

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Arctic Express, Inc.,	)	Case Nos.	03-1466-TR-CVF
Notice of Apparent Violation and	)		(OH0341000641)
Intent to Assess Forfeiture.	)		03-1467-TR-CVF
	)		(OH13208300093)
	)		03-1468-TR-CVF
	)		(OH3202302179)
	)		03-1470-TR-CVF
	)		(OHRF300402)
	)		03-1471-TR-CVF
	)		(OHLF302065)
	)		03-1473-TR-CVF
	)		(OHKB302335)
	)		03-1474-TR-CVF
	)		(OHLI1302782)
	)		03-1475-TR-CVF
	)		(OH1191000047)

REPLY OF ARCTIC EXPRESS, INC.

On July 23, 2003, Arctic Express, Inc. (hereinafter "Arctic") filed a Motion to Consolidate, for hearing, the above-styled proceedings. The Motion was predicated upon Arctic's desire to avoid economic hardship and conserve resources for both Arctic and the Commission. By Memorandum Contra filed July 31, 2003, the Staff opposes the Motion to Consolidate, alleging:

1. Concern about the potential for confusion that might arise from the existence of numerous violations and fact patterns. According to the Memorandum Contra, it is the belief of the Staff that consolidation makes it more difficult to keep the issues related to each case understandable.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician J Date Processed 8-7-03

2003 AUG -7 PM 4:27

RECEIVED-DOCKETING DIV

2. If the proceedings were combined, safety in Ohio would be reduced because eight (8) different officers would be required to be in the hearing room at the same time in Columbus.

According to the Staff, those concerns outweigh any "convenience" to the carrier that might result if the matters are consolidated.

Initially, it should be noted that the request for consolidation involves much more than "convenience" to the carrier. Proceeding separately in eight (8) different proceedings will require the participation of attorneys on behalf of both Arctic and the Staff; witnesses on behalf of both Arctic and the Staff; a court reporter; the hearing examiner and utilization of a Commission hearing room. Given current economic conditions and the deficit faced by the State, that would not appear to be a wise utilization of resources for the State; and it would certainly not be less than an economic hardship for Arctic.

Equally important, the concerns raised by the Staff are simply not credible. While there may be different factual patterns involved with respect to individual violations, the legal issues are essentially the same in each of the eight (8) proceedings and there is no reason to believe that consolidation would, in any manner, result in any of the factual issues becoming less understandable. Indeed, the Commission docket is replete with proceedings that involve hundreds of issues that are handled without difficulty. Moreover, prior motor carrier citation proceedings contradict directly the Staff's assertion. For example, in *B&T Express, Inc., Case No. 00-533-TR-CVF, et al.*, multiple violations were addressed and disposed of at the Commission hearing level without difficulty; and all of those cases were subsequently decided by an appellate court on a

single legal issue common to all. Staff offers no evidence, nor does it even suggest, that consolidations in those proceedings resulted in any less understandability on the part of the Staff.

Similarly, the suggestion, with no factual support, that safety in Ohio might be reduced by consolidation of the cases is without merit. With respect to that allegation, it should be noted:

1. The investigating officers involved in the non-hazardous materials violations are all employees of the Ohio State Highway Patrol, which has not voiced any concern whatsoever about decreasing safety by having officers appear at Commission hearings. Indeed, absent intervention by that agency, it is questionable whether the Staff has authority to make such a representation on behalf of the department.
2. Since investigating officers are assigned regionally, there should be no impact on safety in Ohio from consolidation. Regardless of whether the cases are consolidated or not, an investigating officer will be absent from his or her region on the date of the hearing.
3. To the extent that any legitimate concern regarding safety exists, it can be addressed through the scheduling of witnesses by the Attorney Examiner.

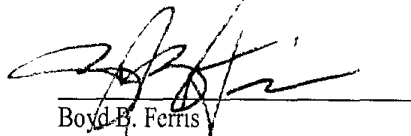
Consolidation does not require a single continuing hearing.

In short, Staff has not suggested a single believable reason that consolidation should not occur.

For all of these reasons, Arctic respectfully requests these cases be consolidated for hearing.

Respectfully submitted,

FERRIS & NEUMAN LLP



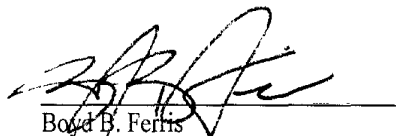
Boyd B. Ferris
2733 W. Dublin-Granville Road
Columbus, OH 43235-2798
(614)889-4777
Fax: (614)889-6515

Attorneys for Respondent,
Arctic Express, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Reply has been served this 7th day of August, 2003, via ordinary first class U.S. Mail, postage prepaid, upon the following party:

Matthew J. Satterwhite
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215-3793



Boyd B. Ferris