

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition of
Sy-Ann Farms, Inc., for Irregular
Route Common Carrier Permit Authority
to Transport Grain from Walnut Grove
and Points Located Within a Ten-Mile
OF_FACT,
Radius of Walnut Grove to all Points in
Minnesota, and to Transport Feed Ingredients
AND
and Sand from All Minnesota Points to
Walnut Grove and a Ten-Mile Radius
of Walnut Grove, and Coal from all
Minnesota Points to Points in Lyon County,

FINDINGS

CONCLUSIONS.

RECOMMENDATION

MEMORANDUM

The above-entitled matter came on for hearing before Allan W. Klein,
Administrative Law Judge on July 9, 1986, in Redwood Falls, Minnesota.
The hearing lasted less than one day, and the record closed on July 9, 1986,

Petitioner Sy-Ann Farms, Inc., was represented by William T.
O'Connor,
Attorney at Law, 519 Center Street, New Ulm, Minnesota 56703.,
Protestants
Nackerud Trucking, Floyd Wild, Inc., Dan Schak Trucking, David Fadness, Vince
Anderson Trucking, Inc., and Silvernale Trucking were represented by Patrick
J. Leary of the firm of Quarnstrom, Doering, Pederson, Leary & Murphy,
Attorneys at Law, 109 South 4th Street, Marshall, Minnesota 56258-1396.

Notice is hereby given that, pursuant to Minn. Stat. sec. 14.61, and
the
Rules of Practice of the Public Utilities Commission, as applicable to
the
Transportation Regulation Board, and the Rules of the Office of
Administrative
Hearings, exceptions to this Report, if any, by any party adversely affected
must be filed within 20 days of the mailing date hereof with the
Transportation Regulation Board, Minnesota Administrative Truck Center,
254
Livestock Exchange Building, 100 Stockyards Road, South St. Paul,
Minnesota
55075. Exceptions must be specific and stated and numbered separately.
Proposed Findings of Fact, Conclusions and Order should be included, and
copies thereof shall be served upon all parties. If desired, a reply to

exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUES

1. Is the Petitioner Sy-Ann Farms, Inc., fit and able?
2. Has the Petitioner demonstrated a need for its proposed services which Protestants have not shown that they are already meeting?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. On March 5, 1986, Sy-Ann Farms, Inc. filed a Petition for Irregular Route Common Carrier Permit Authority with the Minnesota Department of Transportation. It was forwarded to the Minnesota Transportation Regulation Board and received on March 12, 1986.
2. On March 28, 1986, the Board published notice of the Petition in its weekly calendar, setting a protest date of April 17, 1986.
3. On April 14, 1986, the Board received a Petition to Intervene and Protest, Notice of Appearance and Affidavit of Mailing from Attorney Leary on behalf of the above-named Protestants.
4. On June 6, 1986, and weekly thereafter, the Board published notice of the public hearing in its weekly calendar.

Background on the Petitioner and Past Activities

5. Sy-Ann Farms, Inc. is a family farm cooperation. Its officers are Robert G. Syverson, President and Treasurer, and Margaret Syverson, his wife, as Vice President and Secretary. The Corporation owns 1,250 acres of land in the Walnut Grove area, which is used as part of a general grain and livestock operation.
6. Although the Corporation's primary business at the present time is the farming business, trucking has been a sideline for many years.

7. Robert Syverson has lived in the Walnut Grove area for 43 years, with the exception of three years service in the armed forces. He has hauled grain in the Walnut Grove area for many years. At some point prior to 1983, he had a grain buyer's license and moved grain pursuant to that license.

8. For the two years prior to March of 1986, the Corporation had a lease arrangement with Vince Anderson Trucking, one of the Protestants in this proceeding. Anderson has state-wide grandfather grain hauling authority and has been in the business for 25 years. The lease was terminated in March of 1986 because of increased insurance premiums proposed to be charged to Sy-Ann.

9. Prior to the termination of the lease, Sy-Ann had hauled with Anderson for two years, from the Walnut Grove, Tracy and Revere areas.

10. Sy-Ann owns a device known as a "Vac-u-vator", which is a tractor-driven grain transfer device. It was described as a "large vacuum cleaner" which allows grain to be transferred quickly and thoroughly from one place to another, such as from a bin to a truck. It is illustrated in Petitioner's Ex. 1. Sy-Ann has owned this device for three years, and finds it is a nice selling point for farmers who want grain picked up at the farm. Sy-Ann also rents the Vac-u-vator to farmers.

11. Sy-Ann has three full-time employees, none of whom are family members. They include a vo-tech trained mechanic. The most senior has been with Sy-Ann for ten years, the next for between five and six years, and the least senior has been with the operation for three years. All have Class A licenses with health cards. While one is the primary grain driver, all could be used if needed. The employees work primarily in the farm business, but are available to drive when needed. In addition to the three full-time employees, Sy-Ann has a number of part-time people who are available to drive when needed.

12. Sy-Ann has two power units, one Eagle and the other an International Harvester. In addition, it has two hopper grain trailers and one tandum and one "pup" truck for local hauls. It has not had any major accidents in the last four to five years, and the equipment is maintained by Syverson, or when needed, by an outside firm. It is in good repair, and there are no known defects.

13. Since terminating the lease with Vince Anderson Trucking in March of 1986, Sy-Ann has continued in trucking operations. It has hauled its own grain as well as hauling grain for others within a 25-mile radius of Walnut Grove. In addition, however, it has also carried others grain for hire beyond the 25-mile radius. Much of this carriage has been to port elevators, such as those located at Savage, but some has not. Since terminating the lease, Sy-Ann has made "more than 10 but a lot less than 100" hauls for hire which were not exempt from the permit requirements.

Supporting Shippers

14. Continental Grain Company maintains an elevator at Walnut Grove. It serves farmers in both Lyon County and Redwood County. By September of 1986, it plans to have 2 million bushels of storage capacity, in a combination of both permanent and temporary storage. Despite this capacity, however, it expects its capacity will be inadequate for the fall harvest. There is not enough local storage space to handle the fall harvest. Continental attempts to ship out grain whenever the market is favorable. During calendar year 1985, it shipped approximately 6 million bushels, roughly half by train and the other half by truck.

15. There are unit train loading facilities in Pipestone, but they require a large number of trucks. A unit grain train is 54 cars in length, and each car can hold four truckloads. Ideally, the entire train would be loaded in less than 24 hours so that Continental would not have to pay demurrage, but most of the time Continental is unable to load that quickly due to a lack of trucks. Usually, it takes 48 hours to load a unit train. During 1985, Continental Grain filled 15 units trains.

16. Continental has always been able to get trucks, but sometimes it has to go well outside the local area to do so. One of the reasons for this is that Continental has a stated rate it will pay to truckers, and if a local trucker is not willing to haul at that rate, Continental solicits truckers outside the local area or makes do with locals willing to haul at its rate. Continental's need is extremely seasonal, however. It is also subject to the impact of market price. For example, at the time of the hearing, when the market price was considered to be low, Continental had shipped only two truck loads during the entire week before the hearing. But if the market price increases, and especially during the harvest time, Continental expects to have a definite need for as many trucks as it can get.

17. Continental has used Sy-Ann in the past, and finds its service to be very good, its equipment "up to snuff" and its employees able.

18. The Tracy Farmer's Elevator, in Tracy, presently has storage capacity for 859,000 bushels, and is in the process of adding capacity for another 500,000. Last year, the elevator was full before the harvest even began. In calendar year 1985, it shipped about 1.3 million bushels, 80% of which was shipped by truck. Unlike Continental, it does not use unit trains, but does use the railroads for approximately 20% of its shipments. The bulk of its shipments are handled by truckers, including three of the Protestants and the Petitioner.

19. Last fall, the Tracy Farmer's Elevator could have used more trucks than were available. It could not handle all of the demands for storage, and

grain had to be moved elsewhere. Most of the time, the present carriers have been able to fill all of its needs, but during the peak months of October and November, they cannot. The elevator has never been turned down when it requested service from Protestants Vince Anderson, Silvernale or Nackerud Trucking.

20. Some of Tracy Elevator's customers have sold grain "off the farm" to dealers in Mankato and elsewhere. They have asked the elevator to arrange for Sy-Ann to do the trucking because of the Vac-u-vator. The elevator has arranged, for example, for Sy-Ann to haul corn to the Minnesota Corn Processing plant at Marshall. The elevator has also used Sy-Ann itself for backhauls, to haul soybean meal from Mankato to Tracy.

21. In addition to hauling soybean meal from Mankato, Petitioner's other potential backhauls include sand for the Walnut Grove Sandblasting and Painting Company and coal for the Minnesota Corn Processing Plant at Marshall. It did haul some sand in March, but has not hauled any coal as yet. In addition to the Tracy Farmer's Elevator and Continental in Walnut Grove, Petitioner has received occasional requests for hauling from Baaken

Grain and Feed in Walnut Grove, and the Revere Farmer's Elevator in Revere. The former, however, uses primarily private carriage, while the latter uses primarily other haulers, but the Revere Elevator had used Sy-Ann within the 60 days immediately prior to the hearing.

22. The quantity of train service has remained stable over the last three of four years, but the amount of trucking equipment available in the area has decreased over that same period. A number of haulers (including Protestants, to be discussed below) have either reduced the quantity of grain equipment and diversified into other areas, or have stopped hauling altogether.

Protestants

23. Vince Anderson Trucking, Inc. has been in operation for 41 years, and has hauled grain for the past 25 years. It holds statewide, grandfather grain hauling authority. However, during the past five or six years, the volume of grain to be hauled in the area has decreased so that Vince Anderson has been forced to reduce its number of grain trailers from eight to three.

24. Within the last two years, Vince Anderson has hauled for the Farmer's Elevator in Tracy and Continental Grain in Walnut Grove, as well as some grain from the Revere Farmer's Elevator.- However, both Continental and Revere often take their business elsewhere when Anderson tells them his tariffed price. Last year, for example, his grain hauling equipment was idle more than 50% of the time, and that has continued through the first six months of this year. There are occasional times when Vince Anderson has been unable to meet the requests of elevators, but that has been extremely rare. During the fall of 1985, for example, only on one or two days was it unable to meet all requests.

25. David Fadness, doing business as Dave Fadness Trucking, operates out of Minnesota, and has been in the trucking business for 30 years. Over the last five to ten years, it has seen a definite decrease in the amount of grain hauling work available due to unit trains. While it owned six grain trailers, and had several others under lease, it now has only two. During 1985, those two were only busy in the summer and fall, and were used less than 50% of the year as a whole. During the first six months of 1986, the two units have been used very little, much less than 50% of the time. Grain was a much bigger

portion of the Fadness business in the 1970s than it is now. Grain accounts for less than 10% of its revenues. Part of the reason for this is the "deregulation" of grain hauling to interstate terminalism as well as unit trains .

26. Nackerud Trucking operates out of Tracy, and has been in operation for 31 years. It has been hauling grain, since 1961, . In the 1970s, it had five trailers, but it has now reduced that down to three, and is presently trying to sell one of the three. The reason for the reduction in equipment is the sharp decrease in the amount of hauling business. During 1985, for example, its grain hauling equipment was idle more than 60% of the year. At one time, Nackerud Trucking had six employees, but it is now down to two. It has state-wide grain hauling authority. Like Vince Anderson, however, it has been turned down by Continental when it has quoted Continental the tariffed rate.

27. Silvernale Trucking is located in Currie, and has been in business since 1953. It has grandfather state-wide authority to haul livestock and grain. Six years ago, it had five grain-hauling units, but now it has only three. The reason for the reduction is lack of business. The reason for this is the increase in number of rail terminals which have been built to accommodate unit rail trains over the last few years. Grain hauling accounts for only 35% of its 1985 revenues.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.
2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.
3. Petitioner has failed to demonstrate that he is fit and able within the meaning of Minn. Rule part 7800.0100, subp. 4, because of his illegal activities since March of 1986. See, Memorandum.
4. Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department.
5. Petitioner has failed to demonstrate that the area to be served has a need for the requested services. Instead, he demonstrated a momentary need existing for only a few days in the fall.
6. Protestants did demonstrate that they offer sufficient transportation services to fully and adequately meet the existing need, with the exception of a few days in the fall.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Minnesota Transportation Regulation Board deny the Petition of Sy-Ann Farms, Inc. for irregular route common carrier permit authority to transport grain from Walnut Grove and points located within a ten mile radius of Walnut Grove to all points in Minnesota, and to transport feed ingredients and sand from all Minnesota points to Walnut Grove and a ten mile radius of Walnut Grove, and coal from all Minnesota points to points in Lyon County.

Dated this 8th day of August, 1986.

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd, 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded

MEMORANDUM

I .

The Administrative Law Judge concluded that Petitioner had failed to demonstrate fitness and ability because of the illegal activities since March of 1986. The hearing was held in early July, and so the intervening time period is, at most, a little more than four months. During that time, Petitioner admitted to making "more than ten, but a lot less than 100" illegal hauls. Petitioner testified that he had spoken with Vern Marks, who had explained to him the impact the Roberts case [State v. Roberts, 344 N.W.2d 407 (Minn. 1984)]. Petitioner understood that those kinds of shipments were exempt, and he was not including them in his estimate of the number of hauls which he had made,

Based upon his answers to other of the questions, and his appearance of credibility, the Judge believes that he knew that his hauls were illegal at the time that he made them, but that he went ahead and made them anyway. in such a case, it is concluded that he is not fit and able.

II.

This case is like a number of others in that the alleged need and inadequacy of existing carriers has been shown to occur only at the peak harvest time. Petitioner spoke, quite sincerely, about the difficulties and losses which farmers face if they are forced to spend a lot of time waiting in a truck line to unload grain at an elevator because the elevator is too full. During that time, grain still in the field can be damaged or its value diminished by rain, wind or other factors. Petitioner believes that by obtaining the requested authority, he would be helping to alleviate that problem. The Judge has no difficulty agreeing with the Petitioner that at certain peak times, there is inadequate capacity in the area, and that elevators are not able to quickly unload everything that is offered to them.

The problem with Petitioner's evidence is that it demonstrates a need, and an inability of existing carriers, only for the briefest of times. For the rest of the year, existing carriers can more than meet the existing need. Their equipment sits idle, and all of the Protestants have -duced their capacity to haul grain because of inadequate demand. Under such

circumstances, the statute would suggest that the Petition not be granted,
or
at most, that it be severely limited in time. Certainly there has not been
evidence to support anything longer than the months of October and November,
but the Judge does not even recommend that the Board grant a limited permit
based on the evidence introduced at this hearing.

A.W.K.

