

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ALTERMAN TRANSPORT LINES, INC., }
)
 Petitioner,)
)
) CASE NO. 85-2280
vs. }
)
DEPARTMENT OF TRANSPORTATION, }
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, W. Matthew Stevenson, held a formal hearing in this case on October 29, 30 and 31, 1985 in Tallahassee, Florida.

APPEARANCES

For Petitioner: Mark Freund, Esquire
 John Radey, Esquire
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 Monroe-Park Tower
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For Respondent: Judy Rice, Esquire
 James Anderson, Esquire
 Florida Department of Transportation
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The primary issue at the final hearing was whether the Petitioner's request for Department of Transportation designation of a route for twin tandem trailer "terminal access" operations beyond the approved tandem trailer highway network between Petitioner's Opa Locka trucking terminal and its Rockland Key terminal located just north of Key West at the southern extreme of the Florida Keys peninsular should have been granted.

PROCEDURAL BACKGROUND

Alterman Transport Lines, Inc., by letters dated January 21, 1985 and February 5, 1985, applied to the Department of Transportation for "terminal access" to its Rockland Key terminal by the use of twin twenty-eight (28) foot trailers in combination with a truck-tractor over the only route available - U.S. Highway 1. The Department of Transportation denied Alterman's request by letter dated March 13, 1985. On March 22, 1985, Alterman requested that the Department reconsider its denial. By letter dated June 19, 1985, the Department again denied the application for "terminal access" submitted by Alterman Transport Lines, Inc. Thereafter, the Petitioner challenged the denial of its application and requested a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes (1983).

This cause came on for final hearing on October 29, 30 and 31, 1985. By mutual agreement among the parties, the Respondent presented its case first. The following witnesses testified on behalf of Respondent: Bob McCullough, Bureau Chief of Transportation Statistics, FDOT; George W. Herndon, Public Transportation Specialists III, FDOT; Ralph Hartsfield, Administrator of Highway Statistics, FDOT; William A. Wahl, Project Manager for Traffic Signals, FDOT; Patrick Brady, Safety Improvement Program Supervisor, FDOT and accepted as an expert in the area of safety statistics; and Fred Hanscom, President of the Transportation Research Corporation and accepted as an expert in the field of traffic safety studies and traffic operational impacts of large trucks. The Petitioner presented the following witnesses: William E. Johns, Managing Director of Technical Services, American Trucking Association, member of the board of directors of the National Safety Council and accepted as an expert in the areas of semi-trailer and tandem truck operational safety; Edward Toppino, Key West citizen since 1940 and member of the Key West Chamber of Commerce; Thomas B. Webb, Jr., Managing Director of the Florida Trucking Association, prior Secretary of the Department of Transportation, FDOT, and accepted as an expert in highway construction, maintenance and safety; and, Sidney Alterman, president of Alterman Transportation, Inc. In addition to the testimonial evidence presented at the hearing, Joint Exhibits 1-6, Petitioner's Exhibits 101, 103, 104, 109-111, 123, 124, 134 and 139-144, and Respondent's Exhibits 1-18 were duly offered and admitted into evidence.

FINDINGS OF FACT

Based upon my observation of the witnesses and their demeanor while testifying, the documentary evidence received and the entire record compiled herein, I hereby make the following findings of fact:

THE PRESENT OPERATION

1. Petitioner, Alterman Transport Lines, Inc. is a common carrier engaged in the business of transporting freight within Florida and throughout the continental United States. The company's main office is in Opa Locka, Florida, where it has a large shipping terminal, repair facility, and a driver training school. The Petitioner also has terminals in several other Florida cities including Rockland Key near Key West, Florida. From these and its other terminals outside of Florida, Petitioner transports frozen, dry and perishable commodities in intrastate and interstate commerce. The company is not authorized to carry any type of explosives.

2. The Petitioner presently conducts two types of trucking operations in the Florida Keys--its Upper Keys operation, north of Marathon, and its Lower Keys operation, south of Marathon. For both operations, freight is collected at the Opa Locka terminal before movement to the Florida Keys. In the Upper Keys operation, the Petitioner utilizes a tractor pulling a 45-foot semi-trailer, or a 42-foot semi-trailer, to deliver freight to its consignees every few miles along U.S. 1 from Homestead through Ocean Reef and into Key Largo. After the deliveries are made the tractor-trailer returns north on U. S. 1 to pick up freight from shippers. The Upper Keys operation deliveries are made from and the consignments are received into the Opa Locka terminal. The Petitioner does not intend to alter its Upper Keys operation even if the petition is granted.

3. In the Lower Keys operation, the Petitioner utilizes a tractor with a 45-foot semi-trailer to transport freight from its Opa Locka terminal to its Rockland Key terminal. At the Rockland Key terminal, a portion of the freight is off loaded from the transporting semi-trailer and transferred to other vehicles. The freight which is not off-loaded is delivered by the transporting tractor semi-trailer. When the transporting tractor semi-trailer has made its deliveries and received freight from consignors, the tractor semi-trailer returns to the Rockland Key terminal and receives any additional freight that has been brought to the terminal by other vehicles. When the

tractor semi-trailer is fully loaded, it departs the Rockland Key terminal for the Opa Locka terminal. The Petitioner, if its request is granted, intends to utilize tandem trucks in the Lower Keys operation only.

4. In its Florida Keys operations, the Petitioner transports frozen and perishable commodities as well as general commodities. These items cannot be mixed. Depending upon the type of perishable commodity which is being shipped, the refrigerated trailer must be kept at one of three temperatures: zero, thirty-five to forty or sixty-five degrees. It is not possible to mix "refrigerated" freight with the "unrefrigerated" general commodities in the same trailer. However, it is possible to insert a bulkhead or divider in one trailer to have two different "refrigerated" temperatures. It is not technically feasible to mix frozen and perishable commodities with general commodities. Therefore, in transporting freight from the Opa Locka terminal to the Rockland Key terminal, the Petitioner must use two different tractor semi-trailers, one for "refrigerated" freight and one for "non-refrigerated" freight.

THE PROPOSED ROUTE

5. The route over which Petitioner proposes to transport freight utilizing "doubles" to its Rockland Key terminal is as follows:

From the Opa Locka terminal at 128th Street and Lejeune Road travel North on Lejeune Road to 135th Street (Road 916); then travel West on 916 to the Palmetto Bypass (Road 826); then South on 826 to Road 874; then Southwest on 874 to the Florida Turnpike Extension; then South on the Turnpike Extension to where it meets U. S. Highway 1 at Florida City; then South on U. S. Highway 1 to the Rockland Key terminal.

6. No part of the Department of Transportation's preliminary decision to deny Petitioner's application for access to its Rockland Key terminal was predicated on the roadway capability, safety or public convenience of the portion of the proposed route that is north of the intersection of U. S. Highway 1 and the south end of the Florida Turnpike Extension near Homestead. The Respondent did not challenge the appropriateness of the northern portion of the access route at the formal hearing. Therefore, references made herein to the proposed route will be primarily confined to a consideration of the challenged portions only.

6. The Rockland Key terminal directly abuts U. S. Highway 1 and access to the terminal is provided by way of a 50 foot driveway leading directly from U. S. Highway 1 to the terminal building.

7. The proposed route is approximately 123 miles long and passes through southern Dade County and Monroe County on U. S. Highway 1, passing through the cities of Key Largo, Tavernier, Islamorada, Marathon, Big Pine Key and several other towns to mile marker 8.5 of highway map Section 90020. The route proposed by Petitioner is the shortest most direct route between the existing tandem network and the Rockland Key terminal. Transport from the Rockland Key terminal would be over the same route, but northbound.

8. The route traverses the following Sections or portions thereof of the general highway map prepared by State Topographic

Office for the Division of Planning and Programming, State of
Florida, Department of Transportation: 87020; 87010; 90060;
90050; 90040; 90030; and 90020.

THE PROPOSED OPERATION

9. When two trailers are joined together by a dolly and pulled by a truck-tractor, the vehicle is described as a "double" or "tandem". These vehicles are also referred to as twin tandem trailers, double bottoms or tractor-semi-trailer trailer combinations. Different types of doubles are described by the lengths of the trailers pulled by the truck tractor. The "Rocky Mountain double" has a tractor with a 45 or 48 foot long trailer followed by a 28 foot long second trailer and an overall length of approximately 90 feet. The "turnpike double" has two 45 or 48 foot long trailers connected together and an overall length of 105 to 115 feet. The "western double" has two 28 foot long trailers connected together and an overall length of approximately 70 feet.

10. The Petitioner proposes the operation of twin twenty-eight foot semi-trailers, i.e. "western doubles". The tandem proposed for use by Petitioner has an overall length of 69 feet 11 inches from the front of the tractor to the rear of the second trailer and a width of 96 inches. Presently, semi-trailer trucks having a width of 102 inches, a trailer as long as 48 feet, and a tractor in excess of 20 feet may be operated on U. S. 1 without the Department of Transportation's approval.

11. The Petitioner proposes to operate its tandems to Rockland Key as a "closed door" operation. A closed door operation means that there would be no pick-ups or deliveries of freight between the Opa Locka and Rockland Key terminals. The rear trailer of the double would be uncoupled only after arrival at the Rockland Key terminal. The tractor and the front trailer would then be used to make deliveries and pick-ups in Key West or throughout the Lower Keys. The rear trailer would be used with another tractor for deliveries, or the freight from the rear trailer would be off loaded for delivery by other vehicles. After the tractor and front trailer have made deliveries and pick-ups of freight they would then return to the Rockland terminal. There, the tractor and front trailer would be recoupled with a rear trailer and return directly to the Opa Locka terminal. The returning double would make no pick-ups or deliveries.

12. The Petitioner further proposes the following restrictions on its hoped-for tandem operation to the Rockland Key terminal.

A. The operation would be closed door;

B. No doubles would be operated on Saturdays or holidays or during other week days between the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M.-to 6:00 P.M.;

C. No private carrier or other common carrier would be permitted to use Altermans' terminal at Rockland Key for any double operation;

D. Petitioner's doubles would not pass other vehicles along the route unless those vehicles were stopped and blocking traffic or the tandem driver would be directed by a law enforcement officer to pass another vehicle;

E. A sign would be placed on the back of the double that states that the vehicle is a 70 foot long double;

F. There would be no convoying on the route (two or more doubles operating together);

G. The drivers would be experienced and specifically trained to operate doubles.

ROADWAY FACILITY CAPABILITY CONSIDERATIONS

13. U. S. Highway 1 (SR-5) was constructed in accordance with the American Association of State Highway Officials Standards. U. S. Highway 1 has over 95 miles of two lane only road. The lanes are substantially all 12 foot wide, although there are some portions of the highway that have 11 foot lanes. In those parts having 11 foot lanes, paved shoulders are provided to prevent drop-offs (eroded sections which may cause an automobile driver to drop a wheel off of the pavement and result in trouble controlling the vehicle). Some of the two lane portions of U. S. Highway 1 also have turning lanes to avoid congestion for "through" traffic.

14. Generally, the proposed route has adequate shoulders for the traffic carried along the road. The paved shoulders along the 11 foot wide lanes are from 3 to 4 feet wide. Shoulders along the 12 foot wide lanes are either paved or

partially paved. There are a few areas with sharp drop-offs and no shoulders on either side. There is consistent construction and maintenance by the Department of Transportation for the purpose of repairing drop-offs and maintaining adequate shoulders. Overall, shoulders along the proposed route, with a few exceptions, provide enough room for a truck or automobile to pull off safely and stop.

15. The majority of U. S. Highway 1 was built over or adjacent to the railroad embankment that originally connected the Keys to the Florida mainland. The roadway is essentially straight and flat. Curves on U.S. Highway 1 are three degrees or less. There are no vertical curves (hills) of any significance, with the exception of vertical rises on some of the bridges to allow boats to pass underneath. The three-degree curves match the degree curve maximum that was used in the design of the interstate highway system in Florida (which was designed for 70 mile an hour traffic). The absence of extreme vertical curves and sharp curves in the roadway makes the road less hazardous. Much of U.S. Highway 1 is under construction for widening and other improvements: 61 accidents in 1984 were attributed to the condition of the road.

16. Over 40 bridges occur along the proposed route, totalling between 18 and 19 miles of bridges. With the exception of two short bridges in North Monroe County, all the bridges are at least 36 feet wide and some are 44 feet wide. Most of the bridges were renovated or replaced during an extensive program to upgrade the bridges on the Keys. The width of 36 feet was selected to allow enough room on the pavement to provide as much as 12 feet for an emergency stop by a vehicle while still maintaining two 12-foot widths of pavement for traffic movement.

17. Stalled vehicles are not a problem on the narrow bridges because they are so short that a vehicle can roll forward off of the bridge if mechanical difficulties develop. The seven mile long "Seven Mile Bridge" is typical of the other bridges along U. S. Highway 1 and is 36 feet wide. Vehicles are permitted to "pass with caution" along most of the Seven Mile Bridge, except for the extreme southern portion where there are some "no passing zones".

18. The geometric characteristics of U. S. Highway 1 are favorable for the safe operation of tandems.

19. There are approximately 18 high accident sections

occurring along the length of the proposed route. High accident segments are specifically located areas within broader Department of Transportation mapped sections with a safety ratio over 1:0. A safety ratio greater than 1:0 indicates greater accident experience than would be expected for that type of road. High accident areas occur along the proposed route in both rural and urban sections and along the 7 mile bridge area. However, the safety ratio for the entire length of the proposed route is below the 1:0 safety ratio margin, despite the inclusion of the 18 high accident sections. Accident statistics show a high number of accident and injuries occurred along U. S. Highway 1 in 1984. Over the proposed route, 1,316 accidents occurred in 1984, 1381 persons were injured and there were 44 fatalities. In 1984, the following types of accidents occurred along the proposed route: collisions with pedestrians, head-on collisions, rear-end collisions, left and right turn collisions, angle collisions, side-swipes, backing-up collisions, overturns, truck jack-knives, and hitting bridge rails. Rear-end accidents predominated with a significant number of pedestrian pedacyclist and moped accidents. In addition, drunk drivers pose a serious problem in the Keys.

20. Forty-four (44) fatalities occurred on the U. S. Highway 1 portion of the route in 1984. The majority of the fatal accidents along the route occur on weekends.

Section	Fatality Rate (per 100 mill VMT)
90020	4.26
90030	8.42
90040	6.03
90050	3.25
90060	5.48
97010	4.33

21. The unit 100 mill VMT, one hundred million vehicle miles traveled, is a standard exposure measure. The fatality rate in 1984 for all Florida roads was 3.4 fatalities per one hundred million VMT. U. S. Highway 1 has a slightly higher fatality rate over the majority of its length.

22. Overall, heavy trucks (single unit trucks greater than 10,000 pounds unloaded, semi single units and semi double \$ units) are not involved in a higher number of accidents (involving injuries, fatalities and/or property damage) over the length of U. S. Highway 1, disproportionate to the number of heavy trucks on the roadway.

23. Overall, heavy trucks are not involved in a higher number of fatal accidents over the length of the proposed route, disproportionate to the number of heavy trucks on the roadway.

24. The speed limit for the majority of the route is 45 miles per hour. Speed limits of under 30 mph occur on only 20` of the route. The speed limit is confined because of the development up and down the route. On approximately 4.5 miles of the U. S. Highway 1 portion, vehicles operate at the open highway speed. U. S. Highway 1 crosses through at least 4 school zones ranging from high school to elementary school. During morning and afternoon hours, certain school crossings across U. S. Highway 1 are subject to 30 mile per hour speed restrictions.

25. There are some areas of the proposed route where four-lane sections narrow down to two-lane sections, necessitating travel to funnel into the remaining lanes. However, the number of such instances on the proposed route is not significant.

26. Generally, only the four-lane sections of the proposed route provide for separation of opposing traffic. Thus, the majority of the proposed route does not provide a median strip to divide opposing traffic.

27. From Key Largo on south, there is almost continuous development along the highway on both sides. There are frequent drive-ways, intersections, rather lengthy strip commercial developments, and numerous access points to parks, boat ramps and other facilities which are not controlled by traffic lights. Because of the recreational nature of the area and the drivers (i.e. many tourists), vehicles frequently pull on and off the road.

28. During the peak traffic hours, heavy volumes of traffic currently utilize the proposed route. Presently, many two-lane sections are being converted to four-lane sections because they meet standards set by the Department of Transportation for four-lane conversion. (Traffic volume of 10,500-12,000 average annual daily traffic warrants a four-lane facility).

29. Traffic volume reduces substantially between midnight and 6:00 A.M. At other times of the day traffic is heavy and the roadway is congested. Friday afternoons when travelers are heading into the Keys and Sunday afternoons when travelers are leaving are peak hours when the road is congested. In addition,

the roads are particularly congested between 7 and 8:30 A.M.

30. The potential for conflicts between tandems and other modes of travel is great during peak travel periods, i.e. after 6:00 A.M. and before 12:00 midnight. The proposed route traverses an extremely popular tourist area in south Florida. Some problems are created by the heavy volume of slower moving tourist traffic along U. S. Highway 1. Problems associated with this type of traffic are related to tourist inattention to driving while sight-seeing, looking at the water, and trying to find lodging or recreational facilities. Many of the tourists are not familiar with the road and many are pulling campers or boat trailers. In addition to automobiles, the proposed route usually contains a good mixture of vehicles including semi-trailers, dump trucks, automobiles with travel trailers or boats and other recreational vehicles. Safety problems arise along U. S. Highway 1 when the stream of recreational vehicles and boat trailers are combined with truck and bus traffic to form a caravan which may frustrate drivers and lead them into making poor passing decisions. Many drivers are intimidated by large trucks and hesitate to pass them. Large trucks may create certain visibility restrictions, especially if the truck is being followed too closely. The driver of the rear vehicle would have to swing out into into traffic across the line to get a clear view of the road ahead. However, the proposed route contains numerous road signs reassuring motorists and advising them to: "Be patient - passing zone - three minutes ahead".

31. The entire mix of vehicles on the road interact to affect overall roadway safety. A decreased number of vehicles on a roadway will usually account for greater safety conditions.

TANDEM OPERATIONAL CONSIDERATIONS

32. The accident involvement experience and the accident severity experience of tandems and tractor semi-trailers are substantially the same, with the fatal accident rate of the tandem being slightly higher. Thus, tandems and singles have essentially the same accident characteristics. The slightly higher fatality rate of the double is not statistically significant in the instant case when One considers that the Petitioner proposes to reduce the total number of vehicle trips taken if tandems, vice singles, are utilized.

33. Operationally, doubles have characteristics which are comparable to singles, although in some areas singles perform better and in other areas doubles perform better.

34. The typical western double is more maneuverable than the single. The double would experience less low speed off tracking. Low speed off-tracking of a truck or truck combination is the distance that the rear tire deviates inward from the path of the corresponding tire on the front axle. Because of better tracking, tandems would cause less damage to the highway's shoulders than singles.

35. The double will experience greater high speed off-tracking than the single. At high speeds, the rear wheels of combinations can track outward on curves. The restricted speed limits and gentle curves of the proposed route cause this operational difference to have little significance on the proposed route.

36. Rearward amplification is a characteristic of multi-unit trucks where the lateral acceleration of the truck is amplified rearward to the rear trailer. The tractor semi-trailer exhibits an amplification ratio of 1.0 which means that there is no amplification-- the driver feels what the trailer feels. The double on the other hand, has an amplification ratio of approximately 2.0, which means that the trailer experiences twice the lateral acceleration of the tractor. This can result in the driver making an evasive maneuver that feels safe but can cause the rear trailer to roll over. However, a new type of dolly has been developed that significantly reduces rearward amplification.

37. There is no perceptible difference in braking ability between doubles and singles because their brake systems are designed to provide the required torque for the loads carried.

38. There is less splash and spray with a double than there is with a single. Splash and spray is the undesirable condition a motorist faces when a truck is passed and there is a lot of water on the roadway. The twin trailer vehicle uses single axles instead of the tandem axle design normally found on a conventional semi-trailer. The tandem axle arrangement, used on singles, with one tire directly ahead of the other, sets up an interaction which greatly increases the amount of spray kicked up from the road surface.

39. Cross-winds are less likely to affect a double than a single because of the separation between the double's two trailers. Wind currents hit the broader surface of the single harder and have no place to escape, whereas the distance between

the tandem units will provide an escape. However, generally neither singles nor doubles are affected by the wind if the vehicles are carrying a load.

40. The rate of acceleration of a single and double from a stoplight are the same. Generally, tandems, due to their low weigh-to-horsepower ratio tend to slow down on grades much more than do semi-tractor trailers. Due to the flat design of the proposed route, this difference would not be significant.

41. The western double proposed for use by Petitioner would be approximately 12-1/2 feet longer than the 45 foot semi tractor-trailer currently used. The longer double would require a longer passing time because drivers take longer to pass longer vehicles. The specific amount of extra roadway required to pass a longer vehicle depends upon several factors: acceleration behavior on the part of the passing vehicle and overall relative passing speeds. If the type of double proposed for use by Respondent were traveling at 55 mph and a vehicle wanted to pass it at 60 miles per hour, the passing vehicle would be in the passing lane for an additional 1.7 or 1.8 seconds than it would be were it passing a single. At 60 miles per hour, a vehicle travels approximately 88 feet per second. The additional passing time and roadway necessary to pass a double does not present an unsafe factor. In addition, along U. S. Highway 1 there are long two-lane sections in which no passing is allowed at all.

42. Twin trailers spread distribution of weight over a greater distance, therein providing less stress to bridges and highway pavements.

43. Overturned or disabled trucks can completely blocks traffic, especially on bridges. Currently, there is only one wrecker in Monroe County which is capable of moving an overturned or disabled truck. When semi-trailer trucks are involved in accidents, there are problems of clearing the roadway because the truck may have jack-knifed or the trailer may have overturned. Because a double has smaller trailers, and the trailers can be detached from each other, it may be easier to clear an accident involving a double than a single. By detaching each of the double's trailers, each trailer can be maneuvered more easily than a 48 foot trailer.

44. Tractor semi-trailers presently operate on U.S. Highway 1 without restriction as to their overall length and may be 70 to 71 feet long. While the length of the semi-trailer

cannot exceed 48 feet, there is no limitation on the length of the cab or tractor which pulls the semi-trailer. Semi-trailers as well as buses are permitted to be 102 inches wide.

45. When a driver initiates a pass around a truck, there may be a surprise and intimidation effect as the driver discovers that he is passing a truck with more than one trailer. The driver does not know, in initiating his pass, the length of the truck ahead. A clearly designated sign on the rear of the second trailer would help alleviate the "surprise and intimidation" effect of passing a tandem.

46. There are no operational characteristics which would make doubles less safe than singles to operate on the portions of U. S. Highway 1 material to Petitioner's application.

47. There are no operational characteristics of doubles which would prevent them from operating safely on the portions of U. S. Highway 1 material to Petitioner's application.

48. The Petitioner's utilization of doubles on U. S. Highway 1 would reduce the number of truck trips that are required to its Rockland Key terminal. Without the availability of tandem trucks, two trucks may be sent to the Rockland Key terminal when, if using tandem trucks, one truck could carry the weight and volume carried by two trucks. Tandem trailers, each being a separate environment, provide greater efficiency as to what mix of cargo one tractor can pull. Generally, the Petitioner proposes to use tandem trailers with one of the double's trailers refrigerated and the other not refrigerated. Thus, the operation of tandems by Petitioner would have the effect of reducing the overall number of vehicles on the road, which is a major consideration in highway safety.

49. The City of Key West has narrow streets which cause traffic congestion and delivery problems in the downtown area. The use of 28 foot trailers, because they are more maneuverable than longer semi-trailers, would make deliveries more convenient and less hazardous in the City of Key West. However, the use of the 28 foot trailer would not be an improvement over the 22-24 foot "straight-job trucks", designed for local delivery use, or the 12 foot econo vans, both of which are presently used by Petitioner to make local deliveries in Key West.

50. The Florida Keys have a very high cost of living because all of the necessities and conveniences must be shipped to the Keys by truck. The Keys have no railroad transportation and only negligible amounts of freight are transported by aircraft or ship. The use of doubles may have the effect of lowering transportation costs. The lowering of transportation costs may eventually flow through to consumers in the Florida

Keys.

51. The percentage of total traffic by large trucks presently using the proposed route ranges from 6% to 7%.

52. Considering the statutory criteria contained in Rule 14-54.013, F.A.C., and the mandated overriding concern for safety, roadway facility capability and public convenience, the proposed route on U. S. Highway 1 may be safely utilized by Petitioner's tandem operation, but only between the low traffic periods between 12:00 midnight and 6:00 A.M., excluding weekends and holidays.

CONCLUSIONS OF LAW

53. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings pursuant to Section 120.57(1), Florida Statutes (1983).

54. The burden of proof is on the Petitioner. In accordance with the general rule applicable in court proceedings, "the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal". *Balino v. Department of Health and Rehabilitative Services*, 348 So. 2d 349 (Fla. 1st DCA 1977). Because the Respondent is partially relying on it's non-rule policy to exclude tandem trailer operations from two-lane routes, the Respondent has the burden of creating a record foundation for the rationality of such policy choice. Nevertheless, the Petitioner bears the initial and ultimate burden of proving that it meets all the statutory or regulatory criteria and standards for permit approval. *Department of Transportation vs. J.W.C. Co., Inc.*, 396 So. 2d 778 (Fla. 1st DCA 1981). The Petitioner must demonstrate by a preponderance of the competent and substantial evidence that it meets and complies with the statutory and regulatory criteria and standards for approval.

55. The Federal Surface Transportation Assistance Act of 1982, enacted on January 6, 1983 provides for the operation of twin tandem trailer trucks on interstate and certain specified Federal-Aid Primary System Highways. These roads are currently designated in 23 CFR Part 658.21 and referred to as the National Network. The national tandem network is described on a state by state basis in regulations adopted by the Federal Highway Administration; many states have listed all two and four lane Federal-aid highways while other states have listed specific roadways. 23 CFR Part 658, Appendix A. In Florida, this system of interstate and certain designated highways are known as the Basic Network. The portions of highway U. S. 1 proposed for use by Respondent to its Rockland Key terminal are not a part of the

National Network nor the Basic Network.

56. Prior to adoption of the designated National and Basic Network, the Federal Highway Administration in 1983 proposed an interim designation system of routes which essentially listed all Federal-aid highways. The federal proposal originally included U. S. Highway 1 from Key West to Homestead, because it was a road which had been built with federal money participation. The State of Florida did not participate in the development of the proposed interim system of routes. Immediately following the federal register proposal, the State of Florida appealed the proposed U. S. 1 route designation. In deference to the State of Florida, the Federal Highway Administration withdrew the proposed designation of U. S. Highway 1, and the designation never went into effect.

57. The Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes (1983), provides for use of tandem trailer trucks on Florida roadways. Tandems or doubles, are specifically defined in Florida as a tandem trailer combination consisting of a truck tractor, first semi-trailer, dolly and second semi-trailer. In addition, no semi-trailer unit shall exceed 28 feet extreme overall dimension, measured from the front of the unit to its rear. Rule 14.54.03, F.A.C.

58. Section 316.515(3), Florida Statutes (1983) provides in pertinent part:

(c) Tandem Trailer Trucks -

1. Except as otherwise provided in this section, tandem trailer trucks may operate only on routes on the tandem trailer truck highway network. Such network shall consist of all highways on the interstate federal system; those sections of the federal-aid primary system which are divided highways with four or more lanes and full control of access except sections on which truck traffic was specifically prohibited by law on January 6, 1983; and other designated routes consisting principally of four or more lanes and full control of access. Such other routes may be designated by the Department of Transportation if such routes are a part of the state highway system. The Department of Transportation may restrict

the days and hours of operation of any segment of the tandem trailer truck highway network based on considerations of safety, roadway facility capability, and Public convenience. (Emphasis added)

2. Except as otherwise provided in this section, tandem trailer trucks shall be afforded access to terminals to terminal facilities which provide qualifying activities. along highways on the state highway system, but only in accordance with the standards established in this subsection. Access routes defined in the subsection shall be approved, individually, by the Department of Transportation.

a. In a rural area, access may be afforded to such activities located within one mile of an interchange of a tandem trailer truck route, as designated by the Department of Transportation, along a two lane highway on the state highway system and within 3 miles of such an inter-change along a four lane highway on the state highway system. In an urban area, access may be afforded to such activities located within 1 mile of an interchange of a tandem trailer truck route, as designated by the Department of Transportation, along a highway on the state highway system which has lane widths of 12 feet or more. The Department of Transportation may restrict the use of interchanges for reasons of safety, roadway facility capability, or public convenience of the minor roadway.

b. An operator of a terminal facility located along the state highway system outside the limits prescribed in subparagraph a. may seek to obtain access for tandem trailer trucks by submitting a petition for such access to the Department of Transportation. Such petition shall include a recommendation as to the shortest

reasonable route or routes of ingress and egress to serve the terminal facility. A separate petition must be submitted for each facility requesting access for tandem trailer trucks, and each petition shall be prepared in accordance with rules of the Department of Transportation. The Department of Transportation shall, in accordance with its governing rules, and after consideration of safety, roadway facility capability, and public convenience, approve or disapprove such petition.

Rule 14-54, F.A.C., provides in pertinent part:

14-54.01 Purpose and Scope. This rule chapter sets forth the regulations governing the use of tandem trailer trucks within the state of Florida.

14-54.01(2) Definitions

(1) Qualifying activities: Approved access to terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading.

(4)(c) Off-system terminal facility routes: access routes, designated by the Department, to terminal facilities which provide qualifying activities.

PART I SELECTION OF ROUTES FOR TANDEM TRAILER USE

14-54.01 Standards for selection of the network.

(1) The Department's designation of the Network is constrained by the State's overriding concern for safety, roadway facility capabilities, and public convenience. Accordingly the Department shall use the following criteria in approving, restricting, or disapproving roads or portions of roads to the network.

- (a) The number of lanes;
- (b) The condition of the pavement;
- (c) The number, adequacy, and control of points of access;
- (d) The adequacy of the width of the driving lanes;
- (e) The number of bridges and over-passes;
- (f) The number and type of accidents occurring on the road;
- (g) The number of fatalities occurring, on the roads;
- (h) The shoulder conditions and widths;
- (i) The average daily volume of traffic;
- (j) The volume of traffic during peak periods;
- (k) The peak hour operating speed of traffic;
- (l) The number of traffic signals per mile;
- (m) The number of miles of road that vehicles operate below open highway speed;
- (n) The number of miles with speed restrictions;
- (o) The continuity of routes between states;
- (p) The frequency of necessary vehicular lane changes;
- (q) The availability of emergency lanes;
- (r) The method of separating opposing traffic;

- (s) The potential for conflicts with other modes of travel;
- (t) The presence of sight restrictions;
- (u) Bridge width and condition;
- (v) Number of trucks using facility.

14-54.017 Selection and approval of Off-System Routes to Terminal Facilities-State Highway system.

(1) Operators of terminal facilities located along roads on the State Highway System outside the established limits of approved access routes on the State Highway System may petition the Department for approval to use such route for tandem trailer truck access to that facility. A separate petition shall be submitted for each terminal facility for which tandem trailer truck access is desired
. . . .

(2) Within 90 days after receipt of the petition or receipt of any requested additional information, the Department shall:

- (a) Approve the petition;
- (b) Approve the petition with restrictions;
- (c) Disapprove the petition.

The Petitioner has shown by clear and convincing evidence that its petition for access to its Rockland Key terminal, using the route proposed therein, should be granted. The evidence established that Petitioner's Rockland Key terminal is a terminal facility within the meaning of Chapter 316, Florida Statutes, given its exclusive use for commercial transportation activities. Respondent's position that the petition for access is invalid because it was originally stated as a petition for access from terminal to terminal is without merit. The petition was in substantial compliance with the requirements of Rule 54.017, F.A.C. and the petition is by necessity a petition for access from the approved tandem trailer highway network to the Petitioner's Rockland Key terminal. The Petitioner may

certainly proceed from its Opa-Locka terminal to the end of the tandem -trailer highway network towards its Rockland Key terminal with no additional approval required. In consideration of the factors listed in Rule 14-54.013, F.A.C., as addressed in the Findings of Fact, the Respondent has met its burden of satisfying the requirements of the governing statute, Section 316.515(3)(c)2.b., Florida Statutes and the implementing rule, Rule 14-54.017, F.A.C. Upon consideration of safety, roadway facility capability, and public convenience factors, it is clear that the proposed route is capable of accommodating tandem truck operations, and, the public convenience in the Keys area will be served as a result of lower cost and more efficient and better service. Further, it has been established by clear and convincing evidence that the Petitioner's proposed tandem truck operations could safely operate on U. S. Highway 1. Certainly, the evidence established that certain restrictions should be placed on the operation of tandems on U. S. Highway 1. Primarily, the evidence established that the periods between 6:00 A.M. and 12:00 midnight would be the most inappropriate times for tandem trucks to operate on U. S. Highway 1. Because of the congestion occurring during peak time periods occasioned by the infusion of tourist and local traffic, the operation of tandems may indeed negatively impact on safety and public convenience.

The evidence clearly established that the introduction of tandem trucks during certain restricted hours onto the sections of U. S. Highway 1 proposed in the instance case, would not cause safety conditions to worsen. Perhaps tandem trucks could be safely utilized over the proposed route during certain low traffic mid-day periods and not decrease the safety factor of the roadway. However, in light of the mandated overriding concern for public safety, prudent caution would dictate that any tandem operation be limited to periods of the day when the proposed route is definitely less congested.

The Petitioner's use of tandems to its Rockland terminal will not negatively affect roadway safety conditions because use of tandems will reduce the number of vehicle trips and the tandems proposed for use are operationally as safe as semi-trailer trucks (which, Petitioner presently uses and may continue to use regardless of the outcome of these proceedings). Under the current circumstances, without the availability of tandem trucks, the Petitioner sometimes sends two trucks to its Rockland Key terminal despite the fact that by weight and volume, one truck could carry the cargo now carried by two trucks. In addition, the evidence established that the public

convenience will be served by granting permission to Petitioner to use tandems to reach its terminal because roadway wear will be reduced, fuel savings will be realized, transportation costs will be otherwise reduced and deliveries to the City of Key West will be facilitated by use of shorter trailers. The primary factor affecting the safety of the proposed route result from the tourist attractions, parks and recreation areas adjacent to the roadway which contribute a stream of recreational vehicles and boat trailers, which when mixed with the buses, trucks and cars using the roads results in frustrating and potentially dangerous passing situations. The utilization of tandem trucks over U. S. Highway 1 during off-peak hours would lessen the potential for conflict between the tandems and the existing traffic, while decreasing the number of singles which Petitioner would need to utilize during peak hours.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law it is RECOMMENDED THAT:

1) Alterman Transport Lines petition for an off-system terminal facility route as requested therein be approved with restrictions; and that,

2) The restrictions on the approval of tandem access to the Rockland Key terminal be as follows:

(a) the operation must be closed-door;

(b) no tandems may be operated on Saturdays, Sundays, holidays or during other days of the week between the hours of 6:00 A.M. to 12:00 midnight;

(c) the Petitioner may not permit any other private carrier or other common carrier to use the Rockland Key Terminal for any double operation;

(d) the Petitioner must place signs on the back of all doubles stating that the vehicle is a 70 foot long double;

(e) each double must be operated as a separate vehicle; and may not be convoyed--two or more doubles operating--together along the route.

DONE and ORDERED this 20th day of February, 1986 in Tallahassee, Leon County, Florida.

W MATTHEW STEVENSON
Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32301
(904) 488-9675

FILED with the Clerk of the
Division of Administrative Hearings
this 20th day of February, 1986.

APPENDIX

Petitioner's Proposed Findings of Fact

1. Adopted in Finding of Fact 1.
2. Adopted in Finding of Fact 2.
3. Adopted in Finding of Fact 2.
4. Adopted in Finding of Fact 3.
5. Adopted in Finding of Fact 4.
6. Adopted in Findings of Fact 9 and 45.
7. Adopted in Finding of Fact 9.
8. Rejected as immaterial.
9. Addressed in Conclusions of Law.
10. Rejected as immaterial.
11. Not included because unnecessary.
12. Addressed in "Procedural Background" section.
13. Adopted in Finding of Fact 10.
14. Adopted in Findings of Fact 5 and 7. Matters not included therein are rejected as subordinate.
15. Adopted in Finding of Fact 11.
16. Adopted in Finding of Fact 12.
17. Accepted but not included because subordinate.
18. Partially adopted in Finding of Fact 6 Matters not contained therein are rejected as a recitation of testimony. The last sentence is rejected as legal argument.
19. Adopted in Findings of Fact 7, 13 and 14.
20. Adopted in Finding of Fact 16.
21. Adopted in Finding of Fact 15.
22. Partially adopted in Finding of Fact 17. Matters not contained therein are rejected as argument and a recitation of testimony.
23. Partially adopted in Findings of Fact 29 and 30. Matters not included therein are rejected as argumentative and a recitation of testimony.
24. Rejected as subordinate and unnecessary.
25. Partially adopted in Finding of Fact 30. Matters not contained therein are rejected as argumentative and/or a recitation of testimony.
26. Rejected as argumentative, subordinate and/or a recitation of testimony.
27. Partially adopted in Finding of Fact 30. Matters not included therein are rejected as argument.
28. Not included because subordinate.
29. Adopted in Finding of Fact 42. Matters not contained therein are rejected as subordinate.
30. Adopted in Findings of Fact 31-39 and 44.
31. Adopted in Finding of Fact 46.

32. Rejected as argumentative and subordinate.
33. Adopted in Finding of Fact 46.
34. Adopted in Findings of Fact 20 and 21.
35. Adopted in Finding of Fact 41.
36. Adopted in Finding of Fact 46.
37. Partially adopted in Finding of Fact 47. Matters not contained therein are rejected as subordinate.
38. Partially adopted in Finding of Fact 48. Matters not contained therein are rejected as argument and/or subordinate.
39. Adopted in Findings of Fact 39 and 40.
40. Rejected as subordinate.

Respondent's Proposed Findings of Fact.

1. Adopted in Findings of Fact 5 and 7.
2. Partially covered in "Procedural Background" section.
Matters not contained therein are rejected as subordinate.
3. (a) Partially adopted in Findings of Fact 13. Matters not contained therein are rejected as a recitation of testimony and/or subordinate. The proposed finding that "the route is unacceptable because it is primarily two lanes" is rejected as contrary to the weight of the evidence.
(b) Adopted in Findings of Fact 14, 15 and 26.
(c) Partially adopted in Findings of Fact 25 and 28. Matters not included therein are rejected as subordinate and/or a recitation of testimony.
(d) Rejected as misleading, but covered in Finding of Fact 13. The finding that the "narrow lanes are a special safety concern with the off tracking of tandem trailers" is rejected as not supported by the weight of the evidence.
(e) Adopted in Findings of Fact 15, 16 and 41.
(f) Partially adopted in Findings of Fact 18 and 19. Matters not contained therein are rejected as a recitation of testimony and/or subordinate.
(g) Adopted in Finding of Fact 19.
(h) Partially adopted in Finding of Fact 14. Matters not contained therein are rejected as not supported by the weight of the evidence, subordinate and/or a recitation of testimony.
(i) Partially adopted in Finding of Fact 26. Matters not contained therein are rejected as subordinate and unnecessary.
(j) Partially adopted in Findings of Fact 26 and 27. Matters not contained therein are rejected as a recitation of testimony.
(k) (None)
(l) (None)
(m) Partially adopted in Finding of Fact 22. Matters not contained therein are rejected as a subordinate and/or unnecessary.

- (n) (None)
- (o) (None)
- (p) Adopted in substance in Finding of Fact 23.
- (q) Addressed in Findings of Fact 13 and 18; rejected as stated because misleading.
- (r) Partially adopted in Finding of Fact 24. Matters not contained therein are rejected as subordinate.
- (s) Adopted in Findings of Fact 28 and 29.
- (t) Partially adopted in Finding of Fact 28. Matters not included therein are rejected as misleading and/or a recitation of testimony.
- (u) Adopted in Findings of Fact 16 and 41.
- (v) Partially adopted in Finding of Fact 49. Matters not contained therein are rejected as subordinate.
- 4. Rejected as findings of fact, but addressed in Conclusions of Law.
- 5. Rejected as a conclusion of law.
- 6. Rejected as immaterial and/or a conclusion of law.
- 7. Rejected as not supported by the weight of the evidence and/or unnecessary.
- 8. Rejected as irrelevant.
- 9. Partially adopted in Finding of Fact 11. Matters not contained therein are rejected as subordinate and/or a recitation of testimony.
- 10. Partially adopted in Finding of Fact 2. Matters not contained therein are rejected as a recitation of testimony and/or subordinate.
- 11. Partially adopted in Finding of Fact 47. Matters not contained therein are rejected as subordinate and/or not supported by the weight of the evidence.
- 12. Partially adopted in Findings of Fact 30, 33, 34 and 39. Matters not contained therein are rejected as recitation of testimony, subordinate and/or not supported by the weight, of the evidence.

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Hon. Thomas E. Drawdy
Secretary,
Department of Transportation
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Tallahassee, Florida 32301

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AGENCY FINAL ORDER

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STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

ALTERMAN TRANSPORT LINES, INC.,

Petitioner,

vs.

CASE NO. 85-2280

DEPARTMENT OF TRANSPORTATION,

Respondent.

_____ /

FTNAL ORDER

This matter was heard on the petition of Alterman Transport Lines, Inc. for authorization of tandem trailer truck access from its Opa Locka terminal to a terminal located at Rockland Key, just north of Key West, and over 123 miles of highway not included in the tandem trailer truck highway network. The resolution of this petition involves two critical policy issues: First, it must be determined whether it is the intent of Section 316.515(3)(c)2, Florida Statutes, to allow tandem trailer truck access off the tandem trailer truck highway network for such a great distance when it has already been established by federal regulation that the route is not proper for tandem trailer truck traffic. Second, if it is determined that it is within the intent of the Florida Legislature to allow such an extensive deviation from the authorized network, then has reasonable assurance been given by petitioner that such a route should be granted considering safety, roadway facility capability, and public convenience?

A clear legislative intent is evidenced to restrict terminal access to very short distances off the authorized network given the mileage limitations in Section 316.515(3)(c)2a, Florida Statutes. To extend the distance from

the 1-3 mile restriction to over 123 miles would render the statute meaningless. This would lead to ever-increasing extensions to the authorized network, and the route would no longer be merely a terminal access route. A logical extension of the argument asserted by the petitioner would allow tandem trucks to travel over any state roads in Florida so long as a terminal were located at each terminus point. This would defeat the clear legislative intent to limit tandem trailer trucks to interstate highways and federal-aid primary highways with four or more lanes. U.S. 1 in the Keys does not meet the basic statutory requirement that tandem trailer trucks only be operated on "Those sections of the federal-aid primary system which are divided highways with four or more lanes and full control of access," Section 316.515(3)(c), Florida Statutes, since approximately 77 percent of the route is two lane. (Tr. 285)

The precedent which would be set by granting the terminal access route to Alterman Transport Lines, Inc. would also open the door to granting terminal access routes to other transport lines. To limit the route for Alterman's use only as envisioned by the Hearing Officer, would create a virtual monopoly for one line, which would give a definite commercial advantage and raise legitimate antitrust concerns. Indeed, Mr. Sydney Alterman noted that Alterman Transport is presently "eliminating" carriers because of Alterman's new Rockland Key terminal (T.p. 493). Moreover, Mr. Alterman noted that Alterman Transport can create their own prices now, (T.p. 499) and that if Alterman Transport were able to run tandem units to its Rockland Key terminal when no one else could (T.p. 493) that Key West businesses would "favor" Alterman as a carrier (T.p. 511). As other petitions are submitted and granted, a de facto extension of the tandem trailer network would result. This result is contrary to the intent of Section 316.515(3), Florida Statute, and contrary to the health, safety, and welfare of the public.

As to the second point concerning whether reasonable assurances have been given by Petitioner, a complete review of the entire record in this matter has been made. The recommended order of the Hearing Officer is attached and those Findings of Fact and Conclusions of Law which are not rejected or modified herein are considered to be correct and are hereby adopted.

The following abbreviations are used herein:

"T" for transcript
"p" for page

"R" for respondent
"P" for petitioner
"Ex" for exhibit

Finding of Fact 10 is modified to include the fact that the tandem trailer combination of two 28 foot trailers proposed for use by Alterman is longer than the statutory limit of 48 feet for single unit semitrailers which can operate on U.S. 1 without a special permit from the Department. See Section 316.515(3)(b), Florida Statutes.

Finding of Fact 13 is rejected as not being supported by competent substantial evidence to the extent that such finding maintains that all parts of U.S. 1 which have 11 foot lanes have paved shoulders (T.pp. 48-49, 52, 545). Moreover, some sections of U.S. 1 which have 11 foot lanes and paved shoulders, have a mere one foot of paved shoulder (T.p. 572).

Finding of Fact 14 is rejected to the extent that the finding implies a tandem trailer unit can safely exit U.S. 1 onto a shoulder when there is either no shoulder or only one foot of paved shoulder. There is competent, substantial evidence which shows that there are a number of areas with insufficient shoulders for safe recovery by tandem trailer combinations (T. pp. 48-49, 51-53, 572).

Finding of Fact 16 is rejected as not being supported by competent substantial evidence to the extent that such finding indicates that 38 of the 40 bridges which occur over the proposed route provide 12 feet for an emergency stop by a vehicle. The bridges consist of two twelve foot lanes with six foot emergency lanes on either side, not 12 foot emergency lanes as reflected by the Hearing Officer. These six foot emergency lanes would not accommodate the proposed tandem units which are at least eight feet wide.

Finding of Fact 17 is rejected because there is competent substantial evidence to indicate that U.S. Highway 1 is not safe for the safe operation of tandems (T.P. 143, 148, 178, 184), and such an ultimate finding of fact is a policy decision to be made by the Department.

Finding of Fact 9 is modified to indicate that U.S. Highway 1 has a higher fatality rate over the majority of its length than do Florida roads in general.

Finding of Fact 26 is rejected to the extent that it implies that the proposed route is being converted to four lane sections. Most of the proposed route is two lane road (R. Ex. 11, R. Ex. 16). There is no competent, substantial evidence to support the finding that "many two-lane sections are being converted to four lane sections." Much of the widening involves the widening of substandard width lanes to 12 foot lanes without adding additional lanes (T.p. 567).

Findings of Fact 32 and 34 are modified to indicate that rearward amplification is a characteristic of multi-unit trucks. Moreover, there is no evidence to indicate that Alterman Transport possesses the "new dolly" as referenced by the Hearing Officer. This dolly supposedly alleviates the problem of rearward amplification. There is no evidence to show that this dolly can be used immediately on the proposed route; therefore, the rearward amplification of the proposed tandem trailers would, in all probability, occur.

Finding of Fact 35 is rejected as not supported by competent substantial evidence. As noted in P.EX. 123, "Vehicles with more articulations are more likely to become unstable if their wheels lock up, although this has never been quantified." It is also important to note that the proposed route indicates many areas where a sudden application of brakes has occurred (T.pp. 48-64).

Finding of Fact 39 is rejected as to the conclusion contained therein that, "The additional passing time and roadway necessary to pass a double does not present an unsafe factor," because that conclusion does not coincide with the facts recited. The facts recited demonstrate that the additional passing time and roadway necessary to pass a tandem unit, given the limited passing areas on U.S. 1, only reduces the safety factor for drivers for this road.

Finding of Fact 41 is rejected because there is not competent substantial evidence to show that it is easier to clear an accident along the proposed route when such accident involves a tandem unit versus a single unit, and the Hearing Officer's finding is at best speculative.

Finding of Fact 43 is rejected to the extent that it maintains a sign on the back of a tandem unit would alleviate the "surprise and intimidation" effect of passing a tandem. There was no competent substantial evidence presented which indicates that either "surprise" or "intimidation" would be

alleviated and the hearing officer's finding is at best speculative.

Findings of Fact 44 and 45 are rejected as not being supported by competent substantial evidence. Rearward amplification, less maneuverability in case of brake lock up, more time and roadway requirements during passing would make tandem trailers less safe than single units.

Finding of Fact 46 is rejected as not being supported by competent substantial evidence, since it only speculates as to what might happen in the future. Alterman Transport makes trips which will meet customers' demands for daily delivery; thus trips over the proposed route may increase; especially, if this gives Alterman a competitive advantage.

Finding of Fact 50 is rejected as not being supported by competent substantial evidence and is the ultimate policy decision to be made in this proceeding.

Conclusions of Law

The Hearing Officer in the instant case has maintained that the Petitioner has "shown by clear and convincing evidence that its petition for access to its Rockland Key terminal . . . should be granted." The issue is not whether the evidence is clear and convincing, but whether there is competent substantial evidence to justify the Department's position. This is true because the ultimate policy decision to grant the proposed route based on the statutory criteria is a matter reserved to agency expertise and interpretation. See *Reedy Creek Improvement District v. State of Florida*, Department of Environmental Regulation, 11 F.L.W. 814 (1st DCA, April 4, 1986).

The Hearing Officer notes in Finding of Fact 50 in his Recommended Order that the Department has an "overriding concern for the safety, roadway facility capability and public convenience." The recognition that the Department has an "overriding concern" for safety is again noted in the hearing Officer's Conclusion of Law (p. 22 Recommended Order). This referenced "overriding concern" is mandated by Rule 14-54-013, Florida Administrative Code and by Sections 334.044 and 316.515, Fla. Stat. It is therefore recognized that it is the specific statutory duty of the Department to determine when a portion of the state transportation system is safe. This is important

because an agency may not reject or modify a hearing officer's findings that are based upon competent substantial evidence (see Section 120.57(1)(b)(9), Fla. Stat.) unless the ultimate fact decided is an opinion infused with policy insights for which an agency has special responsibility. *Westchester General Hospital v. Department of Health and Rehabilitative Services*, 419 So. 2d 705 (Fla. 1st DCA, 1982). The dispositive facts also must not be susceptible to ordinary methods of proof and the decision of the agency must be one which impacts or. the public health and safety. *Harac v. Department of Professional Regulation, Board of Architecture*, 11 F.L.W. 631 (1st DCA, March 11, 1986).

In the instant case, the Department has the special responsibility as per Section 334.044, Florida Statutes, for determining the safety of the state transportation system. This special responsibility has been noted by the Hearing Officer in this case and is further evidenced by the fact that the Federal Highway Administration has acquiesced to the Department's position that U.S. Highway 1 should not be included in the Basic Network over which tandem trailers are allowed to run (T.pp. 84-94). Moreover, the dispositive fact of the comparative safety of tandem trailers versus single units is not susceptible to ordinary methods of proof. This is evidenced by the conflicting results of the studies which the Petitioner and the Department have utilized in support of their respective positions. Deference must be given to an agency's interpretation of an operable statute as long as that interpretation is consistent with legislative intent and is supported by competent, substantial evidence. *Public Employees Relations Commission v. Dade County Police Benevolent Association* 467 So 2d 987 (Fla. 1585).

Therefore, because the Hearing Officer has maintained that the proposed route has been shown by the Petitioner to be "safe" by "clear and convincing" evidence, without regard as to whether the Department's position has been demonstrated by competent, substantial evidence, the Conclusions of Law which maintain that U.S. Highway 1 is "safe" for tandem trailer operation are rejected because the Department's position has in fact been demonstrated by competent, substantial evidence.

There is no question that the various studies and the expert opinions in the record are at best inconclusive concerning the issue of whether tandem trailers are more safe, less safe, or as safe as the single unit trailers. The State of

Florida and the Federal Highway Administration have already determined that U.S. 1 through the Keys is not and should not be part of the tandem trailer network. The Department must closely consider the health, safety, and welfare of the public and the integrity of the State Highway System before agreeing to allow tandem trailer access through the Keys. Even though the restrictions recommended by the Hearing Officer appear to be insignificant, the ramifications of granting this first terminal access would be more far-reaching than a minor intrusion or extension to the network, as explained earlier in this order.

There are a number of factors which are not in dispute concerning the proposed route. U.S. 1 is mostly a two lane facility, and the clear legislative intent is to limit tandem trailers to interstates and four lane federal aid primary facilities, with short 1 to 3 mile excursions permitted off the network for food, fuel, rest, and terminal access. Many areas along the proposed route have drop offs, insufficient shoulders, or small emergency lanes which do not provide enough room for evasive action by vehicles. The area through the Keys has many intersections and locations where vehicles pull on and off the road and move in and out of traffic. U.S. 1 already has more fatal accidents than the statewide average, and certain segments along the route exceed the statewide average for fatal accidents.

Additionally, tandem trailer truck combinations have certain features or attributes which could increase the safety deficiencies for traffic on U.S. 1. Because tandem units are longer than single unit semitrailers, the passing time for vehicles is increased, which only decreases the safety factor for the passing driver. Rearward amplification is also a characteristic of tandems, which means the trailer experiences twice the lateral acceleration of the tractor, which in turn increases the potential for roll over when evasive action must be taken. Tandem trailer combinations are more likely than single units to become unstable if the wheels lock up, which also reduces the safety factor for drivers on U.S. 1. The evidence shows many intersections, turn ins and turn outs, and stop and go traffic. This only increases the opportunities for dangerous situations and the potential for trucks to lock their brakes when taking evasive action.

The Hearing Officer has also assumed an overall length of 70 feet for the tandem trailer combination to be used by Alterman, but has not made this a restriction for operation over the route. The evidence reflects that the tractors may vary in

length and no statutory limitation exists for the length of the tractor itself. Therefore, many of the assumptions of the Hearing Officer are invalid, if a longer combination is assumed. The tandem trailer characteristics mentioned above are only exacerbated when considering a longer combination.

Alcohol consumption is a major factor in many serious accidents along U.S. 1, and no competent substantial evidence was presented to show that alcohol consumption is any less of an accident factor between 12:00 midnight and 6:00 A.M.

As can be shown by these factors, to allow tandem trailer combinations on U.S. 1 at any time would only serve to reduce the safety parameters for drivers on U.S. 1. To reduce the safety attributes of a highway which already has a fatality rate higher than the statewide average would be unacceptable and contrary to the public's health, safety, and welfare. Given the geometric characteristics and roadway facility capability of U.S. 1, the safety factors mentioned, and considerations of the general convenience to the public, the Department does not believe that sufficient reasonable assurances have been given by Petitioner to show that it would be in the public's interest to allow terminal access for tandem trailer combinations along U.S. 1 through the Keys.

ACCORDINGLY, IT IS ORDERED that the petition by Alterman Transport Lines for off-system terminal facility access by tandem trailer units from Opa Locka, Florida, to Rockland Key, Florida, for a distance in excess of 123 miles over U.S. Highway 1 is hereby DENIED.

DONE AND ORDERED this 21st day of May, 1986 in Tallahassee, Florida.

THOMAS E. DRAWDY, Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32301

Judicial Review of agency final orders may be pursued in accordance with Section 120.68, Florida Statutes, and Florida Rules of Appellate Procedure 9.030(b)(1)(c) and 9.110. To initiate an appeal, a Notice of Appeal must be filed with the

Department's Clerk of Agency Proceedings, Haydon Burns Building, MS 58, 605 Suwannee Street, Tallahassee, Florida 32301-8064, and with the appropriate District Court of Appeal within thirty (30) days of the filing of this Final Order with the Department's Clerk of Agency Proceedings. The Notice of Appeal filed with the District Court of Appeal should be accompanied by the filing fee specified in Section 35.22(3), Florida Statutes.

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