Safety and Licensing Board, dated December 24, 1968, the Director of the Division of Reactor Licensing has issued Provisional Construction Permits Nos. CPPR–58 and CPPR–59 to the Commonwealth Edison Co., for the construction of two pressurized water nuclear reactors, designated as Zion Station Units 1 and 2, on the applicant's Zion Station site on the west shore of Lake Michigan in Zion, Lake County, Ill., approximately 6 miles north-northeast of Waukegan, Ill., and 8 miles south of Kenosha, Wis. The reactors are each designed for initial operation at approximately 3250 megawatts (thermal).

A copy of the Initial Decision is on file in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 26th day of December 1968.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[F.R. Doc. 69–19; Filed, Jan. 3, 1969; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 18659]

BUFFALO-TWIN CITIES NONSTOP SERVICE INVESTIGATION

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled investigation is assigned to be held on January 23, 1969, at 10 a.m., e.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Greer M. Murphy.

In order to facilitate the conduct of the conference interested parties are instructed to submit to the examiner and other parties on or before January 17, 1969, (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statements of positions of parties; and (5) proposed procedural dates.

Dated at Washington, D.C., December 31, 1968.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 69–93; Filed, Jan. 3, 1969; 8:50 a.m.]

[Docket No. 20492]

EXECAIRE AVIATION LTD.

Notice of Hearing

Notice is hereby given pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on January 10, 1969, at 10 a.m., e.s.t., in Room 805, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the undersigned examiner.

Dated at Washington, D.C., December 30, 1968.

[SEAL] JOSEPH L. FITZMAURICE,
Hearing Examiner.

[F.R. Doc. 69–94; Filed, Jan. 3, 1969; 8:50 a.m.]

[Docket No. 18650; Order 68–12–156]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Charges to Apply at U.S. Airports

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 31st day of December 1968.

By Order 68–11–136, dated November 29, 1968, the Board deferred approval of an IATA agreement which would amend air freight terminal charges to be applied at U.S. airports. The agreement was adopted pursuant to IATA Resolution 512b, which provides that such charges shall be negotiated by local agreement among the carriers serving the airports of the country involved.

In deferring action, the Board found that there was no apparent basis upon which to conclude that the charges were unreasonable, but allowed a period of 15 days for the submission of comments by interested parties. No comments have been received, and we are herein making final our approval of this agreement.

Acting pursuant to sections 102, 204 (a), and 412 of the Act, the Board does not find the subject agreement to be adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

Agreement CAB 20630 be and hereby is approved.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 69–98; Filed, Jan. 3, 1969; 8:50 a.m.]

[Docket No. 20411; order 68–12–153]

MOHAWK AIRLINES, INC.

Order Providing for Further Proceedings in Accordance With Expedited Procedures

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of December 1968.

On October 25, 1968, Mohawk Airlines, Inc. (Mohawk), filed an application pursuant to Subpart M of Part 302 of the Board's procedural regulations requesting an amendment of its certificate of public convenience and necessity for Route 94 to permit nonstop service between Boston and Buffalo/Niagara Falls, nonstop service between Buffalo/Niagara Falls and Cleveland, and one-stop service between Boston and Cleveland, all without subsidy eligibility. Mohawk is authorized to serve Boston on segments 3, 4, 5, and 7, Buffalo/Niagara Falls on segments 1 and 3, and Cleveland on segment 5.[1]

American Airlines, Inc., and The Flying Tiger Line Inc., have filed statements requesting that the Board dismiss Mohawk's application.

Upon consideration of the foregoing, we do not find that Mohawk's application is not in compliance with, or is inappropriate for processing under the provisions of Subpart M. Accordingly, we order further proceedings pursuant to the provisions of Subpart M, §§ 302.1306–302.1310, with respect to Mohawk's application.

Accordingly, it is ordered:

1. That the application of Mohawk Airlines, Inc., in Docket 20411 be and it hereby is set for further proceedings pursuant to Rules 1306–1310 of the Board's procedural regulations; and

2. That this order shall be served upon all parties served by Mohawk in its application.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 69–99; Filed, Jan. 3, 1969; 8:50 a.m.]

[Docket No. 20019]

MOHAWK CHICAGO ENTRY CASE

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled proceeding is assigned to be held on January 16, 1969, at 10 a.m., e.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Louis W. Sornson.

In order to facilitate the conduct of the conference interested parties are instructed to submit to the examiner and other parties on or before January 13, 1969, (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statements of positions of parties; and (5) proposed procedural dates.

Dated at Washington, D.C., December 31, 1968.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 69–95; Filed, Jan. 3, 1969; 8:50 a.m.]

[Docket No. 19505]

SKY COURIER, INC., ET AL.

Notice of Prehearing Conference Regarding Approval of Control and Interlocking Relationships

Notice is hereby given that a prehearing conference in the above-entitled

[1] The on-segment portions of this application, Boston-Buffalo/Niagara Falls nonstop service and Boston-Cleveland one-stop service, were stayed pending further order of the Board to permit simultaneous consideration of both the on-segment and off-segment portions of this application. Order 68–11–12, Nov. 4, 1968.

matter is assigned to be held on January 17, 1969, at 10 a.m., e.s.t., in Room 630, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Edward T. Stodola.

Dated at Washington, D.C., December 31, 1968.

[SEAL] THOMAS L. WRENN, *Chief Examiner.*

[F.R. Doc. 69-96; Filed, Jan. 3, 1969; 8:50 a.m.]

[Docket No. 20541]

TRANSPORTES AEREOS DE CARGA, S.A. (TRANSCARGA)

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on January 14, 1969, at 10 a.m., e.s.t., in Room 630, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner John E. Faulk.

Dated at Washington, D.C., December 31, 1968.

[SEAL] THOMAS L. WRENN, *Chief Examiner.*

[F.R. Doc. 69-97; Filed, Jan. 3, 1969; 8:50 a.m.]

FEDERAL MARITIME COMMISSION

U.S. ATLANTIC AND GULF-RED SEA AND GULF OF ADEN RATE AGREEMENT

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. William L. Hamm, Secretary, U.S. Atlantic and Gulf-Red Sea and Gulf of Aden Rate Agreement, 25 Broadway, New York, N.Y. 10004.

Agreement No. 8630-4, among the member lines of the U.S. Atlantic and Gulf-Red Sea and Gulf of Aden Rate Agreement, modifies the basic agreement by amending Article 1 thereof to permit the members to extend their present service in the Red Sea and Gulf of Aden trades to include all ports in the Gulf of Suez and the Red Sea.

Dated: December 27, 1968.

By order of the Federal Maritime Commission.

THOMAS LISI, *Secretary.*

[F.R. Doc. 69-48; Filed, Jan. 3, 1969; 8:46 a.m.]

FEDERAL TRADE COMMISSION

MERCHANDISE WHICH HAS BEEN SUBJECTED TO PREVIOUS USE ON TRIAL BASIS AND SUBSEQUENTLY RESOLD AS NEW

Enforcement Policy

The Commission is concerned with an apparently prevalent practice of marketers of a variety of products who offer for resale merchandise which has been used by prospective purchasers on a trial basis and which upon return of the merchandise is replaced in inventory for resale as new. Such merchandise, which may have been refurbished, is offered for sale without any disclosure of previous use.

The practice is particularly prevalent where sellers of a product utilize mail order solicitations, usually through mail order firms or large and nationally known credit card organizations.

The range of products offered to the public is wide, including such items as household furniture, typewriters, calculators, pool tables, power tools, hand tools, tape recorders, ballpoint pens, cameras, label marking kits, phonograph records, and portable radios.

Common to many of the solicitations is an offer to the prospective buyer to furnish for a specified time, frequently at no charge, the item of merchandise for inspection and use during the trial period. If the customer chooses not to purchase, he is permitted to return the item, usually to the manufacturer, at no charge. It is a common practice in such solicitations for the marketers of the merchandise returned after trial use to "refurbish" such product and replace it in the firm's inventory for resale as new. The term "refurbish" appears to be a common characterization by marketers of the operation performed upon returned merchandise. It could simply mean that the merchandise is inspected and if no damage or noticeable wear is evident in the working parts, or no blemishes or scratches appear on the surface of the item it is returned to inventory for resale. The term may also incorporate a process of cleaning, or other operations which create a like new appearance, prior to replacement in inventory.

Such failure to disclose the prior use of merchandise enables marketers, including mail order retailers, to deceive and mislead the consuming public as to the condition of the merchandise purchased. It is extremely difficult for the public to be aware that it is purchasing anything but a new product, since the merchandise, especially after refurbishment, has all the surface appearances of new, unused merchandise.

Failure to disclose material facts relevant to a purchaser's decision to buy or not to buy has been held to constitute an unfair and deceptive practice.[1]

The Commission has recognized the mischief inherent in the resale of merchandise as new after it has been placed in the possession and use of customers, without disclosing such prior use on resale.[2]

In addition, the Commission under its guidance procedures has focused attention on the problem of marketing used merchandise without appropriate disclosure of such fact through the promulgation of trade practice rules for several industries. Guidelines were established which provide for disclosure of the fact that products have been previously used.

Furthermore, the essential inequity of this practice become evident when manufacturers of competing product lines who clearly disclose that merchandise has been previously used, or do not offer such merchandise for sale as new, are placed in a disadvantageous competitive posture.

ENFORCEMENT POLICY AND IMPLEMENTATION PROCEDURE

The Commission wishes to make clear its future enforcement policy with respect to disclosure by marketers of merchandise that has been the subject of previous use by virtue of trial offers to prospective customers.

First, the Commission has consistently held that the consuming public has a preference for new or unused products as compared to those which have been previously used. The Commission therefore feels that knowledge on the part of a purchaser of the fact that merchandise being offered for sale has been previously subjected to trial use is relevant to a customer's decision as to whether or not to purchase the product.

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[1] Royal Oil Corporation v. F.T.C., 262 F. 2d 741 (4th Cir. 1959) VIS & D 477; Mohawk Refining Corporation v. F.T.C., 263 F. 2d 818 (3d Cir. 1959) cert. den. 361 U.S. 814, VI S & D 522; Kerran v. F.T.C., 265 F. 2d 246 (10th Cir. 1959) cert. den. 361 U.S. 818, VIS & D 533.

[2] The repossession of sewing machines and the representation on resale that such repossessed machines were new or demonstrators or floor samples was the subject of a consent order prohibiting such practice. Docket 6685, Singer Manufacturing Company, 53 FTC 967. Similarly, consent orders were obtained which inhibited the failure to disclose that vacuum cleaners sold as new were previously rented, were exchanged items or were repossessed, Docket 7259, James Bugg Trading As Kirby Center of Washington, 55 FTC 1094; or that electric shavers sold as new were composed in whole or in part of previously used materials, Docket 6543, Shick, Inc., 54 FTC 114.

The fact that returned merchandise is refurbished to a "good as new" condition does not warrant a failure to disclose prior use. Substitution of a used product for a new one without disclosing such fact is unlawful even though a qualitative equivalence is shown.[3]

Second, merchandise which has been previously used on a trial basis and then returned should not be offered for resale by marketers, including importers, distributors, or retailers, or their agents, without clear and conspicuous disclosure of such fact in all the marketers' advertising, sales promotional literature and invoices concerning the product, on the container in which the products are packed and, if the product has been refurbished or otherwise has the appearance of being new, on the product with sufficient permanency as likely to remain thereon until sale to the ultimate consumer.

Further, it is suggested that marketers maintain adequate inventory control records that reflect the disposition of returned merchandise. Maintenance of inventory control records will enable them to demonstrate that returned merchandise was not replaced in inventory and resold without disclosing the fact of its previous use to purchasers.

Mail order houses and credit card organizations promoting the sale of merchandise, through their extensive mail advertising capabilities, share responsibility for any deceptive advertising disseminated by them when the deceptive nature of the advertising is known or should have been known to them. This is especially true where they participate in the preparation of deceptive advertising.[4]

The Commission intends to examine all complaints brought to its attention involving the marketing of merchandise which has been previously used on a trial basis without clear and conspicuous disclosure of such fact, in the light of the principles set forth above.

The Commission wishes to make clear, however, that this policy applies only to merchandise that has been used, and not to merchandise that has merely been inspected but not used.

Issued: December 31, 1968.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 69-62; Filed, Jan. 3, 1969; 8:47 a.m.]

[3] "* * * the public is entitled to buy what it chooses. A manufacturer may not surreptitiously substitute his judgment for that of the purchaser as to the article to be purchased, even if the manufacturer's judgment is equal or even superior to that of the dealer or the customer. If this were not so, the substituted judgment of the manufacturer would always prevail over the will of the dealer or customer and the provision of the statute prohibiting unfair and deceptive practices would be emasculated." Mohawk Refining Corporation v. F.T.C., supra note 1, at 821.

[4] Doherty, Clifford, Steers & Shenfield, Inc. v. F.T.C., 392 F. 2d 921 (6th Cir. 1968), CCH Vol. 5, Par. 72, 397; Carter Products, Inc. v. F.T.C., 323 F. 2d 523 (5th Cir. 1963), VII S & D 794. See also Colgate-Palmolive Company v. F.T.C., 326 F. 2d 517 (1st Cir. 1963), VII S & D 824, rev'd. on other grounds, 380 U.S. 374, VII S & D 1152; Joseph Winkler & Co., 46 F.T.C. 107.

INTERSTATE COMMERCE COMMISSION

[Notice 268]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 30, 1968.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-70895. By order of December 11, 1968, the Transfer Board approved the transfer to Arthur S. Nelson, doing business as Nelson Brothers Transfer, Geneva, Ill.; of certificate in No. MC-20750, issued July 23, 1941, to Walter F. Nelson, doing business as Nelson Brothers Transfer, Geneva, Ill.; authorizing the transportation of: General commodities, with the usual exceptions, over a regular route, between Chicago, Ill. and Geneva, Ill. Joseph Radovich, 312 West State Street, Geneva, Ill. 60134; attorney for applicants.

No. MC-FC-70909. By order of December 12, 1968, the Transfer Board approved the transfer to William R. Kemerling and George H. Kemerling, doing business as Kemerling Brothers, Post Office Box 364, Gillette, Wyo., of the certificate of registration No. MC-114083 (Sub-No. 1) issued July 9, 1965, to Hugh Grant, doing business as Hugh Grant Hauling, Post Office Box 550, Mills, Wyo., evidencing a right to engage in transportation in interstate or foreign commerce solely within the State of Wyoming, authorizing the transportation of light oil field equipment and supplies, between points and places within the counties of Fremont, Hot Springs, Washakie, Johnson, Natrona, and Converse, Wyo., and from and to points and places within said counties to and from points and places in the State of Wyoming, all shipments either to originate or terminate within said counties.

No. MC-FC-70945. By order of December 16, 1968. The Transfer Board approved the transfer to Marshall A. Coburn, doing business as Coburn Moving & Storage, 115 Northview Street, Narrows, Va., of the operating rights in certificate No. MC-37828 issued September 25, 1961, to A. W. Coburn, doing business as Coburn Transfer & Storage, 115 Northview Street, Narrows, Va., authorizing the transportation of: Scrap iron, coal, household goods, building materials and lumber, farm produce and livestock, between points in Virginia and West Virginia.

No. MC-FC-70948. By order of December 16, 1968, the Transfer Board approved the transfer to Miracle Transportation Corp., Jersey City, N.J., of permits Nos. MC-128044 (Sub-No. 1) and MC-128044 (Sub-No. 2) issued January 11, 1967, and March 25, 1968, to H. J. Tensen, doing business as Par Troy Transportation, Parsippany Troy Hills, N.J., authorizing the transportation of aquariums, uncoated, and aquarium parts, accessories, and supplies from Pine Brook, N.J., to points in North Carolina, Tennessee, Georgia, Alabama, Florida, Louisiana, Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, Minnesota, Oklahoma, Ohio, Pennsylvania, Wisconsin, and a specified portion of Texas. B. Bruce Freitag, 245 Cornelison Avenue, Jersey City, N.J. 07302; attorney for transferee. Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102; attorney for transferor.

No. MC-FC-70966. By order of December 16, 1968, the Transfer Board approved the transfer to Buck's Express Service, Inc., a Michigan Corporation, Detroit, Mich., of certificate No. MC-120527 (Sub-No. 3), issued June 4, 1964, to Rudolph Sztanyo and Charles A. Vecellio, a partnership, doing business as Buck's Express Service, Detroit, Mich., authorizing the transportation of: General commodities, with usual exceptions, between Willow Run Airport, Ypsilanti, Mich., Wayne Major Airport, Romulus, Mich., and Detroit City Airport, Detroit, Mich., on the one hand, and, on the other, points in Macomb, St. Clair, and Sanilac Counties, Mich. Mr. Frank J. Kerwin, Jr., Eames, Petrillo, Wilcox, and Nelson, 900 Guardian Building, Detroit, Mich. 48266; attorney for applicants.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 69-52; Filed, Jan. 3, 1969; 8:47 a.m.]

[S.O. 1002; Car Distribution Direction 25, Amdt. 2]

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO. ET AL.

Car Distribution

Upon further consideration of Car Distribution Direction No. 25 (The Atchison, Topeka and Santa Fe Railway Co.; Chicago, Burlington & Quincy Railroad Co.; Northern Pacific Railway Co.) and good cause appearing therefor: