynes, Jr. is Vice President of Marketing for Matlack. (N.T. 615). Matlack is a wholly-owned subsidiary of Matlack Systems, which also controls, as a wholly-owned subsidiary, Rollins Terminals, a company specializing in the storage of bulk materials. (Matlack Exhibit 2, p. 2). Matlack holds authority from this Commission at A-67250, including several folders and amendments. Matlack operates pursuant to that authority. By Initial Decision served June 15, 1989, Administrative Law Judge Wendell Holland approved Matlack's application at A-67250, F.21, Am-G, which, as relevant to this

proceeding, authorizes the transportation of dry bulk commodities in tank or hopper-type vehicles, between points in Pennsylvania. Matlack also holds operating authority from the Interstate Commerce Commission authorizing the transportation of general commodities, except class A and B explosives and household goods, between all points in the United States on a common and contract carrier basis. Matlack also holds and operates pursuant to operating authority from 34 states authorizing intrastate service in those jurisdictions. (Matlack Exhibit 2, pp. 2-3; Matlack Exhibit 2, Appendices 1-2).

Matlack specializes in the transportation of liquid and dry bulk products including such commodities as chemicals, petroleum products, paints, latex, emulsions, resins, pharmaceutical, and edibles in liquid, gas, powder or pellet form. (Matlack Exhibit 2, p. 2).

Matlack maintains a total of 93 terminals throughout the United States. Six terminals are situated in Pennsylvania at Bensalem, Bradford, Martin's Creek, Norristown, Pittsburgh, and York. Matlack also maintains a terminal in Swedesboro, New Jersey that is utilized to dispatch equipment to provide Pennsylvania intrastate service, as well as sub-terminals at Stockertown and Highspire at which equipment is stationed for service to shippers. (Matlack Exhibit 2, p. 4). The terminals at Bensalem, Norristown and Pittsburgh have tank cleaning

capabilities. (Matlack Exhibit 2, p. 5). Matlack is in the process of reopening a terminal situated in St. Petersburg, Clarion County. This terminal is being reopened because of a significant increase in the volume of traffic being tendered to Matlack by Witco Corporation. The St. Petersburg facility is located close to Witco's Petrolia plant. (Matlack Exhibit 2, pp. 4-5). Matlack operates a Central Dispatch System at Wilmington, Delaware which functions 24 hours a day, seven days a week to monitor and coordinate service and truck movements throughout Pennsylvania and nationwide. (Matlack Exhibit 2, p. 5).

Matlack employs in excess of 2,000 employees systemwide, of which 297 are employed at the six Pennsylvania terminals; an additional 79 employees are located at the Swedesboro, New Jersey facility. (Matlack Exhibit 2, p. 6; Appendix 5).

On a systemwide basis, Matlack utilizes 4,482 pieces of equipment, including 1,481 tractors and 3,001 trailers. Of this equipment, 220 tractors and 354 trailers are stationed at Matlack's Pennsylvania and Swedesboro, New Jersey terminals. (Matlack Exhibit 2, p. 6; Appendices 6 and 7). Matlack has 30 multi-compartment trailers stationed at terminals serving Pennsylvania. (N.T. 624-625). Matlack's vehicles stationed in Pennsylvania are underutilized and are available to handle additional Pennsylvania intrastate shipments. Trailer

utilization for the six Pennsylvania terminals plus the Swedesboro, New Jersey terminal averaged 55.5% during May, 1989. Trailer utilization at the Pittsburgh terminal amounted only to 30.2%. (Matlack Exhibit 2, pp. 6-7; Appendix 7).

For the period January 1, 1989 through May 31, 1989, Matlack handled a total of 853 shipments for the eight shippers which appeared in support of Central's application, generating total revenues of \$872,487. Of these totals, 92 shipments, and \$113,105 in revenue resulted from Pennsylvania intrastate service. (Matlack Exhibit 2, p. 3; Appendix 3). During the period January 1, 1989 through May 31, 1989, Matlack transported a total of 1,645 shipments in intrastate commerce in Pennsylvania, generating revenue of \$1,064,005 in transporting commodities which are within the scope of Central's application as restrictively amended. (N.T. 622; Matlack Exhibit 2, p. 4; Appendix 4).

For the five-month period January 1, to May 31, 1989, Matlack's Pennsylvania intrastate gross revenues were approximately 2.4 million dollars. (N.T. 618).

For the fiscal year ending September 30, 1988, Matlack had an operating ratio of 102.28% for its Pennsylvania operations. (N.T. 628, Matlack Exhibit 2, Appendix 3). The Pennsylvania profit and loss statement contained an Appendix 9 to Matlack Exhibit 2 was prepared as justification for an increase

in intrastate Pennsylvania rates. (N.T. 641). The rate increase was approved in January, 1989. (N.T. 641). For the 12-month period ending September 30, 1988, operations at Matlack's six Pennsylvania terminals resulted in a net operating loss of \$525,435 and a total net loss of \$589,922. For that period, Matlack had interstate operating revenues from its Pennsylvania operations of \$16,086,845 and intrastate operating revenues of \$7,003,822. (Matlack Exh. 2, p. 11; Appendix 9).

Within the past year, Matlack has solicited the business of each of the shippers that supported Central's application. Solicitations ranged in frequency from once in the past year (Para-Chem Southern, Inc.) to six times within the past five months (E. F. Houghton & Co.). (Matlack Exhibit 2, p. 3).

Matlack opposes this application for several reasons. Matlack faces an increasing amount of competition for a finite volume of Pennsylvania intrastate traffic. This competition, and the diversion of traffic that has resulted from it, has affected Matlack's operations. Within the past four years, Matlack has closed terminals in New Castle, St. Petersburg, Beaver, and Greensburg due to lack of sufficient traffic to support their continuing operations. This has affected the responsiveness of the service which Matlack can supply to shippers situated in those areas by forcing Matlack's vehicles to travel greater distances in order to provide service to them. (Matlack Exhibit

2, p. 10). Matlack further argues that the approval of Central's application to the extent requested in this proceeding may divert traffic from Matlack and thereby exacerbate Matlack's equipment utilization difficulties and negatively impact upon the efficiency of Matlack's operation. (Matlack Exhibit 2, p. 7). When Matlack is confronted by constant equipment underutilization in a given territory, the equipment will be withdrawn so that it may be utilized in a more productive area. Equipment underutilization can result in the closure of a terminal and the attendant loss of jobs. (N.T. 621). Matlack argues that it is a very real possibility that the authorization of Central to the extent requested in this case will force the closing of additional terminal facilities. (Matlack Exhibit 2, p. 11).

Matlack argues that competition from Central would be particularly harmful because of the manner in which Central compensates its drivers. Matlack argues that because Central pays its drivers a percentage of revenue, it permits Central to minimize its salary expense. If the rate for transportation is low or cheap, the driver is compensated according to that rate and not according to his labor expended. Further, if a particular shipment takes an extended time for loading or unloading, or if it is in a highly congested area, the driver is not necessarily compensated for the time he spends or for the number of miles he travels. His payment is based on the

negotiated rate between the shipper and the carrier. (N.T. 620, Matlack Exhibit 2, p. 11).

Most of Matlack's employees are unionized, and are compensated through collective bargaining agreements. Matlack considers itself at a disadvantage relative to carriers such as Central which are not unionized and are not obligated to provide wage and benefit programs to their employees through collective bargaining agreements. (N.T. 629). Matlack has found Central's competition in interstate commerce to be detrimental to Matlack; for that reason it opposes Central's application for limited statewide authority. (N.T. 630).

Overall, for fiscal year ending September 30, 1988, Matlack Systems, Inc. had total revenues of \$230,227,000 and net earnings of \$1,412,000 or \$.26 per share. (N.T. 640). Appendix 9 to Matlack Exhibit 2 is an exact reproduction of the information supplied to the Commission with respect to Matlack's request for a rate increase. (N.T. 641). That information is not the same as the information provided in connection with a company's assessment report. (N.T. 641). For 1988, Matlack reported assessable intrastate operating revenues of approximately \$6.9 million dollars. For 1987, that number was \$6,661,000. (N.T. 641-642). Expenses shown on Appendix 9 of Matlack Exhibit 2 which are not directly assignable to

Pennsylvania operations are allocated on the basis of an allocation methodology prescribed by the ICC. (N.T. 643).

In January, 1989, Matlack's parent company, Matlack Systems, Inc. was spun off by its own parent company, RLC Corp. (N.T. 617). In a prospectus filed with the Securities and Exchange Commission in connection with a public offering of Matlack Systems' stock, the following statement was made, "[t]o the extent that competition is based on service and convenience, the number and location of Matlack's terminals together with its ability to clean tank trailers places Matlack in a favorable position to increase its business." (N.T. 631). That prospectus also contains a statement that indicates that Matlack has withdrawn from markets which have limited growth potential and pricing structures that will not provide it with an adequate return on its investment. (N.T. 631).

Matlack, to the best of its knowledge, is in compliance with the regulations of the Commission, the ICC, US DOT and other regulatory bodies to which it is subject. For a brief period, from October, 1987, to early February, 1988, Matlack provided service for Hercules Cement Company from Stockertown, Pennsylvania without requisite operating authority. The service was initiated in error due to a combination of factors. Matlack provided substantial service for Hercules in interstate commerce. Matlack believed that it held appropriate operating authority

until, in early February, 1988, it was advised by a Commission enforcement officer that a portion of the intrastate service for Hercules was unlawful. Matlack terminated service immediately, and filed an application for emergency temporary authority to serve Hercules. Intrastate transportation for Hercules was not reinstated until emergency temporary authority was granted and a tariff filed with the Commission. The service for Hercules was considered by ALJ Holland in Matlack's recent application proceeding. Despite that service, ALJ Holland found that Matlack was fit to be granted additional authority. (Matlack Exhibit 2, pp. 9-10).

During the cross-examination of Matlack's witness, Central attempted to introduce as its Exhibit 33 a two-page document which Central obtained from the United States Environmental Protection Agency through a Freedom of Information Act request. (N.T. 648). The document appeared to list enforcement actions taken by the EPA against Matlack. The document was objected to by counsel for Matlack. The document consisted of a computer printout, much of which was in the form of cryptic abbreviations. Central offered no witness to explain the nature of the document or to discuss the underlying violations. (N.T. 650-653). I sustained the objection on the basis that the document did not contain sufficient information in a form that is readily understandable so as to indicate relevance

to the issues involved in this case. (N.T. 651-652). During that same cross-examination, Central also attempted to offer into evidence as Central Exhibit 34 certain documents pertaining to a complaint in the United States District Court for the Northern District of Ohio, in which Matlack appeared as a defendant. Matlack objected to the exhibit on the basis that the proffered document contained no information to indicate that Matlack's involvement in the case had anything to do with its provision of transportation service. (N.T. 656). My review of the documents during hearing indicated that the case, while terminated by consent decree in 1989, started in 1984, and involved several defendants besides Matlack. (N.T. 658). I sustained the objection to the documents because they failed to give any indication of Matlack's involvement with the matter underlying the complaint. (N.T. 657-658).

Findings of Fact

1. On March 21, 1988, Central Transport filed an application seeking Commission authorization to transport:

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

2. Central has subsequently amended its application to seek the following authority:

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

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

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

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

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

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

3. Of 21 original protestants, six remain in the case: Chemical Leaman Tank Lines, Inc., Crossett, Inc., Marshall Service, Inc., Matlack, Inc., Oil Tank Lines, Inc., and Refiners Transport & Terminal Corp.

4. Central is a motor common and contract carrier of bulk commodities operating in interstate and foreign commerce pursuant to authority issued by the ICC at MC-118831. Central also operates in intrastate commerce in the states of Georgia, North Carolina, South Carolina, Tennessee, and West Virginia.

5. Central presently has facilities at Karns City (Butler County) in western Pennsylvania, Paulsboro, New Jersey, and at Baltimore, Maryland from which it provides service to points in Pennsylvania for traffic moving in interstate commerce, and from which it would provide equipment for service in intrastate commerce in Pennsylvania if this application is approved. Central does not now hold authority to render service in Pennsylvania. Central is not affiliated with any other carrier holding authority from this Commission.

6. During the period October, 1987, through September, 1988, Central originated and/or delivered 5,095 loads at Pennsylvania points, in interstate commerce. These loads generated \$5,922,533 in revenue.

7. Between October, 1987, and September, 1988,

Central rendered service for 84 different shippers and 242 different consignees.

8. As of September 26, 1988, Central operated 369 company-owned line haul tractors and 121 owner/operated-owned tractors. Central operates a total of 778 trailers systemwide, all but one of which are designed to transport bulk commodities.

9. Central has a facility for the cleaning of tank trailers at its Karns City terminal. Cleaning of Central's trailer equipment will be accomplished either at Central's Karns City terminal or at a commercial cleaning facility. Central maintains a preventative maintenance program for its equipment.

10. Central maintains driver training programs which focus on the transportation and handling of hazardous as well as non-hazardous loads.

11. Central is a non-union carrier. Central pays its line-haul drivers a percentage of revenue and accessorial charges, depending upon seniority.

12. Central anticipates transporting similar commodities in intrastate commerce to those that it presently transports in interstate commerce. Central's service would be focused upon the bulk transportation of chemicals for industry. More than 50% of the chemical traffic carried by Central is considered to be hazardous by US DOT or the EPA.

13. Central has not determined the specific rates to be charged for its Pennsylvania intrastate services. Central would apply its tariff respecting accessorial services that it now applies for interstate commerce, as well as for intrastate commerce in other states.

14. Central's balance sheet as of June 30, 1988, shows total assets of \$29,716,899 and total liabilities of \$3,967,978. Stockholders equity, consisting of common stock and retained earnings, was \$25,748,921.

15. Central's income statement for the six months ending June 30, 1988, shows net income after allowance for income taxes of \$1,839,061, on operating revenues of \$26,511,262.

16. Central carries \$5,000,000 of insurance coverage for bodily injury, property damage, and cargo coverage, plus umbrella coverage of \$10,000,000.

17. Although Central was shown to have transported 22 shipments in intrastate commerce in 1988, Central demonstrated that all but one of those shipments were arguably lawful under reasonable interpretations of applicable laws and regulations.

18. On July 15, 1986, Central was assessed a fine for transporting corrosive material through a tunnel on the Pennsylvania Turnpike. On May 12, 1988, Central was fined in Pennsylvania because its vehicle was lacking a driver vehicle report. On December 23, 1986, a Central truck was cited in

Pennsylvania for failure to display hazardous materials placards properly and for a violation concerning brakes.

19. Central has a policy that if a civil fine results from a violation of company procedures, the driver or operator is responsible for the fine. A driver who feels he should not be penalized for a violation has the right to appeal the operating department's decision to the management of the company.

20. On June 4, 1986, at Central's terminal in Charlotte, North Carolina, two Central employees died of asphyxiation, by methylene chloride, after being sent into a tank trailer to clean it. As a result of that incident, the North Carolina Department of Labor issued a citation against Central for violation of various occupational safety and health laws and federal regulations. That citation was resolved by a stipulation agreement between Central and the North Carolina Department of Labor which resulted in a consent order being issued. The agreement between Central and the Department of Labor required Central to pay a penalty of \$1,800, to implement and enforce a confined space entry program for all employees who may enter and work in the interior compartments of tank trailers, and to establish and maintain a respiratory protection program. At the time the workers were asphyxiated, they were wearing no protective equipment and no oxygen masks or similar equipment.

21. On July 31, 1986, Central received a US DOT driver vehicle examination report indicating that one of its vehicles was transporting hazardous materials without a properly prepared shipping paper. The report also disclosed that the tractor's brakes were out of adjustment.

22. As a result of an inspection on December 3, 1986, the South Carolina Department of Labor issued a citation on January 29, 1987, charging that Central, at its Greenville, South Carolina terminal, failed to comply with certain occupational safety and health laws and regulations pertaining to the washing of tank trailers. This situation concerned the failure of Central to require its employees to wear appropriate protective equipment and respirators. This citation was resolved by a settlement agreement between Central and the South Carolina Department of Labor, in which Central, while not admitting the accuracy of the allegations, agreed to abate all of the items noted in the citation, primarily by implementation of a confined space entry program for all employees who may enter such spaces.

23. On April 22, 1987, the Pennsylvania Department of Environmental Resources issued a notice of violation to Central for failure to comply with hazardous waste generator, transporter, and treatment facility requirements with respect to Central's tank cleaning facility at Karns City. The violations occurred because Central failed to recognize that the waste

generated by its tank cleaning facility was considered by DER to be a hazardous waste. Central has corrected the violations by not using the Karns City facility to clean hazardous materials that are categorized as "P" or "U" materials.

24. Witco Corporation operates a petroleum refinery in Petrolia (Butler County), Pennsylvania, where it produces products such as petroleum oil, wax, petrolatums, and white oil. Witco also operates a refinery at Bradford (McKean County), Pennsylvania, at which it produces such products such as motor oil, waxes, and petrolatums. Witco also operates a facility at Trainer (Chester County), Pennsylvania.

25. Witco has a need to transport from its Petrolia plant at least 29 intrastate shipments per month of commodities covered by this application.

26. Central has not demonstrated that the present service to Witco at Petrolia is inadequate.

27. Central has shown that its proposed service to Witco at Petrolia would serve a useful public purpose in that it would be more efficient than existing services and would be useful to meet a future need.

28. Witco has a need for intrastate service from its Bradford facility; however, Central has failed to show either that existing services to Bradford are inadequate to meet Witco's

need, or that Central's proposed service to Witco at Bradford would serve a useful public purpose.

29. The record contains no evidence of intrastate shipments from Witco's Trainer facility.

30. Pennzoil operates a petroleum refinery at Karns City (Butler County), Pennsylvania. From that facility Pennzoil ships white oil and petrolatums. Pennzoil also operates a facility at Rouseville (Venango County), Pennsylvania from which it ships primarily kerosene, and also some petrolatums and neutral oil.

31. Pennzoil has a need to transport from its Karns City facility 39 intrastate shipments per month of commodities covered by this application.

32. Pennzoil receives at its Karns City facility three inbound shipments per month, handled by common carriers, of commodities covered by this application. Although Pennzoil receives considerably more shipments at its Karns City facility, the vast majority of such traffic is handled by Pennzoil itself in its own trucks.

33. Central has not demonstrated that present service to Pennzoil at Karns City is inadequate.

34. Central has shown that its proposed service to Pennzoil at Karns City would serve a useful public purpose in

that it would be more efficient than existing services, and would be used as a backup to Pennzoil's own fleet.

35. The record contains no evidence of any need for intrastate transportation to or from Pennzoil's Rouseville facility, other than shipments between Rouseville and Pennzoil's Karns City facility, which were included in Finding Nos. 31 and 32.

36. McCloskey Corporation has a need to transport from its Philadelphia facility approximately three intrastate shipments per month of commodities covered by this application.

37. Central has established that the overall level of service to McCloskey is inadequate.

38. E. F. Houghton & Co. has a facility in Fogelsville (Lehigh County), Pennsylvania which is engaged in the manufacture and distribution of oils and greases. Both products are shipped from that facility to various points in Pennsylvania.

39. Houghton has a need to transport from its Fogelsville facility approximately eight intrastate shipments per month of commodities covered by this application.

40. The record contains no evidence of a need for intrastate inbound shipments received at the Fogelsville facility. Houghton has no complaints about the service it has received from existing carriers on inbound shipments.

41. Central has not established that existing service to Houghton is inadequate.

42. Central has shown that its proposed service to Houghton's Fogelsville facility will serve a useful public purpose in that it will permit Central to coordinate interstate and intrastate shipments.

43. Harry Miller Corporation has a need to transport from its Philadelphia facility approximately three intrastate shipments per month of commodities covered by this application.

44. Central has established that the overall level of service to Miller is inadequate.

45. Para-Chem Southern, Inc. has a facility in Philadelphia from which it ships approximately nine intrastate shipments per month of commodities covered by this application.

46. Para-Chem receives approximately five inbound shipments per month of commodities covered by this application from the Pittsburgh area. The inbound shipments are presently handled by a company called Backhaul Transport, a broker from New Jersey. Backhaul uses different carriers, one of which is Beeline. According to Commission records, neither Backhaul Transport nor Beeline holds appropriate authority from this Commission as either a common carrier or a broker.

47. Central has failed to establish that existing service to Para-Chem is inadequate.

48. Central has established that its proposed service to Para-Chem would serve a useful public purpose in that it would be used by Para-Chem as a backup to its own fleet on outbound moves and would permit Central to coordinate intrastate and interstate shipments.

49. Calgon Corporation has a facility located in Ellwood City, Pennsylvania, from which it has a need to transport between 20 and 25 intrastate shipments per month of commodities covered by this application.

50. Calgon's intrastate transportation needs are presently being met by its primary carrier, Schneider National.

51. Chemical Leaman, Refiners and Matlack are available to Calgon as backup carriers. At least for the past year, Calgon has not made use of Refiners as a backup carrier.

52. Central has failed to establish either that existing services to Calgon are inadequate or that Central's proposed service to Calgon would serve a useful public purpose.

53. Valspar Corporation manufactures a can coating for the food and beverage industry at plants in Pittsburgh, and Rochester, Pennsylvania. From its Rochester facility, Valspar has a need to transport approximately three intrastate shipments per month of commodities covered by this application. Valspar has a need to transport fewer intrastate shipments from its Pittsburgh facility.

54. Central has not shown that existing service to Valspar is inadequate.

55. Central has demonstrated that its proposed service to Valspar would serve a useful public purpose in that it would be more efficient than existing service and would permit coordination of interstate and intrastate loads.

56. Central failed to offer any evidence to demonstrate that the evidence of need provided by the eight supporting shippers in this proceeding is representative of a need for service by all shippers within the scope of the requested authority as restrictively amended. Central has failed to offer any evidence of need for the transportation of dry commodities or for transportation in dump or hopper-type type vehicles.

57. Marshall Service, Inc., holds authority from the Commission at Docket No. A-101153, including several folders and amendments. Marshall is basically a bulk commodity hauler.

58. Marshall has rendered service for only one of the supporting shippers in this proceeding, E. F. Houghton, Inc., and only in interstate commerce.

59. Marshall produced no evidence of having rendered intrastate transportation for any of the supporting shippers in this proceeding. Since the beginning of this proceeding,

Marshall has not solicited the business of any of the supporting shippers.

60. Marshall will suffer no adverse impact from a grant of authority to Central to serve only the supporting shippers in this proceeding.

61. Chemical Leaman Tank Lines specializes in the bulk transportation of both liquid and dry commodities in Pennsylvania and in interstate commerce.

62. Although Chemical Leaman offered testimony that traffic at some of its Pennsylvania terminals would be affected by approval of Central's application, it offered no evidence to quantify the extent of any potential traffic diversion.

63. If this application is granted, it will not have a significant, immediate adverse impact on Chemical Leaman. Chemical Leaman's operations will be impaired little, if any, if Central is authorized to render service to the supporting shippers to the extent that Central has demonstrated that its service will serve a useful public purpose responsive to the needs of the shippers.

64. On November 7, 1986, Chemical Leaman was cited for a leak of butyl acrylate in Dedham, Massachusetts from one of its tank trailers. The leak occurred while the driver was on layover at a motel. On November 23, 1986, Chemical Leaman was cited for a leak of a combustible liquid from a tank trailer which occurred

when Chemical's vehicle struck a bear in the roadway at night, ran off the roadway, and overturned. The accident occurred on I-80 in Jefferson County. Chemical Leaman was cited on November 28, 1987, at the Port of Milwaukee, Wisconsin, for failure to follow prescribed procedures in transferring lubricating oil from its tank trailer to a ship. On February 1, 1988, Chemical was cited in Ironton, Ohio, for failure to file DOT form 5800-1 within fifteen days after discovery of an unintentional release of phenol.

65. The evidence submitted by Oil Tank Lines by stipulation with Central fails to demonstrate that approval of Central's application as restrictively amended would endanger or impair Oil Tank Lines' operations to any extent.

66. Crossett is a regional carrier specializing in petroleum and petroleum products in bulk in tank vehicles. Crossett is headquartered at Warren, Pennsylvania.

67. Most of Crossett's business comes from the counties of Warren, McKean, and Venango.

68. Although Central has restricted its application against the transportation of many petroleum products, the authority sought by Central would authorize Central to transport several petroleum products which Crossett transports, including lubricating oils, petrolatums, petroleum gases, resins, and naphtha.

69. Witco, a supporting shipper in this proceeding, is an important customer of Crossett. Crossett transports material from Witco's Bradford facility on a daily basis. One of Crossett's terminals is in Bradford. The products which Crossett transports for Witco are products which Central is seeking to transport. Crossett renders little if any service for Witco from Petrolia.

70. Crossett transports petroleum products for Pennzoil Company, another supporting shipper in this proceeding. Crossett renders daily service for Pennzoil out of Pennzoil's facility at Rouseville. Crossett renders little if any service for Pennzoil from Karns City.

71. Crossett's operations will be impaired little, if any, if Central is authorized to render service to the supporting shippers to the extent that Central has demonstrated that its service will serve a useful public purpose responsive to the needs of the shippers.

72. During the two-year period August 19, 1986 through June 6, 1988, Crossett paid four fines of \$67.50 each for vehicles with various defects including a leaking tank, brakes out of adjustment, unbalanced steering brakes, and no stop lights. During the same period, Crossett paid three fines of \$117.50 each for vehicle defects such as unbalanced steering brakes, and no stop lights. In 1988, Crossett paid a fine of

\$100 to the US DOT for a chemical spill resulting from a vehicle accident and fines of \$1,000 and \$1,500 to the Pennsylvania Fish Commission and to the Pennsylvania Clean Water Fund relating to a spill from a vehicle accident.

73. Refiners holds statewide intrastate authority to transport property, in bulk, in tank vehicles. Refiners also holds ICC authority to transport bulk commodities in interstate commerce.

74. Refiners has a terminal at Oil City, Pennsylvania, which has an office, maintenance facility, and tank cleaning facility. Forty percent of the Oil City terminal business is generated by service performed for Pennzoil, a supporting shipper in this proceeding.

75. Refiners also has a terminal at East Butler, Pennsylvania, which includes a maintenance facility, a tank cleaning facility and an office. Fifty percent of the total revenue of the East Butler terminal comes from Witco traffic. Witco is a supporting shipper in this proceeding.

76. Refiners has made special efforts to serve Witco and Pennzoil, including the purchase of special equipment and dedicated trailers for those accounts.

77. Refiners also maintains terminals at Sewickley, Duncansville, and Devault, Pennsylvania, as well as Wilmington,

Delaware and Hammonton, New Jersey, which provide intrastate service to Pennsylvania shippers.

78. In 1987 and 1988, Refiners rendered intrastate service to supporting shippers Witco, Pennzoil, Harry Miller and Calgon. On interstate shipments, Refiners served Witco, Pennzoil, E. F. Houghton and Calgon.

79. Refiners serves approximately 150 shippers in intrastate commerce in Pennsylvania for commodities involved in Central's application.

80. Refiners provides service for a large number of major shippers for products involved in this application, including Ashland Oil, British Petroleum, Bolero Petroleum, Exxon Company, Quaker Chemical, Quaker State Oil Refining, Texaco, Sun Oil, and Union Chemical.

81. Refiners receives annually approximately \$3.6 million of revenue from the intrastate transportation of commodities covered by this application. Revenue from the Witco and Pennzoil accounts amount to approximately 50% of the total intrastate transportation of, and revenues from, commodities covered by this application.

82. Refiners has failed to show that authorization of Central to render outbound service for Witco at its Petrolia plant is likely to cause the closure of a Refiners terminal.

83. Refiners has failed to show that authorization of Central to provide service to Pennzoil at its Karns City plant is likely to cause the closure of a Refiners terminal.

84. While Refiners suffered an overall operating loss for the year ended December 31, 1988, its balance sheet and income statement should improve substantially in 1989 when it, along with several sister companies, are split off from its parent, Leaseway Transportation. Five management members of Leaseway's Bulk Materials group have signed a letter of intent to acquire the group from Leaseway Transportation during the first quarter of 1989. Once the acquisition is complete, Refiners' administrative and selling expenses will be less than they have been because the allocation methodologies now used to allocate costs among Leaseway subsidiaries do not show the actual costs that would be incurred by Refiners on a stand-alone basis.

85. Refiners, as early as October 15, 1986, solicited the intrastate transportation business of E. F. Houghton Company. Houghton has now begun to tender traffic to Refiners. In 1987 and 1988, Refiners solicited the traffic of Valspar Corporation. Refiners has also solicited the traffic of Harry Miller Corporation. Neither Valspar nor Harry Miller have tendered traffic to Refiners.

86. Refiners' operations will not be impaired to an extent, that on balance, the granting of authority would be

contrary to the public interest, if Central is authorized to render service to the supporting shippers to the extent that Central has demonstrated that its service will serve a useful public purpose responsive to the needs of the shippers.

87. On September 2, 1988, Refiners executed a consent agreement with the Pennsylvania Department of Environmental Resources (DER) which provided for Refiners to pay a civil penalty of \$5,600 in connection with the discharge of inadequately treated industrial waste water from its Oil City tank cleaning facility into Oil Creek. Refiners has paid the fine. By order dated May 14, 1986, the Environmental Hearing Board (EHB) imposed on Refiners a civil penalty of \$35,400 for transporting on several occasions during 1983 and 1984 hazardous waste for which it did not have a license, and for accepting hazardous waste for transport without a completed manifest. In its order the EHB characterized the violations as being "of a low degree of severity."

88. Matlack, Inc. holds authority from the Commission at A-67250, including several folders and amendments. Matlack also holds authority from the ICC, and from 34 states authorizing intrastate service in those jurisdictions. Matlack specializes in the transportation of liquid and dry bulk products, including commodities of the kinds for which Central is seeking authority.

89. Matlack has six terminals in Pennsylvania, and a terminal at Swedesboro, New Jersey, that are utilized to provide intrastate service, as well as sub-terminals at Stockertown and Highspire, Pennsylvania. Matlack is in the process of reopening a terminal situated in St. Petersburg, Clarion County, Pennsylvania; that terminal is being reopened because of a significant increase in the volume of traffic being tendered to Matlack by Witco's Petrolia plant.

90. Between January 1, 1989 and May 31, 1989, Matlack transported a total of 853 shipments for the eight supporting shippers which have appeared in this application, generating revenues of \$872,487. Of these totals, 92 shipments and \$113,105 in revenue resulted from Pennsylvania intrastate service. During that same period, Matlack transported a total of 1,645 shipments in intrastate commerce in Pennsylvania, generating revenue of \$1,064,005 in transporting commodities which are within the scope of Central's application as restrictively amended. For that same period, Matlack's Pennsylvania intrastate gross revenues were approximately \$2.4 million.

91. For the fiscal year ending September 30, 1988, Matlack had an overall operating loss. Matlack applied to the Commission for a rate increase on intrastate traffic and the rate increase was approved in January, 1989.

92. Within the past year, Matlack has solicited the business of each of the shippers that supported Central's application.

93. Matlack's operations will not be impaired to any significant degree if Central is authorized to render service to the supporting shippers.

94. For a brief period from October, 1987, to February, 1988, Matlack provided unauthorized service for Hercules Cement Company from Stockertown, Pennsylvania without requisite operating authority. The service was initiated in error, and was terminated as soon as Matlack was advised by a Commission enforcement officer that the service was unlawful. Matlack then filed an application for authority to render service to Hercules. That application has been approved.

Discussion

The criteria to be used in determining motor carrier applications is set forth in the policy statement codified at 52 Pa. Code §41.14:

§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 an extent that, on balance, the granting of authority would be contrary to the public interest.

This policy statement has survived appellate challenge. Seaboard Tank Lines, Inc. v. Pa. Public Utility Commission, 93 Pa. Commonwealth Ct. 601, 502 A.2d 762, (1985).

The primary Commission decision interpreting this policy statement is Re: Richard L. Kinard, Inc., 58 Pa. PUC 548 (1984). In Kinard, the Commission held that the policy statement at 52 Pa. Code §41.14 requires that the applicant demonstrate, in

addition to need and fitness, that the proposed transportation will serve a useful public purpose. To demonstrate a useful public purpose, in addition to offering evidence of shipper support, an applicant is required either to prove the inadequacy of existing services to meet the need, or to produce evidence to establish one of several alternatives to inadequacy, nine of which are enumerated in Kinard. Accordingly, I will consider how the evidence produced by the parties in this case compares with the criteria established in 52 Pa. Code §41.14, as interpreted by Kinard.

I. Need: Useful Public Purpose, Responsive to Public Demand or Need.

There are two dimensions to the need issue in this proceeding. The protestants argue that Central not only has failed to demonstrate a need for the statewide authority which it seeks by this application, but that Central also has failed to demonstrate a need for service limited to the specific supporting shippers which testified in this case. I will consider each of those issues separately.

Each of the supporting shippers in this proceeding testified to a need for transportation for a certain number of intrastate inbound and/or outbound shipments over a particular period of time. The periods of time used by each witness were not uniform. Further, some witnesses included in their figures shipments which their own traffic departments did not control,

i.e. shipments picked up or delivered by the shipper itself or by the other party to the transaction, or traffic controlled by the other party to the transaction. (e.g. N.T. 166-168, 186-189). For the sake of uniformity and ease of understanding, I have calculated for each supporting shipper a "shipments-per-month" figure based upon the testimony of the shipper's supporting witness, excluding deliveries or pickups by the supporting shipper itself or by its customers or vendors, and excluding common carrier traffic not controlled by the supporting shipper. I will use these shipments-per-month figures for the balance of this discussion. These figures also are used in my Findings of Fact.

A. Need for Statewide Authority

The crux of this issue is whether the testimony of the eight supporting shippers in this proceeding is sufficient to support statewide authority. Central, citing several cases, contends that the eight supporting shippers are sufficient to support a finding of need for statewide authority. The protestants disagree. I agree with the protestants that Central has not produced sufficient evidence to support a finding of need for statewide authority.

While it is true that an applicant need not present proof of need at every point in the territory for which authority is sought, Pa. Public Utility Commission v. Purolator Courier

Corp., 24 Pa. Commonwealth Ct. 301, 304, 355 A.2d 850 (1976), an applicant seeking a broad grant of authority is required to demonstrate that the needs of the supporting shippers are representative of the need for similar transportation service throughout the territory for which authority is sought. Application of Samuel J. Lansberry, Inc., A-99642, F.1, Am-P, Slip Op. at 21 (Order adopted September 14, 1989, entered October 3, 1989). The Commission's policy statement at 52 Pa. Code §41.14 is consistent with this rule because §41.14(c) states that the "Commission will grant motor carrier authority commensurate with the demonstrated public need" (Emphasis added).

In this case, Central has produced eight supporting shippers of commodities covered by the application, which between them have ten facilities throughout Pennsylvania for which they desire to use Central's service. Between them, those shippers have indicated that they have a total of approximately 356 intrastate shipments per month which, if each of the shippers stopped using all of its existing carriers, would be tendered to Central. By comparison, between October 9, 1987 and September, 1988, Central itself rendered service for 84 different shippers and 242 different consignees in interstate commerce. (Central Exhibit 7, p. 3). One of the protestants in this proceeding, Refiners, serves approximately 150 shippers of the commodities involved in this application in intrastate commerce

(N.T. 576-577), including such major shippers as Ashland Oil, British Petroleum, Bolero Petroleum, Exxon Company, Quaker Chemical, Quaker State Oil Refining, Texaco, Sun Oil and Union Chemical, none of which appeared in this proceeding. (N.T. 537-538). In short, not only did Central make no attempt to meet its burden of demonstrating the representative nature of the supporting shippers, but, in fact, the overwhelming evidence of record indicates that those eight shippers are far from representative of any general need for the transportation of the commodities involved in this application between all points in Pennsylvania.

The cases cited by Central in support of its argument on this issue are factually distinguishable from this case.

In Pa. Public Utility Commission v. Purolator Corp., 24 Pa. Commonwealth Ct. 301, 355 A.2d 850 (1976), a common carrier holding Pennsylvania authority was applying for an expansion of its existing authority. As the Court noted, "the net effect of the modification is to allow Lincoln [the applicant] to operate in two additional counties, Fayette and Armstrong, and, more importantly, to dispense with the necessity of beginning and ending each trip at the Three Rivers Bank." Purolator, 24 Pa. Commonwealth Ct. at 304. Three contract carriers protested the application. Lincoln produced 11 supporting shippers. Additionally, Lincoln's vice president testified to 19 service

requests received by Lincoln throughout the seven counties in the application. As the Court noted, the supporting shippers in Purolator each indicated a desire to use a common carrier rather than a contract carrier for their transportation needs. In that case, the Commission found, and the Court agreed, that the evidence established a need for common carrier service within the seven-county area of the application. The differences between this case and Purolator are obvious. In this case, Central is seeking to transport a much wider range of commodities than was the case in Purolator; in this case, the applicant has produced only eight supporting shippers in its quest for statewide authority, whereas in Purolator the applicant produced eleven supporting shippers, and 19 requests for service, in support of an expansion of its existing authority; finally, this case has been actively litigated by no fewer than six protestants all of which are common carriers. (While the Public Utility Code favors common carriage over contract carriage, 66 Pa. C.S. §2501(a), the law contains no similar preference for common carrier applicants over common carrier protestants).

The case of Allied Asphalt Co., Inc., 43 Pa. PUC 622 (1968) is factually distinguishable from the present case. In Allied, the applicant applied for the right to transport liquid asphalt and tar in bulk, in tank trucks, between points in all parts in the western half of Pennsylvania, west of the eastern

boundaries of Potter, Clinton, Centre, Huntington, and Fulton. The application was protested by numerous motor carriers. The Commission eventually granted Allied the right:

To transport, as a Class D carrier, liquid asphalt, in bulk, in tank trucks, from points in the Boroughs of Springdale, Allegheny County, Monaca, Beaver County, and Warren, Warren County, to points in that part of Pennsylvania located west of the eastern boundaries of Potter, Clinton, Centre, Huntington and Fulton.

The applicant produced eight supporting shipper witnesses. That case is factually distinguishable from this one in that Allied sought authority to transport only two commodities: liquid asphalt and tar. The commodity scope of Central's application is much broader. Moreover, in Allied, the Commission substantially reduced the territorial scope of the authority granted as compared to the scope of the authority sought. As the Commission noted, the record indicated that the liquid asphalt market is very limited, with very few origin points in all of western Pennsylvania where the transportation would originate. Allied, 43 Pa. PUC at 625. Significantly, in approving the application, the Commission limited the origin points to three boroughs. Thus, in that case, the Commission clearly granted only authority commensurate with the need shown.

Application of Refiners Transport and Terminal Corp., Docket A-00093117, F.1, Am-A (Order adopted December 7, 1984, entered December 13, 1984) also is distinguishable from this

case. In Refiners, the applicant sought an amendment to its common carrier certificate authorizing it to transport property, in bulk, in tank vehicles, between points in Pennsylvania; subject to the following condition: that no right, power or privilege is granted to transport dry commodities in bulk. While numerous protests were filed to the application, all carriers but one withdrew their protests, after two days of hearings, on the basis of a restrictive amendment prohibiting the transportation of dry commodities in bulk. The remaining protestant challenged the application only to the extent that it would authorize Refiners to transport industrial wastes. The Commission eventually granted the application as restrictively amended and as further modified to prohibit the transportation of industrial wastes to DER-approved disposal sites. As Central notes, Refiners produced in support of the application only five supporting shipper witnesses. Nevertheless, in Refiners, unlike the present case, the applicant already held considerable intrastate authority to transport the involved commodities when it filed its application. Refiners was already serving 150 to 200 shippers on a regular basis pursuant to its Pennsylvania authority which covered, primarily, the western half to two-thirds of the state. (Initial Decision of ALJ Michael Nemec, Appendix A at 1-2). A carrier obviously need not produce evidence of need in those territories for which it already holds

authority. Moreover, in the Refiners case, each of the supporting shipper witnesses testified in great detail to the unsatisfactory nature of the service which it was then receiving from its existing common carriers. (See e.g., Initial Decision, Appendix A at 7-9, 13, 16, 19-20, and 22). By contrast, of the eight supporting shippers in this case, only two, Pennzoil (N.T. 172-173) and McCloskey (N.T. 212-213), expressed any dissatisfaction whatsoever with the service obtained from the common carriers presently serving them. Moreover, although Pennzoil complained about service lapses with respect to a particular customer, upon cross-examination it was revealed that the customer and not Pennzoil chooses the carrier for that particular transportation (N.T. 186-187). Similarly, McCloskey claimed that they terminated service by Matlack because of late pickups and deliveries, but on cross-examination, it appeared that McCloskey's dissatisfaction with Matlack may have arisen from Matlack's level of rates rather than from any serious service difficulties. (N.T. 233-235).

In Refiners, the consistent service complaints coupled with the withdrawal of protests could surely support a reasonable inference on the part of the ALJ and the Commission that the evidence presented by the supporting shippers was representative of conditions throughout the territory sought by the application. In this case, there are many protestants and few complaints about

service. Despite the fact that Central is seeking authority in essentially the same part of the transportation industry--liquid bulk commodities--as Refiners was seeking in its application, the inconsistent evidence produced in each case may be simply the result of the Commission's certification of more carriers during the intervening period (between 1984 and 1988). (See e.g. N.T. 492-494). Such a result is neither unexpected nor unreasonable as the question of need for service must be judged on the basis of evidence presented in each case. In 1984, when Refiners pursued its application, there appears to have been a greater need for additional service than exists at the present time. The Commission's certification of many new carriers and the broadening of authority for several others in the intervening years appears to have reduced the need for additional service at this time. Such a change is simply a result of the Commission's discharge of its duty under the Public Utility Code.

Two other cases Central mentioned in its argument on this point are similar to Refiners. In Application of Ward Trucking Corp., 43 Pa. PUC 689 (1968) and Application of Matlack, Inc., Docket No. A-00067250, F.21, Am-G (Order adopted October 27, 1989, entered October 31, 1989), the applicants were established Pennsylvania carriers seeking to expand their authorities. Those carriers (Ward and Matlack) were not required to demonstrate need throughout the entire territory as for which

they were seeking authority because they already held rights to operate in much of that territory.

Another case cited by Central, Kulp v. Pa. Public Commission, 153 Pa. Superior Ct. 379, 33 A.2d 725 (1943), is not even remotely helpful to Central's argument. In Kulp, the applicant held the right to transport property within 20 miles of the Borough of Lansdale, Montgomery County, excluding the City and County of Philadelphia, parts of which are within the 20-mile radius. The applicant applied for the right to transport property within all of the City and County of Philadelphia. In support of its application to transport property in Philadelphia, the applicant produced 14 shipper witnesses. The Commission approved the application over the protest of 18 competing carriers. On appeal, the Superior Court eliminated much of the territory authorized by the Commission. While the Court acknowledged that an applicant need not produce every conceivable shipper in a particular territory to prove need for service within the territory generally, the Court held that the evidence produced by the applicant was insufficient to demonstrate a need for service throughout the entire territorial scope of the application:

The "desired flexibility in administrative procedure does not go as far as to justify orders without a basis in evidence having rational probative force" The burden was upon applicant to establish a public need for the facilities, which he offered, throughout the

extended territory of the application and only insofar as this burden has been met may his certificate be amended enlarging his field of operation. To the extent that service is authorized beyond the territorial limits of the proofs, the order is extravagant, capricious and arbitrary and not in conformity with the law.

Kulp, 153 Pa. Superior Ct. at 383, 384.

Another case cited by Central, Noerr Motor Freight, Inc v. Pa. Public Utility Commission, 181 Pa. Superior Ct. 332, 124 A.2d 393 (1956), is actually most unhelpful to its argument. In Noerr, a holder of existing motor carrier authority filed an application to substantially expand that authority. The application was protested, and after hearing, the Commission approved the application with several modifications. The protestants appealed. Upon appeal, the Superior Court modified the Commission's order so as to further restrict the grant of authority. With respect to that portion of the grant of authority which the Court affirmed, the applicant had produced 26 shipper witnesses who testified not only to a need for service, but to severe inadequacy of the existing services. The applicant also produced evidence of numerous service requests which it had received. The protestants in Noerr claimed on appeal that the applicant had not proven need for the service throughout the territory which it sought. In rejecting that argument, the Court stated:

What may constitute a need for service, indicated in part by the number of requests, depends upon

the locality involved and the particular circumstances of each case. In an area such as Lewistown, where the requirements for transportation facilities to the Pittsburgh area are not great, fewer requests will be considered as substantial evidence of public convenience and need for such service.

Noerr, 181 Pa. Superior Ct. at 330. Thus, Noerr stands for the proposition that what will be considered sufficient evidence of need in a particular territory depends upon the particular circumstances of each case. In this case, Central has certainly not demonstrated that the needs of its eight supporting shippers are representative of the need for service across the state.

Central cites Noerr for the proposition that "the Courts and the Commission have historically recognized that no existing carrier has an absolute right to be free from competition." (Central Brief at 30). While Central's characterization of the holding in Noerr is not inaccurate, it must be read in the context of the case. In Noerr, the record contained much testimony by the shippers that existing service was inadequate. The Court observed;

A lack of interest in this business by all carriers until applicant filed his application clearly appears throughout the record. The shipping public need not be indefinitely inconvenienced by disinterested carriers.

Noerr, 181 Pa. Superior Ct. at 331. It is clear that the Court viewed the Commission's authorization of competition in that case to be a response to the inadequate service provided by the

protestants. There is no testimony of general service inadequacy in this case.

Finally, Noerr also substantially undercuts Central's reliance, in meeting its burden of establishing need, upon recent Commission pronouncements emphasizing the encouragement of competition over the protection of existing carriers. (Central Brief at pp. 30-31). One of the rights sought by the applicant in Noerr and granted by the Commission was a Class A right. Class A rights were then defined in Rule 202 of General Order No. 29 of the Commission (now 52 Pa. Code §31.22(b)). The Commission, by relying upon Rule 202, authorized the applicant in Noerr to provide certain service without evidence of need for the questioned service having been produced by the applicant. Upon appeal, the Commission took the position that Rule 202 permitted it to authorize the questioned service simply as a matter of Commission policy or discretion. In rejecting that argument, the Court made the following observations:

Apparently the purpose of Rule 202 is to meet realistically the transportation problem in many instances, but the rule is not operative merely as a matter of policy or at the unlimited discretion of the Commission in the absence of evidential support for its order. Its findings and final order must have a substantial basis in the evidence and Rule 202(a) may operate only if there has been substantial evidence of public necessity as is required for the granting of any such additional rights. (Footnotes omitted).

Noerr, 181 Pa. Superior Ct. 334, 335. The Court further noted in footnote 5 on page 334:

Policy cannot be made a substitute for evidence .
. . . ; and administrative discretion is not without
some limitation

In this case, the fact that the Commission has a policy favoring competition among motor carriers cannot be invoked as Central would invoke it to avoid its own burden to produce substantial evidence of need which is representative of the need throughout the service territory for which it seeks authority.

Another case cited by Central, Re Eazor Express, Inc., 53 Pa. PUC 374 (1979), also involved the expansion of intrastate authority by a common carrier already operating in Pennsylvania. In that case, the only protestant to the application was the successor to a company which had ceased operations. The carrier which had ceased operations was a major carrier in the relevant transportation market. The primary issue in Eazor was not whether there was sufficient proof of need for service, but whether to certificate Eazor to compete with a company which had recently succeeded a major carrier in the same transportation market. Thus, Eazor also bears little, if any, resemblance to this case.

Finally, it is important to remember that even in Application of Richard L. Kinard, Inc., 58 Pa. PUC 548 (1984), which stands as the definitive interpretation of the Commission's new transportation policy, the Commission did not approve the entire application as filed and amended by the applicant, but

rather imposed additional limitations upon the certificate consistent with the evidence of record.

B. Service for Specific Supporting Shippers

Having concluded that Central Transport has failed to demonstrate a need for service throughout the state, I will now consider the extent to which Central has demonstrated that its proposed service will serve a "useful public purpose, responsive to a public demand or need" for the supporting shippers in this proceeding. Throughout this discussion, it is important to bear in mind that to the extent that the Commission has adopted a policy of fostering competition in the motor carrier industry, that policy cannot be made a substitute for evidence of need. Noerr, 181 Pa. Superior Ct. at 334, n. 5.

1. Witco Corporation

Witco operates three facilities in Pennsylvania: Bradford (McKean County), Petrolia (Butler County), and Trainer (Chester County). (N.T. 148, 149; Central Exhibit 8). Witco has a need to transport approximately 236 loads per month from Bradford. It is presently using eight common carriers to handle that traffic. (Central Exhibit 10; N.T. 153-155). Witco has the need to transport approximately 29 loads per month from Petrolia. At this time it is using four different common carriers for that transportation. (Central Exhibit 9). Witco provided no testimony as to service required from Trainer. Witco mentioned

no need for inbound service at any of its facilities. Witco testified that if Central's application is approved, Witco will use Central to render outbound service from its Bradford and Petrolia facilities. (N.T. 159). Thus, Central established a need for service from Witco's Bradford and Petrolia locations.

Having determined that Central has established a need for service on the part of Witco, it is now necessary to analyze the testimony to determine whether approval of Central's application will serve a useful public purpose, responsive to that need. In order to do that, it is necessary to determine whether Central has established either the inadequacy of the existing services or an alternative to inadequacy. Kinard, 58 Pa. PUC at 551-552. Since Witco's witness made no mention of any service problems with its existing carriers, Central has not established the inadequacy of those services. Thus, the inquiry must be focused upon the alternatives to inadequacy.³

³In order to save time during this discussion of need, I will note here that I reject Central's claim that the Kinard alternative of "lower rates" applies to this case. The Kinard alternative of lower rates cannot be invoked by Central because it has failed to produce sufficient evidence to support it. A motor carrier which wishes to rely upon rate evidence in an application proceeding must comply with the evidentiary guidelines set forth in 52 Pa. Code §3.382(b). That section provides that the weight to be attributed to prospective rate evidence depends upon the extent to which it is accompanied by cost evidence demonstrating that the prospective rates would be compensatory. In this case, Central not only indicated that it has not yet determined the level of rates which it would charge if this application is to be approved (except for a very limited part of its service) (Central Exhibit 1, p. 14), Central has

The alternatives to inadequacy enumerated in Kinard are:

- (1) different service
- (2) efficiency
- (3) lower rates
- (4) future need
- (5) backup service
- (6) shipper competition
- (7) ICC authority
- (8) rectification of authority
- (9) benefit to applicant

The alternatives which could apply to the Witco service are efficiency, future need, and ICC authority. Although Witco does not appear to be in need of more backup carriers, Central's service to the Petrolia facility would be more efficient than the service of the competing carriers in that Central's Karns City terminal is located in close proximity to Witco's plant. (N.T. 157). Because Witco ships primarily food grade products from Petrolia, Central's tank cleaning facility would be of great benefit to it. (N.T. 152-153). Moreover, because Witco has recently completed an expansion project at its Petrolia facility which will increase the production at that facility, the future need alternative also applies. (N.T. 150). The "ICC Authority" alternative does not apply. Witco is using Central for outbound interstate shipments only (Central Exhibit 8) from Petrolia. Since Witco would use Central only for outbound intrastate

provided no evidence that any rates to be charged would be compensatory. Accordingly, the lower rate alternative does not apply.

shipments in single compartment trailers (N.T. 151), there is no benefit to be gained by coordinating intrastate and interstate shipments.

The situation at Witco's Bradford facility is somewhat different. The Bradford facility is served by eight common carriers. (Central Exhibit 10; N.T. 153-155). Moreover, one of those common carriers, Crossett, maintains a terminal in Bradford. (N.T. 453). There was no testimony that Witco's Bradford facility is undergoing any expansion which would substantially increase its need for transportation. Under these circumstances, the different service, future need, and efficiency alternatives would not apply to this location. Moreover, the ICC authority alternative is inapplicable for the same reasons that it is inapplicable for service from Witco's Petrolia facility. Finally, it is difficult to ascertain a need for an additional carrier to provide either more competition among the carriers for Witco's business or backup service. While the volume of shipments from Bradford is large (236 per month), Witco is already using eight different common carriers to meet its transportation needs from that location. Thus, I am unable to conclude that Central has demonstrated that its proposed service for Witco from Witco's Bradford plant would serve a useful public purpose.

2. Pennzoil

Pennzoil operates facilities at Karns City (N.T. 165) and at Rouseville (N.T. 167). Pennzoil ships approximately 39 shipments per month in intrastate commerce from its Karns City facility to 22 different locations throughout Pennsylvania. (Central Exhibit 12). Presently that traffic is handled by three common carriers, including Refiners and Matlack. (N.T. 165, 185). Although Pennzoil makes other shipments from its Karns City facility, those shipments are handled either as customer pickups or are tendered to carriers which were chosen by Pennzoil's own customers. Pennzoil also receives inbound shipments at its Karns City facility. (Central Exhibit 13). The vast majority of those shipments are transported by Pennzoil in its own trucks. (N.T. 166-168, 187-189). Inbound shipments within the scope of this application which were transported by common carriers have amounted to approximately three per month. Central has established a need for service to and from the Pennzoil facility at Karns City and the focus shifts to whether Central's proposal to render service would serve a useful public purpose.

Central attempted to establish that service provided by Matlack and others from the Pennzoil Karns City facility to a customer of Pennzoil in Carnegie, Pennsylvania was inadequate. (Central Exhibit 14). That attempt was based upon a contention by the Pennzoil witness that on a number of occasions it had

problems obtaining equipment from Matlack and other carriers for the service in question. However, upon cross examination, it was disclosed that the customer, and not Pennzoil, specifies the carriers to be used by Pennzoil for that transportation. Moreover, Pennzoil honors that choice of carriers by the customer and will continue to do so even if this application is granted. (N.T. 186-187). Accordingly, it is my determination that Central has not shown that the service provided by the existing carriers to Pennzoil is inadequate. Thus, it is necessary to review this evidence in light of the alternatives to inadequacy.

Central's proposed service to the Karns City facility of Pennzoil meets several of the criteria set forth in Kinard. Because Central maintains a facility in Karns City, the efficiency alternative applies. Moreover, to the extent that Pennzoil would use Central's service as a backup to its own equipment for inbound service, the backup service alternative also applies. Accordingly, I conclude that Central has demonstrated that service to the Pennzoil facility at Karns City would serve a useful public purpose responsive to a public demand or need.

Although Pennzoil also operates a facility at Rouseville, the only evidence regarding need for transportation at Rouseville which appears in the record involves shipments moving between Rouseville and Karns City. (Central Exhibits 12 and 13). Because I considered those shipments in connection with

Pennzoil's need for service to and from Karns City, to consider them again in connection with a need for transportation at Rouseville would be to consider them twice. Accordingly, I find that Central has failed to establish a need for transportation to or from Pennzoil's Rouseville facility.

3. McCloskey Corporation

McCloskey Corporation maintains a facility in Philadelphia from which it ships in intrastate commerce in Pennsylvania approximately three shipments per month. (Central Exhibits 15, 16). Of that traffic, 70 to 75% travels in compartmented trailers. (N.T. 220). McCloskey needs compartmented trailers because it ships stopoff shipments to more than one customer, which frequently include combined intrastate and interstate loads. (N.T. 206).

McCloskey presently uses only Chemical Leaman for its transportation in intrastate commerce. (N.T. 213). McCloskey previously used Matlack in addition to Chemical Leaman, but has not done so since May, 1988. McCloskey claimed it stopped using Matlack because it had experienced service difficulties with Matlack. (N.T. 212, 213). McCloskey, however, admitted that it had threatened to discontinue service from Matlack if Matlack persisted in seeking a rate increase in transportation from McCloskey's plant in Los Angeles, California. (N.T. 233-235). I am not persuaded that McCloskey ceased the use of Matlack's service due to service difficulties; the evidence suggests that

it is at least equally likely that McCloskey stopped using Matlack because of its level of rates. Nevertheless, even if Matlack's service is not inadequate, it is appropriate to consider the overall level of service available to McCloskey.

The McCloskey witness testified that his company has never been solicited for outbound traffic by Marshal, Oil Tank Lines, Crossett or Refiners, the other protestants in this proceeding. (N.T. 211, 250). (Refiners does transport products inbound to McCloskey's plant from points in Pennsylvania, but that transportation is controlled by the supplier of the materials.) It is understandable that McCloskey has not been solicited by several of the carriers involved in this proceeding because McCloskey ships a relatively small volume of material in comparison to the larger shippers. This small volume coupled with McCloskey's need for compartmented trailers would combine to make it more difficult for McCloskey to obtain service than would be the case for larger shippers such as Witco and Pennzoil. Failure of existing carriers to solicit a shipper's traffic constitutes evidence of inadequacy of those existing services. Noerr, 181 Pa. Superior Ct. at 331. Accordingly, I conclude that Central has established that existing service to McCloskey is inadequate.

4. E. F. Houghton

E. F. Houghton has a facility in Fogelsville, Pennsylvania, from which it makes approximately eight shipments

per month to points in Pennsylvania. (N.T. 259-260). For outbound service from Fogelsville to Pennsylvania points, Houghton has been using Matlack, Chemical Leaman, and, more recently, Refiners. (N.T. 263, 599). The Fogelsville facility receives inbound products in the nature of chemicals, raw materials, and oil from Bradford, Oil City, Petrolia, and Marcus Hook, all in Pennsylvania. (N.T. 261). The witness did not detail the frequency of the inbound shipments. Inbound service is provided by Crossett and Oil Tank Lines. Houghton has no complaints about the service received from those carriers. (N.T. 263, 275-278). Houghton testified to a desire to use Central as a backup carrier for last-minute service requests. (N.T. 264). To date, Houghton has used Central's service in interstate commerce approximately once per month on inbound shipments. (Central Exhibit 18).

Houghton's interest in Central appears to be primarily for outbound shipments. Houghton expressed no dissatisfaction with the service received from its existing carriers on inbound movements. Houghton expressed no particular intent to use Central on intrastate inbound movements. Accordingly, I find that Central has failed to establish a need for inbound service to Houghton's facility.

With respect to outbound service from Houghton's facility, Central has established a need for service for approximately eight shipments per month. While Central has not

demonstrated that the service by Houghton from existing carriers on outbound shipments is inadequate, I note that Houghton, like McCloskey, is a small volume shipper and is more likely to have difficulty obtaining service for sporadic shipments than is a larger shipper. Also, it is my opinion that Central has demonstrated that the proposed service meets the "ICC authority" alternative to inadequacy. While the number of shipments involved are not great, Houghton has been using Central's service in interstate commerce primarily on inbound shipments. Certification of Central to provide outbound service for Houghton will permit Houghton to utilize Central's equipment which is arriving at Houghton's facility for outbound intrastate service.

5. Harry Miller Corporation

Harry Miller Corporation has a facility in Philadelphia which ships cleaning compounds and petrolubes. Miller ships to Reading, Pennsylvania approximately once every two months and to Allenport, Pennsylvania, once every three months. Miller is presently using Matlack for its intrastate outbound traffic. (N.T. 282-283). Central is presently providing outbound service in interstate commerce. (Central Exhibit 19).

Miller has not used Crossett, Marshall Services, Refiners, or Oil Tank Lines. Although Miller has not used Oil Tank Lines for outbound movements, Oil Tank Lines does make deliveries to Miller's facility. (N.T. 284-286, 290-291). Miller is supporting Central because it would like to have an

alternative carrier to Matlack to use if a shipment must be made on short notice. (N.T. 284). Central would be used as a backup carrier. (N.T. 290).

Central has established that Miller has an extremely small need for outbound intrastate transportation service. While Miller is presently dealing with only one carrier, Matlack, on its intrastate service, there is no indication that Matlack's service is inadequate. I find, however, that Central has made a showing that overall service to Miller is inadequate. While there are presently other certificated carriers apparently able to serve Miller, Miller has not used them and only one, Refiners, has solicited Miller's business. (N.T. 600). As in the case of McCloskey, and Houghton, Miller is a small shipper which may have more difficulty interesting carriers in its business than a large shipper would have. Accordingly, I find that certification of Central to serve Miller even as a backup carrier for a small number of shipments, would serve a useful public purpose responsive to Miller's need for service.

6. Para-Chem Southern

Para-Chem Southern, Inc. has a facility in Philadelphia from which it ships liquid latex. Para-Chem ships approximately nine shipments per month to Pennsylvania locations. (N.T. 294-295). Most of those outbound shipments are made in Para-Chem's own equipment. (N.T. 295, 297).

Para-Chem presently receives approximately five inbound shipments per month of a resin solution from the Pittsburgh area. (N.T. 294). Inbound shipments are presently handled by a company called Backhaul Transport, an ICC property broker. Backhaul uses different carriers, one of which is Beeline. (N.T. 295, 308).⁴

Para-Chem has used Central to transport approximately three inbound interstate shipments per month. (Central Exhibit 20).

If Central's application is approved, Para-Chem may use Central for inbound service, and would use Central as a backup to its own equipment for outbound service. (N.T. 304-306).

Central has established a need, albeit a small one, for service on the part of Para-Chem. Central has failed to show that Para-Chem's present service is inadequate in that Para-Chem apparently prefers to deal with uncertificated carriers rather than with established carriers such as the protestants in this case. With respect to the alternatives to inadequacy, however, I believe that Central has established that its proposed service would fall under the backup service and ICC authority alternatives. Although Para-Chem has not used the other carriers

⁴I have checked Commission records, and they disclose that neither Backhaul Transport nor Beeline holds appropriate authority from this Commission as either a common carrier or a broker. In the ordering paragraphs of this Decision, I will direct that it be served upon the Law Bureau and the Bureau of Safety and Compliance so that an appropriate investigation and prosecution of Backhaul Transport and/or Beeline for the provision of unauthorized transportation service may be conducted.

involved in this case, there is no indication on the record that any of them have solicited Para-Chem's business. Again, apparently because Para-Chem's need for service is slight, it would benefit from having available to it the services of another carrier. Since Central is already rendering inbound interstate service, it could coordinate interstate and intrastate movements.

7. Calgon Corporation

Calgon Corporation has a facility located in Ellwood City, Pennsylvania, where it manufactures water treatment chemicals. (N.T. 318-319). Calgon ships water treatment chemicals to several points in Pennsylvania. Calgon ships to the City of Pittsburgh approximately 15 to 20 truckloads per month. Calgon also ships approximately one truckload per month to several locations in Pennsylvania. (N.T. 319-320). At this time, the majority of Calgon's intrastate shipments are being handled by Schneider. (N.T. 321). Calgon has used Central's service in interstate commerce for outbound loads. (Central Exhibit 21). Calgon would like to have Central available as a backup carrier for Pennsylvania intrastate traffic that is now handled by Schneider National. Calgon also would like to have Central available to increase competition for intrastate transportation. (N.T. 321; Central Exhibit 21).

Although Central has established that Calgon has a need for transportation service, I conclude that Central has failed to establish either that present service for Calgon is inadequate or

any of the alternatives to inadequacy. Calgon testified that at the present time all of its shipments are being handled satisfactorily by Schneider. Calgon also acknowledged that Refiners, Chemical Leaman, and Matlack are all available to Calgon as backup carriers. (N.T. 327). I can discern no useful public purpose to be served by certificating Central to act as a backup carrier when Calgon already has at least three carriers available to backup the carrier that is presently handling all of its transportation needs in a satisfactory manner.

It is also my opinion that authorization of Central to serve Calgon simply because Calgon would like to increase competition for its business is not justified by this record. Calgon has available at least four intrastate common carriers. Calgon expressed dissatisfaction with neither the rates nor the service of presently authorized carriers. There is no evidence in the record on which to conclude that the injection of another carrier would improve the situation in any respect. As noted previously, a policy to favor increased competition is no substitute for substantial evidence in a particular case. Accordingly, I conclude that with respect to Calgon, Central has failed to establish that its proposed service would serve a useful public purpose.

8. Valspar Corporation

Valspar Corporation ships material in liquid form from plants in Pittsburgh and Rochester, Pennsylvania. (N.T. 333).

From its Rochester facility, Valspar ships approximately three intrastate shipments per month, primarily to Philadelphia or to Valspar's own Pittsburgh facility. Valspar also ships very infrequently to Lebanon, Pennsylvania and to Fogelsville, Pennsylvania. Valspar ships to the same locations from its Pittsburgh facility but the shipments are fewer in number. (N.T. 327, 333, 338-339). For its intrastate transportation, Valspar has been using Matlack. (N.T. 335-336). Valspar uses primarily Central for its interstate shipments. Valspar ships substantially more in interstate commerce than it does in intrastate commerce. (Central Exhibit 22). Matlack dedicates equipment specifically to the Valspar account. (N.T. 340). Refiners has solicited Valspar's Pennsylvania intrastate business, but Valspar does not consider Refiners to be even a backup carrier at this time. (N.T. 340, 341). Since the number of shipments that Valspar has in intrastate commerce is limited, it is using primarily the carriers Central and Matlack. (N.T. 342). If Central is certificated, Valspar claims that it will use Central as a backup carrier and for more competition on outbound movements to locations in Pennsylvania. (N.T. 336).

It is evident that Valspar has a very slight need for intrastate transportation service. Judging by this record, the only existing carriers which have an interest in Valspar's intrastate traffic are Matlack and Refiners. However, this apparent lack of interest must be viewed in light of the fact

that Central handles the bulk of Valspar's business, which is in interstate commerce. In fact, despite the fact that Valspar indicated it would use Central as a backup for intrastate service, the sheer difference in volume between interstate and intrastate shipments, combined with the fact that Central is handling most of Valspar's interstate traffic, strongly suggests that certification of Central to handle Valspar's intrastate traffic will result in Central becoming Valspar's primary, if not only, carrier in intrastate commerce. While Valspar's need for Central as a backup carrier is dubious, at best, authorization of Central to serve Valspar would appear consistent with the efficiency and ICC alternatives to inadequacy. Whether Central is eventually used as Valspar's primary intrastate carrier or as a backup, quite clearly the fact that it is the beneficiary of considerable interstate service from Valspar would encourage it to render a high quality of service to Valspar in intrastate commerce. Accordingly, I conclude that Central has demonstrated that authorization of it to serve Valspar would serve a useful public purpose.

II. Fitness

An applicant seeking motor carrier authority is required to demonstrate 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 the propensity to operate safely and

legally. 52 Pa. Code §41.14(b). I will consider each of these issues separately.

A. Financial Fitness

Although two of the protestants raise a nominal challenge to Central's financial fitness, (Brief of Matlack at 15, Footnote 3; Brief of Marshall Service at 4-5), there is no question that Central has the financial capability to render the proposed service. Central's balance sheet as of June 30, 1988, shows total assets of \$29,716,899 and total liabilities of \$3,967,978. Stockholders equity consisting of common stock and retained earnings was \$25,748,921. Central's income statement indicates that it has been able to operate profitably in interstate commerce and in the states in which it now renders intrastate service. (Central Exhibit 1H). As of September 26, 1988, Central operated 369 company-owned tractors and 121 owner/operator-owned tractors. (Central Exhibit 1C). Central operates a total of 778 trailers systemwide. (Central Exhibit 1D). Central has a total of 39 trailers assigned to its Karns City, Pennsylvania, terminal, 14 trailers assigned to its Paulsboro, New Jersey, terminal, and 20 trailers assigned to its Baltimore, Maryland terminal, all of which would be available to service within Pennsylvania. (Central Exhibit 2). It quite obvious that if that equipment were insufficient to render service in Pennsylvania, Central is financially able to purchase such equipment as it might need. Finally, Central carries

insurance in excess of that required by the Commission's regulations. (Central Exhibit 7, p. 7). In short, Central has unquestionably established its financial fitness to provide the requested service.

B. Technical Fitness and Propensity to Operate Legally and Safely

Technical fitness requires that the applicant have technical capacity to meet the need in a satisfactory fashion. The applicant must possess sufficient staff, facilities, and operating skills to make the proposed service feasible, profitable, and a distinct service to the public. Re William O. Connor, 54 Pa. PUC 547, 549 (1980). As in the case of financial fitness, the protestants do not seriously challenge Central's technical fitness. This is understandable inasmuch as Central is a successful carrier in interstate commerce and in intrastate commerce in several other jurisdictions. Moreover, Central obviously has the equipment needed to render the service for which it has demonstrated need. Nevertheless, the record contains evidence of a number of problems at Central's terminals which reflect upon Central's technical fitness. These are, of course, the problems associated with tank cleaning at the North Carolina and South Carolina terminals, as well as the violation of Pennsylvania environmental regulations at Central's Karns City terminal. (Matlack Exhibit 3). While the protestants have chosen to characterize those problems as casting doubt upon

Central's propensity to operate safely and legally, they also reflect upon Central's technical fitness. For this reason, I have chosen to combine the discussion of Central's technical fitness with the discussion of its propensity to operate safely and legally.

Before discussing the specifics of the various incidents, it is necessary to put to rest two legal issues which the parties have argued in this proceeding. Central has argued throughout these proceedings that the violation of occupational safety and health laws and regulations, as well as other violations of environmental laws and regulations, may not be considered in determining its fitness. Specifically, it takes a position that in determining fitness the Commission may only consider violations of the Public Utility Code, the Commission's regulations, and violations of law affecting "safety of operations." (Central Brief at 10, 11). The violations of law of which the protestants have produced substantial evidence involve failure on the part of Central to employ safe methods and equipment in cleaning tank trailers, and Central's failure to comply with Pennsylvania environmental regulations regarding the disposal of water from its Karns City trailer cleaning facility. Central's contention that the Commission may not consider these matters in determining Central's fitness is ludicrous.

66 Pa. C.S. §1501 provides, in pertinent part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. (Emphasis added.)

Under that section, the Commission does have jurisdiction to grant relief to employees of a public utility whose personal safety is jeopardized by the conditions under which they work. Reading Co. v. Pa. Public Utility Commission, 188 Pa. Superior Ct. 146, 149-150, 146 A.2d 746 (1958). The fact that a safety issue arises in an application case, rather than in a complaint proceeding, and involves violations of laws other than the Public Utility Code, does not preclude the Commission from considering it. Byham v. Pa. Public Utility Commission, 16 Pa Superior Ct. 248, 67 A.2d 626 (1949) (Commission affirmed after it refused to issue a certificate for taxicab service to a person who had been arrested and convicted several times for drunkenness and disorderly conduct, and the Commission considered these convictions in its refusal to grant a certificate); Re Betz, 63 Pa. PUC 500 (1987) (Commission refused to issue a certificate for taxi cab service to an individual who, as a taxi driver, had made improper advances to female patrons).

The primary purpose of the fitness criteria is to protect the public. Brinks, Inc. v. Pa. Public Utility Commission, 500 Pa. 387, 456 A.2d 1342 (1983). The occupational

safety and health violations and the environmental violations at issue in this case involve the tank cleaning operations of Central. That these tank cleaning operations are an indispensable part of the trucking operation is evident from the considerable testimony both by the applicant (Central Exhibit 1, pp. 11-12) and by the various shippers (N.T. 152-153, 301, 334) of the need to clean the trailers between loads. Central's proposed service will be of little benefit to the public if it cannot conduct that service without endangering the health of its employees and the cleanliness of Pennsylvania's waters. Accordingly, Central's contention that the Commission may not consider incidents involving the occupational safety and health of Central's employees, as well as environmental violations, is rejected.

A second issue which arose in this connection involves Central's offer of the records of the protestant carriers insofar as violations of safety, environmental, and public utility laws and regulations are involved. The protestants take the position that such evidence may not be admitted because only Central's fitness was at issue. Central has sought to demonstrate that its own record was not significantly different from industry experience in that area. I ruled in favor of Central on this issue (Orders dated January 17, 1989 and February 2, 1989). By Order dated February 28, 1989, I refused Matlack's request to certify my ruling to the Commission. Because this issue was

discussed at length in my earlier orders regarding this matter, I will not dwell upon it in detail in this Initial Decision. I will merely point out that my ruling stems from the principle that the primary purpose of the fitness criteria is to protect the public. Brinks, Inc. v. Pa. Public Utility Commission, 500 Pa. 387, 456 A.2d 1342 (1983). The fitness criteria would not serve that purpose if one or several protestant carriers were able to use the fitness criteria to bar entry into the transportation market by an applicant whose own safety record was either not substantially worse or, perhaps much better, than their own.

1. Employee Safety Problems at Central's Charlotte, North Carolina Terminal

The evidence regarding deficiencies in employee safety at Central's terminal in Charlotte, North Carolina begins with the death of two Central employees who entered a tank trailer to clean it. (N.T. 673, 677-678). The coroner in that case determined that the two employees died of asphyxiation by methylene chloride.⁵ The witness from Central testified that it was not determined that the methylene chloride had been in the tank, and that methylene chloride had not been the product carried in the tank immediately prior to the men being sent in to

⁵Webster's Third New International Dictionary, 1971, identifies methylene chloride as a low boiling point, non-flammable liquid used chiefly as a solvent, paint remover, refrigerant, and propellant in aerosols. It is synonymous with dichloromethane. Webster's at 1423.

clean it. The men were not wearing respirators when they entered the tank. (N.T. 678). As a result of that incident, the North Carolina Department of Labor issued a citation against Central for violation of several occupational safety and health statutes and federal regulations. The citation was resolved by stipulation between Central and the North Carolina Department of Labor which resulted in a consent order being issued. While Central, in the agreement, did not admit the violations charged in the citation, Central agreed to withdraw its notice of contest to citation and to pay the proposed penalty of \$1,800. Central further agreed to implement and enforce a confined space entry program for all employees who may enter and work in the interior compartment of tank trailers. Central also agreed to establish and maintain a respiratory protection program in accordance with the requirements of 29 CFR §1910.134. (Matlack Exhibit 3, pp. 6-15).

Central maintained that it had begun implementing its safety program prior to the occurrence of the incident involving the deaths in 1986. (N.T. 689-690).

2. Employee Safety Problems at Central's Greenville, South Carolina Terminal

As a result of an inspection on December 3, 1986, the South Carolina Department of Labor issued a citation against Central on January 29, 1987, charging that Central, at its Greenville, South Carolina terminal, failed to comply with

several occupational safety and health laws and regulations pertaining to the cleaning of tank trailers. Several of the violations involved the failure of Central to provide and require its employees to use protective equipment, including respirators, while cleaning tank trailers. This citation was resolved by a settlement agreement between Central and the South Carolina Department of Labor. Central did not admit the accuracy of the allegations contained in the citation, however, Central did abate all of the items noted in the citation by implementation of a confined space entry program for all employees who may enter such spaces. (Matlack Exhibit 3, pp. 18-29).

Central argues that the problems involved in these occupational safety and health citations should not preclude its certification in this proceeding because they are insufficient to support a finding that Central lacks the propensity to operate safely and legally. It argues that this is the case because Central was not convicted of a crime, because the citations were not criminal in nature and did not involve acts of "moral turpitude", and because the agencies having jurisdiction over the activities involved entered orders "absolving Central of any responsibility for the alleged violations." (Central Brief at 14). While it is true that Central was not convicted of a crime or otherwise adjudged guilty of a particular violation, the agencies' orders certainly did not absolve Central of any responsibility for the alleged violations. In the case of the

North Carolina settlement, Central withdrew its contest of the citation and agreed to pay the proposed penalty. Furthermore, Central agreed to institute a program to comply with 29 CFR §1910.134 regarding respiratory protection of employees. Similarly, in the South Carolina case, while Central did not admit that it committed any violations, it agreed to implement a confined space entry program and a respiratory protection program for its employees.

Central's agreements in 1987 with the North Carolina Department of Labor to implement a respiratory protection program in accordance with 29 CFR §1910.134, and with the South Carolina Department of Labor to implement, among other things, a respiratory protection program at its Greenville terminal, must be viewed in light of the fact that 29 CFR §1910.134, the regulation of the Occupational Safety and Health Administration (OSHA) pertaining to respiratory protection, has been in effect since 1971, (and that regulation was based upon a "national consensus standard", ANSI Z88.2-1969). Advance Notice of Proposed Rulemaking, 47 Fed. Reg. 20,803 (May 14, 1982). Central's failure for 16 years to comply with regulations designed to protect the safety of its employees can certainly be viewed as a reckless, if not willful, disregard of the safety of its employees; moreover, even if viewed as a result of mere ignorance of the regulations on the part of Central, Central's failure to comply with these regulations at its tank cleaning

facilities certainly reflects negatively upon Central's technical capacity to carry out the proposed service in a manner which is beneficial to the public.

In fairness to Central, with the exception of 29 CFR §1910.134 (pertaining to the use of respiratory devices) OSHA, to this date, has not yet adopted a general regulation pertaining to employees required to work in confined spaces. OSHA has only recently proposed such a rule, and that proceeding is not yet final. Notice of Proposed Rulemaking, 54 Fed. Reg. 24,080 (June 5, 1989).

The question to be answered at this point is whether the employee safety and health deficiencies at Central's North Carolina and South Carolina facilities should act to bar Central from authorization to render intrastate service in Pennsylvania. I conclude that they should not. In the most recent Supreme Court decision involving fitness, the Court stated:

The essence of public utility regulation is to ensure that the public's needs are best served at the most reasonable rates. If past unlawful operations were deemed conclusive of an applicant's fitness, the Commission would be powerless to grant the application of a carrier who, despite its unlawful activities, has otherwise demonstrated its present fitness to perform services beneficial to the public. Such an automatic disqualification, moreover, would improperly view the Commission's statutory obligation to determine an applicant's fitness prior to granting a contract carrier permit as a punitive measure directed against the individual wrongdoer rather than as a safeguard, the primary purpose of which is the protection of the public.

Brinks, 500 Pa. at 392, Footnote 3.

Because Central has taken steps to comply with the applicable safety and health laws and regulations at its facilities in North and South Carolina, to bar it from holding Pennsylvania authority on the basis of prior violations at those terminals would be to use the fitness criteria as a punitive measure rather than as a safeguard. Nevertheless, the fact of those violations does suggest that Central's certificate of public convenience, if approved, should be modified with certain conditions designed to safeguard the protection of its Pennsylvania employees.

Interestingly, at no time in this proceeding did Central specifically offer testimony that it is maintaining confined space entry and respiratory protection programs for its tank cleaning facility at Karns City. I am concerned that Central failed to make such assurances. Accordingly, I will order, as a condition of issuance of Central's certificate, that it institute and maintain confined space entry and respiratory protection programs at its Karns City facility. I will further order that issuance of the certificate be conditioned upon Central's certification to the Commission that it has instituted such programs. The respiratory protection program will be required to be in accordance with the OSHA regulation, 29 CFR §1910.134. Because OSHA has not yet adopted a regulation for confined space entry safety, I will direct that Central maintain a confined space entry program in Pennsylvania in conformance with its stipulation agreement with the North Carolina Department

of Labor, until such time as OSHA adopts a regulation governing confined space entry safety. (I am unable to find any Pennsylvania safety and health regulations pertaining to confined space entry programs).

3. Environmental Violations

The environmental violations included those which occurred at Central's Karns City facility as a result of its lack of knowledge regarding Pennsylvania environmental law (Matlack Exhibit 3, pp. 30-42, 47-61) and a single instance in which Central's vehicle was inspected and found to be transporting a hazardous material without a properly prepared shipping paper. (Matlack Exhibit 3, pp. 16-17). It is my conclusion that neither of these violations preclude certification of Central. Central attributed the violations at its Karns City tank cleaning facility to its lack of knowledge of Pennsylvania environmental regulations. The DER inspector who uncovered the violations agreed. While lack of knowledge of environmental rules on Central's part does not speak well of its technical fitness to engage in the transportation of hazardous materials, the fact that it is now in compliance with the applicable laws and regulations is in its favor. Because the rationale behind the fitness criteria is to protect the safety of the public rather than to punish the carrier for misdeeds, I conclude that these violations should not preclude approval of Central's application.

4. Other Safety Violations

The record contains evidence of other sporadic safety violations on the part of Central such as the transportation of corrosive material through a tunnel on the Pennsylvania Turnpike, the operation of a vehicle without a driver vehicle report, failure to display hazardous materials placards properly, failure to have a properly prepared shipping document for the transportation of hazardous materials, and two violations involving brake defects. (N.T. 81-85; Refiners Exhibit 1). Isolated violations such as these, many of which are attributable to the driver, are insufficient to support a finding that a carrier lacks a propensity to operate safely and legally, and also fail to support a finding that a carrier lacks the requisite technical fitness to carry out the service. The records of several of the protestant carriers in this proceeding disclose similar isolated violations. For example, during this same period of time covered by Central's violations, Chemical Leaman was cited for two leaks from its tank trailers, for failure to follow prescribed procedures in transferring lubricating oil from its trailer to a ship, and for failure to file a DOT report within a timely period after discovery of a leak, (Central Exhibit 27). Similarly, Crossett was fined for a leaking tank, for several brake defects, for stop light defects, and for two spills resulting from vehicle accidents. (Central Exhibit 29). Finally, Refiners was fined for discharging inadequately treated

waste water from its Oil City tank cleaning facility into Oil Creek and for transporting on several occasions hazardous waste for which it did not have a license and for accepting hazardous waste for transport without a completed manifest. (Central Exhibits 30 and 31). In terms of the severity of the violations, Central's are no worse than those of Chemical Leaman, Crossett, or Refiners. Any large company is bound to have accidents and incidents in which employees commit traffic and similar violations. Central's record in this regard is no better and no worse than one might expect.

Whether analyzed separately as I have done here or viewed together, the safety and environmental violations on Central's part of which there is credible evidence in this record are not sufficient to support a finding that Central lacks the propensity to operate legally and safely, or that Central lacks the technical fitness required to provide the service which it proposes to render.

5. Unauthorized Service

On 22 occasions in 1988, Central transported shipments between two points in Pennsylvania. (Matlack Exhibit 1). The protestants argue that this is evidence of unauthorized service which indicates that Central lacks the propensity to operate safely and legally. That argument must be rejected.

The majority of the intrastate movements originated at Unitank Terminal Services in Philadelphia and moved to various

points in Pennsylvania. (Matlack Exhibit 1). Unitank is a terminal storage facility. (N.T. 49). Central regards this transportation as taking place in interstate commerce because the materials transported, various chemicals, have prior interstate movements by water by which they arrived at the Unitank facility. (N.T. 49-50). Central has sought and received a legal opinion that such transportation is considered to be in interstate commerce. (N.T. 52). Thus far, the validity of that opinion has not been tested in litigation. (N.T. 68-69). While the interstate nature of such service might or might not be confirmed in the course of a formal proceeding in which the nature of the service was the issue, the multitude of recent ICC decisions holding similar types of transportation to be in interstate commerce provide reasonable justification for Central to rely upon its legal opinion in the absence of any complaint against the service. See e.g., Armstrong World Industries, Inc. -- Transportation within Texas, Petition for Declaratory Order, 2 ICC 2nd 62 (1986); Matlack, Inc., -- Transportation within Missouri, Petition for Declaratory Order, ICC Docket No. MC-C-10999 (Slip Opinion issued June 1, 1987).

The second category of intrastate movement involved the transportation of water between points in the Pittsburgh area in January, 1988, subsequent to the catastrophic collapse of the Ashland oil fuel tank. (Matlack Exhibit 1). The transportation was performed for the Allegheny Emergency Management Agency.

Such transportation was not unauthorized because the Commission issued an emergency order authorizing all available carriers to transport water during that emergency whether or not they held Commission authority. 18 Pa. Bulletin 292 (January 16, 1988).

The third category of Pennsylvania intrastate transportation involved the transportation of property between two points on the property of Kopper's plant in Petrolia, Pennsylvania. That transportation was conducted entirely within the plant boundaries and was not conducted over any public highway. (N.T. 55-56; Matlack Exhibit 1). Whether the transportation of property between two points on private property is within the Commission's jurisdiction is open to question. Compare Keyser v. Blanchette, 50 Pa. PUC 79 (1976) with Application of Parkhill Truck Company, 42 Pa. PUC 672 (1966). Because this area of the law is unsettled, I conclude that Central's isolated transportation of property between points on the property of Kopper's does not demonstrate a lack of propensity to operate legally.

The final category of intrastate transportation involved a load of phosphoric acid which was transported between points in Pennsylvania. In that case, the shipper of the material told Central that the load was destined to Ohio. After the truck was loaded, Central was notified that the load was reassigned to a Pennsylvania destination. Because the material had already been loaded into the trailers, Central transported

it. (N.T. 56-57). While there is no conceivable justification for this unauthorized transportation, Central's resolution of this problem also is insufficient to support a finding that Central lacks a propensivity to operate legally.

For the foregoing reasons, I conclude that the evidence of alleged unauthorized service in this proceeding on the part of Central is not sufficient to support a finding that it lacks the propensity to operate legally.

III. Impact on Protestants

After an applicant for motor vehicle authority has met its burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, that the applicant does not lack a propensity to operate safely and legally, and that approval of the application will serve a useful public purpose, responsive to a public demand or need, then the applicant is entitled to a grant of authority commensurate with the demonstrated public need unless that 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. 52 Pa. Code §41.14(c). The burden placed upon protestants by §41.14(c) is quite heavy. It is not satisfied by showing mere diversion of traffic volume. Kinard, 58 Pa. PUC at 552.

Because I have determined that Central has failed to demonstrate a need for the statewide authority which it seeks, but only for a very limited portion of that authority, the potential adverse impact upon protestants must be analyzed in light of the limited grant of authority for which Central has demonstrated need. If, upon review of this Initial Decision, the Commission decides to grant substantially broader authority, the following analysis will not be valid.

A. Marshall

Protestant Marshall has not received calls for service from any of the supporting shippers since the beginning of this application proceeding. (N.T. 363). Marshall has provided service in the recent past to only one of the supporting shippers in this proceeding, E. F. Houghton, and then only in interstate commerce. (N.T. 374-375). Marshall has not solicited the traffic of any of the supporting shippers since the beginning of this proceeding. (N.T. 363). Accordingly, a grant of limited authority commensurate with the need demonstrated in this proceeding would have no adverse impact whatsoever on Marshall.

B. Chemical Leaman⁶

Chemical Leaman's own witness testified that approval of Central's application would not have a significant immediate adverse impact on Chemical Leaman. (N.T. 410). He further

⁶Although Chemical Leaman participated in the hearings in this proceeding, it filed no brief.

testified that over a longer period of time one more competitor within the area would have an impact but not necessarily an significant and immediate impact. (N.T. 410). He testified that if the impact grew to be significant and affected the profitability of a terminal, Chemical Leaman would close the terminal if it could not provide an adequate return to the company. (N.T. 411-413).

Chemical Leaman's witness identified those of Chemical Leaman's terminals which might be affected by approval of Central's application, but did not make any attempt to quantify the extent of any potential diversion. (N.T. 397-398). Finally, while Chemical Leaman attempted to depict itself as being less than financially healthy because it has not paid dividends since 1982 (N.T. 406), the fact that it purchased additional operating authority in 1986 (N.t. 415-417), the fact that in 1987 it took out a loan to repurchase its common stock (N.T. 431-433), and the fact that it has recently opened several new terminals (N.T. 415, 435-436), all suggest that it is a fundamentally healthy enterprise.

The only shippers presently served by Chemical Leaman for which Central has demonstrated need are McCloskey and E. F. Houghton. (N.T. 213, 263). Between them, these two shippers only account for eleven loads per month. (Central Exhibits 15, 16; N.T. 259-260). Even if Chemical Leaman is presently handling

all of this traffic and loses it to Central, the adverse impact upon Chemical Leaman would be virtually nil.

C. Oil Tank Lines

The only evidence in the record regarding the operation of Oil Tank Lines is contained in the stipulation between Central and Oil Tank Lines. (Oil Tank Lines Exhibit 1; N.T. 349-350). However, nothing in the record (including that exhibit) details the extent of Oil Tank Lines' participation in any of the traffic for which Central has demonstrated a need for its service. Accordingly, I find that Oil Tank Lines would suffer no adverse impact from the approval of Central's application to the extent that Central has demonstrated a need for service.

D. Crossett

Crossett, like Chemical Leaman, attempted to depict its financial condition as shaky. (Crossett Exhibit 5; N.T. 488-489). However, Crossett, like Chemical Leaman, appears to a financially sound entity. (Central Exhibit 28; N.T. 489-490). Crossett indicated that its major concerns with this application involved the transportation for Witco from its Bradford facility, and transportation for Pennzoil from its Rouseville facility. (N./t. 480-482). Crossett indicated that its interest in this proceeding would be largely satisfied if the Commission were to exclude the counties of McKean, Venango and Warren as points of origin. (N.T. 484).

Central has demonstrated that its service for Witco would serve a useful public purpose responsive to Witco's needs only with respect to outbound service from Petrolia. The evidence indicates that Crossett has rendered little, if any, service of that nature. (Central Exhibit 9). Central failed to demonstrate that its service for Witco from Bradford would serve a useful public purpose. Crossett should suffer no significant adverse impact from approval of this application with respect to Witco's Petrolia facility.

Similarly, with respect to Pennzoil, the evidence indicates that while Crossett may participate heavily in Pennzoil's traffic from Rouseville, Crossett renders only limited service, if any, from Pennzoil's Karns City facility. (N.T. 165-185). I have found that Central has failed to establish need for transportation from Rouseville, except for a limited number of shipments to Karns City. Moreover, most of the shipments from Rouseville to Karns City consist of kerosene, which is excluded from Central's application by restrictive amendment. Thus, the potential diversion of traffic from Crossett by authorization of Central to provide inbound and outbound service to Karns City, including service between Rouseville and Karns City, is very small.

At the present time, Crossett does not participate in any of the other traffic for which Central has demonstrated that its service would serve a useful public purpose responsive to the

shipper's needs. (While Crossett renders service to E. F. Houghton, (N.T. 482), that service is inbound only. I have previously found that Houghton has demonstrated only a need for outbound service. Accordingly, any potential adverse impact upon Crossett by the grant of authority to Central commensurate with the need demonstrated in this proceeding is minimal.

E. Refiners

The fact that Refiners presently is the subject of a buyout agreement by five employees of its parent company should be sufficient to dispel any notion that it is not a financially viable entity. (N.T. 587-593). Nevertheless, Refiners attempted to demonstrate that certification of Central to serve Witco and/or Pennzoil could divert sufficient traffic from two of Refiners' Pennsylvania terminals to such an extent as to cause the closing of those terminals. 50% of the total revenue of Refiners' East Butler terminal comes from Witco traffic. Much of that traffic involves the transportation of inbound raw material on an intrastate basis. (N.T. 533-534). Similarly, Pennzoil represents approximately 40% of the business at Refiners' Oil City terminal. (N.T. 535). Refiners also provides interstate service to these shippers, but for fewer loads. (N.T. 549-550).

The record does not disclose whether the Witco business for Refiners' East Butler terminal involves Witco's Bradford or Petrolia locations. However, it is likely that it originates at the Petrolia location as that is much closer to the East Butler

terminal. (Because I have found that Central has failed to demonstrate that its service would serve a useful public purpose responsive to the shipper's needs at Witco's Bradford location, any traffic which Refiners presently handles from there would not be affected by this application.) While the record indicates that Refiners does participate significantly in the outbound traffic from Witco's Petrolia facility (Central Exhibit 9), much of Refiners' service for Witco involves inbound transportation. (N.T. 533-534). Because Central has not demonstrated a need on the part of Witco for additional inbound service, at most only a portion of Refiners' service for Witco's Petrolia facility would be subject to diversion.

With respect to Pennzoil, the situation is similar. While Refiners renders service to Pennzoil both at Karns City and at Rouseville, (N.T. 165-168, 185-187), there is no indication of the extent to which that service is rendered from Refiners' Oil City terminal. By virtue of its proximity to Rouseville, Refiners' Oil City terminal appears to serve Pennzoil at that location, to a greater degree than at Karns City. Because I have found that Central has demonstrated a need for transportation at its Rouseville plant only to the extent that shipments move between Rouseville and Karns City, the potential for Refiners to lose traffic at Rouseville is virtually nil. While there is obviously some potential for diversion of Refiners' traffic for Pennzoil from Karns City, the record contains no

indication of the potential extent of such diversion. I also note that some of the service rendered for Pennzoil by Refiners requires use of special equipment (N.T. 537), and the record contains no indication that Central owns or intends to acquire such equipment.

The only other supporting shipper to which Refiners has rendered intrastate service in 1988 is E. F. Houghton. Refiners only started providing intrastate service for Houghton since the beginning of this proceeding. (N.T. 531-532).

Of the protestants in this proceeding, Refiners has made the strongest effort to show that certification of Central, even limited to the supporting shippers in this proceeding, might endanger or impair Refiners' operations to an extent that, on balance, the granting of authority would be contrary to the public interest. In principal, I agree with Refiners' argument that a protestant might meet its burden under Section 41.14(c) by demonstrating that certification of a new carrier would be likely to result in the closure of a protestant's major terminal. In this case, however, in light of the limited service for which Central has demonstrated need, it is my conclusion that Refiners has failed to show that its Oil City or East Butler terminals are likely to lose a sufficient amount of traffic to result in their closure. The service rendered by Refiners for E. F. Houghton is of such low volume as to be insufficient to support a finding of a substantial adverse impact upon Refiners.

Accordingly, Refiners has failed to demonstrate that its operations would be endangered or impaired to an extent that approval of Central's application, as limited herein, would be contrary to the public interest.

F. Matlack

Matlack, like several of the other protestants, has placed into evidence financial data suggesting that it is marginally profitable, at best. (Matlack Exhibit 2, Appendix 3; N.T. 628). As in the case of the other protestants, there is other information in the record which suggests that Matlack is fundamentally healthy. (N.T. 631, 640). Moreover, while Matlack serves most of the supporting shippers in this proceeding (the only exceptions being McCloskey and Para-Chem), only Witco and Pennzoil have a significant amount of intrastate traffic for which Central has demonstrated need and either inadequacy or an alternative to inadequacy. Any potential diversion of traffic from the smaller shippers such as Valspar, Miller, and Houghton would be insufficient to support a finding that Matlack would suffer an adverse impact sufficiently great to implicate the public interest.

Although the record indicates that Matlack serves Witco from its Petrolia facility (Central Exhibit 9; Matlack Exhibit 2, pp. 4-5), the extent of that service appears to be limited to a few loads per month. (Central Exhibit 9). Similarly, although the record indicates that Matlack serves Pennzoil from its Karns

City facility, (N.T. 165, 185), the record contains no indication of the extent of that service. With no evidence in the record to describe the extent of potential traffic diversion, Matlack has failed to demonstrate that certification of Central to the extent that Central has demonstrated need would endanger Matlack's operations to an extent that, on balance, certification of Central would be contrary to the public interest.

IV. Structuring the Grant of Authority

At this point I need to consider the manner in which to phrase the grant of authority to Central. I find the restrictive amendment filed by Central to be generally acceptable in that it is not overly complex and it resulted in the withdrawal of several protests thereby reducing the size of this proceeding. Nevertheless, the amended authority must be further modified because the authority for which Central has met its burden of proof is substantially less than that which is described by the amendment.

Each of the supporting shippers in this proceeding described a need for transportation of liquid commodities in tank-type vehicles. There is no evidence of need for the transportation of dry commodities in bulk, or for the transportation of commodities in hopper or dump vehicles. Accordingly, I will limit the grant of authority to liquid property, in bulk, in tank-type vehicles. This limitation will preclude the need for that part of the restrictive amendment

which mentions asphalt, cement, cement mill waste, flour, dolomitic limestone, dolomitic limestone products, dry litharge, fly ash, limestone, limestone products, mill scale, roofing granules, salt, sand, scrap metal and stack dust. It will also preclude the need for the restriction against transportation in dump vehicles. Thus, I will eliminate those portions of the restrictive amendment. (While other portions of the restrictive amendment also might be eliminated, I have not done so in order to avoid eliminating, inadvertently, a necessary restriction.) I will phrase the grant of authority in terms of liquid property in order to include the large number of varied products which the different supporting shippers intend to ship. This is a simpler way of accommodating both the needs of the shippers and the interests of the protestants than by reciting, for each supporting shipper, those specific products which it mentioned in its testimony.

Although some of the shippers mentioned only very limited origins or destinations for their transportation needs, I will not so limit the grant of authority. Because the grant will be limited to specific shippers at specific locations, further limitations as to origins and destinations are unnecessary and might serve to unduly hamper the shippers' businesses.

Finally, I note that the supporting shipper E. F. Houghton indicated that it is located in Fogelsville, Lehigh County, Pennsylvania. Fogelsville is not an incorporated municipality, but rather it lies within the Township of Upper

Macungie. It is Commission practice to name only incorporated municipalities in grants of authority, and thus I will use the Township of Upper Macungie, rather than Fogelsville, to describe the location of the facilities of E. F. Houghton.

Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the parties of this proceeding by virtue of 66 Pa. C.S. §1101.

2. Central has demonstrated that its proposed service will serve a useful public purpose, responsive to a public demand or need, to the extent described in Findings of Fact 24 through 55.

3. Central has demonstrated that it possesses the requisite financial and technical fitness to provide the proposed service subject to the condition that Central institute and maintain confined space entry and respiratory protection programs at its Karns City tank cleaning facility.

4. The record does not demonstrate that Central lacks a propensity to operate safely and legally.

5. A grant of authority to Central to the extent described in the Findings of Fact 24 through 55 would not endanger or impair protestants to such an extent that the granting of authority would be contrary to the public interest.

6. Common carrier authority should be granted commensurate with a demonstrate public need, as described in Findings of Fact 24 through 55.

Order

THEREFORE,

IT IS ORDERED:

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

To transport, as a Class D carrier, liquid property in bulk from the facilities of Witco Corporation in Petrolia, Butler County, to points in Pennsylvania; from the facilities of Pennzoil Products Corporation in Karns City, Butler County, to points in Pennsylvania and vice versa; from the facilities of McCloskey Corporation and Harry Miller Corporation in the City of Philadelphia to points in Pennsylvania; from the facilities of Para-Chem Southern, Inc. in the City of Philadelphia to points in Pennsylvania and vice versa; from the facilities of E. F. Houghton and Co. in the Township of Upper Macungie, Lehigh County, to points in Pennsylvania; and from the facilities of Valspar Corporation in the City of Pittsburgh, Allegheny County, and in the Borough of Rochester, Beaver County, to points in Pennsylvania; subject to the following conditions:

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

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

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

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

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

5. That the certificate holder shall comply with all the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all pertinent regulations of this Commission now in effect or as may hereafter be prescribed by the Commission. Additionally, the certificate holder shall

maintain the respiratory protection program described in Ordering Paragraph No. 2 herein, and a confined space entry program which shall be in accordance with Ordering Paragraph No. 3 herein until such time as the Occupational Safety and Health Administration of the United States Department of Labor adopts final regulations for such a program, at which time Central shall comply with OSHA's final regulations. Failure to comply shall be sufficient cause to suspend, or revoke or rescind the rights and privileges which are conferred by the certificate.

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

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

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



MICHAEL C. SCHNIERLE
Administrative Law Judge

Dated: March 5, 1990



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

ISSUED:

March 29, 1990

IN REPLY PLEASE
REFER TO OUR FILE

A-00108155

DOCKETED
APR 3 - 1990

William A. Chestnut, Esquire
McNeas, Wallace & Nurick
P.O. Box 1166
Harrisburg, Pa. 17108-1166

DOCUMENT
FOLDER

Application of Central Transport, Inc.

TO WHOM IT MAY CONCERN:

This is to advise you that pages 163, 164 and 165 of the Initial Decision in the above-captioned proceeding (served on March 16, 1990) are incorrect. Please find attached revised pages 163, 164 and 165 for your use. Please note the following changes:

Page 163, the authority should read: "To transport, as a Class D carrier, liquid property in bulk in tank type vehicles from . . ."

Page 163, Restriction (1) the commodities asphalt, cement, cement mill waste, and flour are deleted

Page 164, Order Paragraphs 2 and 3: The word "Commission" is changed to "Bureau of Safety and Compliance"

Page 165, Order Paragraph 8 should read: "That a copy of this Initial Decision . . ."

Because some of the errors are substantive in nature, the exception period is hereby extended to April 12, 1990, and reply exceptions are due within ten (10) days of the date that the exceptions are due.

cc:ALJ Schnierle/ Office of ALJ/Bureau of Trans./Law Bureau/Mr.Bramson/OSA/Chairman/Correspondence/Our File

Very truly yours,

Allison K. Turner
Chief Administrative Law Judge

smk

Encls.
Certified Mail
Receipt Requested

SIMILAR LETTER LIST ATTACHED:

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Order

THEREFORE,

IT IS ORDERED:

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

To transport, as a Class D carrier, liquid property in bulk in tank type vehicles from the facilities of Witco Corporation in Petrolia, Butler County, to points in Pennsylvania; from the facilities of Pennzoil Products Corporation in Karns City, Butler County, to points in Pennsylvania and vice versa; from the facilities of McCloskey Corporation and Harry Miller Corporation in the City of Philadelphia to points in Pennsylvania; from the facilities of Para-Chem Southern, Inc. in the City of Philadelphia to points in Pennsylvania and vice versa; from the facilities of E. F. Houghton and Co. in the Township of Upper Macungie, Lehigh County, to points in Pennsylvania; and from the facilities of Valspar Corporation in the City of Pittsburgh, Allegheny County, and in the Borough of Rochester, Beaver County, to points in Pennsylvania; subject to the following conditions:

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

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

2. That Applicant shall not engage in any transportation granted herein until it has instituted a respiratory protection program at its Karns City tank cleaning facility in accordance with 29 CFR §1910.134, and has certified to the Bureau of Safety and Compliance that it has instituted such a program.

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

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

5. That the certificate holder shall comply with all the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all pertinent regulations of this Commission now in effect or as may hereafter be prescribed by the Commission. Additionally, the certificate holder shall

maintain the respiratory protection program described in Ordering Paragraph No. 2 herein, and a confined space entry program which shall be in accordance with Ordering Paragraph No. 3 herein until such time as the Occupational Safety and Health Administration of the United States Department of Labor adopts final regulations for such a program, at which time Central shall comply with OSHA's final regulations. Failure to comply shall be sufficient cause to suspend, or revoke or rescind the rights and privileges which are conferred by the certificate.

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

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

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

Michael C. Schmierle
MICHAEL C. SCHNIERLE
Administrative Law Judge

Dated: March 5, 1990

3/30

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

Initial Decision By: ALJ Michael C. Schnierle

Deadline for Return to OSA: March 30, 1990

This decision has not been reviewed by OSA.

* * * * *

I want full Commission review of this decision.

Bill Sharow
Commissioner

3-28-90
Date

I do not want full Commission review of this decision.

Commissioner

Date

ACT 294

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

Initial Decision By: ALJ Michael C. Schnierle

Deadline for Return to OSA: March 30, 1990

This decision has not been reviewed by OSA.

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

William H. Smith

Commissioner

3/29/90

Date

ACT 294

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

Initial Decision By: ALJ Michael C. Schnierle

Deadline for Return to OSA: March 30, 1990

This decision has not been reviewed by OSA.

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

X Joseph P. Plunket, Jr.
Commissioner

3/20/90
Date

ACT 294

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

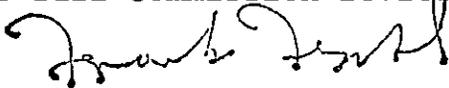
Initial Decision By: ALJ Michael C. Schnierle

Deadline for Return to OSA: March 30, 1990

This decision has not been reviewed by OSA.

* * * * *

I want full Commission review of this decision.



Commissioner

3-29-90

Date

I do not want full Commission review of this decision.

Commissioner

Date

ACT 294

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

Initial Decision By: ALJ Michael C. Schnierle

Deadline for Return to OSA: March 30, 1990

This decision has not been reviewed by OSA.

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.



Commissioner



Date

RECEIVED

MAR 19 1990

COMMISSIONER ROLKA'S OFFICE

4/12
4/23

DATE: March 30, 1990

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

TO: Jerry Rich
Secretary

FROM: Cheryl Walker Davis, Director
Office of Special Assistants

CWD

Pursuant to the requirements of Act 294, (66 Pa. C.S. §332(h)), Chairman Shane and Commissioner Fischl have requested full review of the Administrative Law Judge's Initial Decision in the above captioned proceeding. The second request for review was dated March 29, 1990.

Please notify the Office of Administrative Law Judge to prepare the case for consideration at Public Meeting.

DOCKETED
MAY 1 - 1990

DOCUMENT
FOLDER

Acceptance filed