

October 11, 1995

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RE: Petition of Triangle Transportation Company, Inc. for Charter Carrier Permit Authority (OAH Docket No. 7-3001-9606-2, TRB Docket No. CH 146851/A-94-795); and

Petition of Lange Transport, Inc. for Extension of Charter Carrier Permit Authority (OAH Docket No. 7-3001-9618-2, TRB Docket No. CH 57484/E-94-811, Sub. 3).

Dear Counsel:

I am in the process of completing my Findings, Conclusions and Recommendations in the above matters. I hope to issue the Reports simultaneously next week.

In that connection, I have received the Transportation Regulation Board's October 6, 1995 Order Dismissing Show Cause Proceeding in the Matter of Triangle Transportation Co., Inc. as a Regular Route Common Carrier of Passengers, Docket No. RRCC 14/SC-95-003 (enclosed), which Order restricts Triangle against providing incidental charter service under that authority. That document is ADMITTED to the record of both of these matters, as ALJ Exhibit 12 (in both cases).

It is necessary also to resolve the objection by Triangle to admission to the record of the Appendix to the verified statement of Randall Carpenter, filed after the hearing in rebuttal to the testimony of Annette Bergan in the Triangle case. Upon review of the relevant portions of the record, Mr. Van Osdel's objection is SUSTAINED. I ADMIT to the record (as Protestants' Exhibit 13, copy enclosed) the three-page Verified Statement of Randall Carpenter, with the exception of the final sentence in the first full paragraph on page 3 (the sentence beginning with "As an example,"), which is STRICKEN. The three-page APPENDIX to the Verified Statement of Randall Carpenter is NOT ADMITTED to the record.

It is so ruled because I agree with the argument of counsel for Triangle - the exhaustive listing by Mr. Carpenter of all his intrastate charter traffic in 1993, 1994 and

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through the time of the hearing is IMPROPER REBUTTAL which should have been introduced at the time of Mr. Carpenter's direct testimony. The information in the Appendix goes beyond the scope of the testimony it purports to rebut (that of Triangle witness Annette Bergan) and to introduce it now deprives Triangle of the opportunity to cross-examine the witness, Randall Carpenter, on the proffered evidence.

In a related matter, counsel for Lange filed a written objection to the above-noted and now sustained objection made by Mr. Van Osdel, arguing that the letter containing the objection should be STRICKEN as improper surrebuttal. I conclude that Mr. Van Osdel's letter is argument, not a presentation of evidence, and Mr. Johnson's request on behalf of Lange that it be stricken is DENIED.

With these rulings, the record in the above matters is closed.

Very truly yours,

RICHARD C. LUIS  
Administrative Law Judge

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RCL:mki

Encs.