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# Uintah Freight Lines, Salt Lake Transfer Co., and Ashworth Transfer Co. v. Public Service Commission of Utah and Guy Prichard : Brief of Plaintiffs

Utah Supreme Court

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# In the Supreme Court of the State of Utah

UINTAH FREIGHT LINES, a corporation;  
SALT LAKE TRANSFER COMPANY, a co-partnership; and  
ASHWORTH TRANSFER COMPANY, a co-partnership,

*Plaintiffs,*

vs.

PUBLIC SERVICE COMMISSION  
OF UTAH and GUY PRICHARD,

*Defendants.*

Case No.

7420

**FILED**  
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Clerk, Supreme Court, Utah

## BRIEF OF PLAINTIFFS

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## BRIEF OF PLAINTIFFS

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### STATEMENT OF THE CASE

This matter is before the Supreme Court on writ of certiorari from the Public Service Commission of Utah for the purpose of reviewing a report and order of the Commission dated September 12, 1949, following a hearing on July 21, 1949, held at Price, Utah. Petition for rehearing was filed September 22, 1949, and denied October 18, 1949. The petition for rehearing was filed

by these plaintiffs and alleged as error all matters which are before this Court for review.

The issue before this Court is whether there was substantial evidence to support the report and order of the Commission. 76-6-16, U.C.A., 1943; *Salt Lake and Utah Railway v. Public Service Commission, et al.*, 106 Utah 405, 149 P. 2d 647; *McCarthy et al. v. Public Service Commission*, 111 Utah 489, 184 P. 2d 220.

## STATEMENT OF FACTS

The application of Guy Prichard was filed June 15, 1949, by which he sought to enlarge the Certificate of Convenience and Necessity issued to him in 1946. The original Certificate No. 741 authorized Guy Prichard to operate as a common carrier by motor vehicle for the transportation of commodities, which may be described generally as requiring special equipment or service of a character not regularly furnished by regular common carriers by reason of their size, shape, weight, origin, destination, or nature, and to haul equipment and supplies for use in pipe and pole line construction and discovery, development, and production of natural gas and petroleum or minerals. This service was to be performed to or from all points within Carbon, Emery, Duchesne, Uintah, Grand, and San Juan counties over irregular routes on call, and to or from any point in said counties for connection with the rail head at Heber City, Utah, all in intrastate commerce. The application seeks to amend this certificate by expanding the territory so as

to include to or from all points in those counties, as well as additional counties of Daggett, Wayne, Piute, Garfield, Sanpete, Kane, Sevier, and Wasatch, and further, to authorize the hauling of such commodities "to or from any point in Utah, providing the point of origin or destination of shipment is at a point in the above mentioned counties".

The order of the Commission gives the applicant a part of what he seeks by adding Wayne County to the counties already authorized and giving authority to perform the service to or from any point in Utah where the origin or destination of the movement is in one of the original six counties, with Wayne County added.

Included among the protestants were the plaintiffs. The Uintah Freight Lines protested as to its territory, which is generally from Salt Lake to Uintah Basin; The Salt Lake Transfer Company and Ashworth Transfer Company, whose authorities are generally similar to Prichard's as to commodities and service with authority based upon grandfather rights to serve all points within the State of Utah, protested as to the entire application.

Certificate of Convenience and Necessity No. 274 was issued to Sterling Transportation Company on October 2, 1926, and as amended and now held by the successor in interest of Sterling Transportation Company, Uintah Freight Lines, gives authority to serve as a common carrier of property by specified routes, among other territories all points on said routes between

Salt Lake City and points within the Uintah Basin and east of Heber City (R. 207, 222), and there was put in evidence lists of equipment owned by Uintah Freight Lines and available to Uintah Freight Lines under lease (R. 29 to 31) which show that this plaintiff has available trucks, trailers, and semi-trailers, van, panel, stake, and flatbed types of bodies, and one unit with an A frame and winch.

Insofar as it could be considered pertinent to a need for service between Uintah Basin and Salt Lake City, the following evidence or lack of evidence is pointed out:

The list of temporary permits issued to the defendant Prichard includes none between Salt Lake City and any Uintah Basin point (R. 43, 44). Mr. Prichard testified to having a connection in Vernal at the Peyton Shops and stated he had been called on one occasion and that "Uintah Freight Lines takes care of most of that," without any indication that the one call from Mr. Peyton involved transportation to or from Salt Lake City (R. 83);

There were several questions and answers showing that when the defendant Prichard obtained his original certificate it was upon stipulation of certain carriers that he would be limited to six counties and whether such limitation was to be binding in the future (R. 172, 173);

Mr. Sims, representing Salt Lake Transfer Company, testified that he has a contact in Vernal (R. 177);



Mr. Sims also testified that during the laying of a pipeline the Salt Lake Transfer Company enjoyed a little increase in their business toward the Uintah Basin (R. 180); and this was repeated on cross-examination (R. 183);

Mr. Campbell, a resident of Uintah County and engaged in the contracting business (R. 204), testified that Ashworth Transfer Company brought one shipment from Salt Lake to a point 12 miles west of Vernal (R. 205) and that there was a two days' delay in the shipment, for which no claim was presented (R. 207), which delay was, according to Mr. Ashworth, because the tractor was not ready at the Lang Company on the day it was expected (R. 212, 213);

Mr. Campbell also testified that Uintah Freight Lines serves Vernal on daily runs and that their service has been good (R. 208) and further testified that he was interested only in seeing to it that Mr. Prichard's service between Price and Vernal was not interrupted (R. 209);

Mr. Ashworth testified that it is his opinion that there will be an increased activity in hauling into the Uintah Basin (R. 219);

The plaintiffs, Salt Lake Transfer Company and Ashworth Transfer Company, object to the report and order on the ground of extension to and from all points in Utah outside the specified counties and refer the court to the following evidence or lack of evidence in the transcript:

The scope of the authority encompasses all counties, points and places in Utah but there is an absolute absence of any evidence whatsoever in the record as to the following counties in Utah: Cache, Davis, Box Elder, Morgan, Rich, Tooele, Juab, Millard, Beaver, Iron, Washington, Wayne, Garfield, Sevier and Sanpete.

Only six so-called public witnesses appeared in the proceedings, three from Carbon County, two from Emery County (both at Huntington) and one from Uintah County. The last named, Mr. Martin Campbell, has been referred to before and he did not know the reason for the one alleged delay (R. 206), admitted that there was daily service available to him (R. 207) and that he was testifying on behalf of the applicant as to service between Price and Vernal (R. 209 and 210).

The two witnesses from Huntington, Utah were, G. W. Nielson (R. 135) and J. L. Larsen (R. 148). Neither of them testified as to any actual transportation needs, nor as to any specific points from which they would need to have commodities moved for them in the future. Both referred to a haul of pipe performed late in the Fall of 1946 by Ashworth Transfer Company when only one of its trucks got stuck in the mud and bad roads (R. 147) just before the project was suspended for the Winter (R. 145) and completed the next Spring. This pipe moved from Salt Lake City to the Huntington area. Their present pipe purchases come from Denver to Price and are moved by truck to Hun-

tington by Mr. Prichard, a haul for which he presently has authority (R. 152).

Two of the three witnesses from Carbon County appeared without authority from their employers, both of which have offices in Salt Lake City and employ the services of protestants, Salt Lake Transfer Company and Ashworth Transfer Company, to-wit, Erin Leonard (R. 129 and 131) and George B. Jackson (R. 185 and 202). The first of these two witnesses only operates as a salesman in the counties of Carbon, Emery, Grand, San Juan, Uintah and Duchesne (R. 130), and the second, Mr. Jackson, has been with the mining company in Kenilworth for some 42 years but has only engaged the services of the applicant twice in two years (R. 192) and did not know of any actual future needs for service. He acknowledged the availability of service from other authorized carriers, including daily service from Rio Grande Motor Ways and Carbon Freight Line (R. 195), and Denver and Rio Grande Western Railroad (R. 196).

The other Carbon county witness and remaining public witness appearing was Mike Gamber of Price, Utah who is engaged in coal mining at Upper Spring Canyon (R. 111 and 112). He was at the hearing to tell of one delay suffered by him in all of his years of coal mining. This involved the movement of tubing from Salt Lake City to his mine, five feet in diameter and twenty-four feet long. He suffered some delay in arrival of the tubing, but the matter appeared to have been

occasioned because the tubing was such that when loaded the Highway Patrol of Utah would not permit it to be moved over the highways on Saturdays, Sundays or holidays and the shipper tendered it to Salt Lake Transfer Company for hauling just prior to the 4th of July week-end (R. 168). Though the shipper had not specified that unloading facilities would be needed at the mine, Mr. Gamber complained that he had procured the services of applicant's winch truck to remove these tubes and erect them (R. 114). Though he had been mining there since 1938, he had never used the services of the applicant before this single isolated case (R. 117), and he had no testimony as to any future need for applicant to serve him between any points at all.

One of the exhibits introduced at the hearing (R. 43-44) represents a letter referring to certain temporary authority permits granted by the Commission to the applicant during the period from July 19, 1948 to July 7, 1949. Protestants have taken the position that these were wrongfully issued by the Commission and that such do not constitute any evidence of convenience and necessity. One of these, for example, is shown for hauling between Salt Lake City and Monticello, Utah for the Atomic Energy Commission (R. 44). Affirmative, undisputed testimony was adduced (R. 148-150), by Mr. Rulon C. Ashworth that the commodities were tanks, that they had authority to haul the same, had equipment available in Salt Lake City to perform the work, had been requested to transport the same, had

sent a truck down to load the commodities and when advised that applicant had procured a special permit, had, in company with Mr. Sims of the Salt Lake Transfer Company, gone to the Commission and strenuously opposed the ex parte gift of a special permit to the applicant. Both of these authorized carriers "were ready, and willing and available to serve at that time" (R. 250). Thus such temporary permits cannot and must not be considered as evidence of convenience and necessity.

Further evidence was adduced that at the time applicant procured his original authority to serve in the six Eastern counties in 1946, and in reliance upon his representation that he would not seek other territory to serve, these protestants withdrew their protests (R. 172).

Both Salt Lake Transfer Company and Ashworth Transfer Company hold a similar commodity description authority to that of the applicant, but both of them are authorized to transport such commodities to and from all points in the state of Utah. Both have adequate equipment and trained employees to serve all of this territory (R. 164, 165, 211 and 214). Both have idle equipment and their business has declined some 20%. Salt Lake Transfer Company has been performing this type service since 1880 and Mr. Ashworth for the past 38 years. Witnesses for both testified that except for occasional hauls, the alleged increased development of the Eastern area has not resulted in increased demand for transportation service. Both companies are faced



with maintaining a large number of units of operating equipment, 111 by Salt Lake Transfer Company (R. 164) and 70 by Ashworth Transfer Company (R. 211) and an active organization of employees, with no work (R. 172).

In addition to the services of the two above named carriers between the Salt Lake City area and the Price and Carbon County areas, the shippers have available to them the services of the Denver and Rio Grande Railroad, Rio Grande Motor Ways and the Carbon Freight Lines. Both of the last named motor carriers have regular daily service and both have idle equipment and are ready, willing and anxious to serve the public. Each of these also are parties to inter-line agreements with other truck and transportation companies serving all routes in Utah for a complete service to shippers from any point and highway (R. 233-34 and 245).

The Court should be advised that there is not a single word from a single shipper or any place in the record of this hearing that any requested carrier service in the transportation of any commodity had ever been denied. The matter of some so-called rate advantages from applicant were erroneously alluded to indirectly, but the evidence is that he is a party to the same tariff and should charge the same rates as protestants on the same hauls (R. 214-215). There is no need for the additional authority sought by applicant (R. 214).

The only evidence of any semblance of need for

the applicant to serve in the counties of Utah and Weber appears from the temporary authorities (R. 43) of two movements between Weber County and Carbon County and two movements between Utah County and Carbon County. These are referred to in applicant's own self serving testimony in an attempt to justify his hauls in this area outside of his proper authority. Neither of said counties produced a single witness to state that there was a need for his service. Likewise, not a single person appeared from Salt Lake County to request rendition of service by the applicant.

### STATEMENT OF ERRORS RELIED ON

1. There is no competent evidence to sustain the finding that there is a need for extension of the applicant's service between the counties of Duchesne and Uintah and any other part of the state of Utah, not covered by the present authority of the applicant.

2. The finding of the Commission that public convenience and necessity requires the service of the applicant to all points in the state of Utah is not supported by any substantial evidence.

3. The granting of the said authority to applicant will be detrimental to the protestants, plaintiffs, and to the motor carrier service otherwise available to shippers within the state of Utah.

4. The granting of the application will be detrimental to the best interests of the people of the state of Utah and of the territory affected by the report and order.

5. The Commission failed and neglected to make

any finding regarding the adequacy of the transportation service now rendered by and available to the public through the protesting carriers, plaintiffs herein.

## ARGUMENT

### I.

THERE IS NO COMPETENT EVIDENCE TO SUSTAIN THE FINDING THAT THERE IS A NEED FOR EXTENSION OF THE APPLICANT'S SERVICE BETWEEN THE COUNTIES OF DUCHESNE AND UINTAH AND ANY OTHER PART OF THE STATE OF UTAH, NOT COVERED BY THE PRESENT AUTHORITY OF THE APPLICANT.

There is no substantial evidence in support of the extension of applicant's service to or from outside the counties of Carbon, Emery, Duchesne, Uintah, San Juan, Grand and Wayne.

The Commission's report as to statements which are apparently intended to support the order of the commission are as follows:

“That there is a considerable demand for the transportation of property as herein above defined in said application, between points in Utah, where the origin or destination of the movement is in Uintah, Duchesne, Grand, Carbon, Emery, Wayne and San Juan counties, and public convenience and necessity require the said service. \* \* \*

“That present and future convenience and necessity requires that Certificate of Convenience



and Necessity No. 741, heretofore issued to applicant, be amended to read as follows:'' (R. 22)

It therefore appears that the Commission made no finding that any area of the state of Utah other than Wayne County required the service of Guy Prichard outside his original six counties and surely it will not be sufficient to find that hauls had been made to points outside the six counties on temporary authority and that therefore there was a need for authorized service to the entire State of Utah beginning or ending in one of the six counties. And it cannot logically be argued that because Salt Lake City was one terminal of hauls made into Carbon and San Juan Counties that there is therefore a need for service between Salt Lake City and the Uintah Basin. (See R. 43 which shows temporary authorities issued between Salt Lake City and Price and Gordon Creek in Carbon County and between Salt Lake City and Green River in Emery County.)

And likewise, there is no force to applicant's position in seeking authority to serve Salt Lake City to and from the Uintah Basin merely because there has been an increase in business to and from the Uintah Basin, where carriers already serving the area have abundant equipment and have suffered a net loss in business which has made additional money, men and equipment available for service into the Uintah Basin or elsewhere in the state.

The position of the plaintiff Uintah Freight Lines simply is that there is no evidence to support the exten-

sion of applicant's service so as to include Salt Lake City to and from the Uintah Basin, and if defendants can find such evidence in the record a reply brief will be submitted to argue whether such evidence is substantial. There is not in the record before the Commission one word of testimony from any shipper witness, or from any citizen living in the Uintah Basin to the effect that existing service to and from the basin and Salt Lake City is inadequate, or that there is a need for the service of an additional carrier in that area.

The addition of service for the applicant to and from Wayne County is not significant because it is a single county with a small population (2,394 according to the last official census), Salt Lake City has a population of 149,934 and is the shipping center for all of Salt Lake County, with a population of 211,623, which is 38.27% of the total population of the State of Utah. A carrier authorized to serve some portions of the State of Utah should not be allowed to add service to and from Salt Lake City for an area such as the Uintah Basin, which embraces all of two counties, without a showing that the Uintah Basin has a need for such service; and it should not be enough to show that on two or three occasions the carrier was able to obtain a temporary permit to serve a point in different counties.

Section 76-5-18, U.C.A., 1943, sets the requirements for issuance and amendment of certificates of convenience and necessity, and provides:

“If the commission finds from the evidence

that the public convenience and necessity require the proposed service or any part thereof it may issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require, otherwise such certificate shall be denied.”

It is true that the cases hold that if there is substantial evidence to support the decision of the commission the Supreme Court will affirm; but in the language of the statute there must be substantial evidence that the public convenience and necessity “require” the proposed service and “otherwise such certificates shall be denied”. The evidence in the record touching on common motor carrier service to the Uintah Basin is entirely devoid of any proof that additional service is required.

In *Goodrich v. Public Service Commission of Utah* (Utah Supreme Court, November 8, 1949), 198 P. 2d 975, this Court affirmed the rule that the limit of the court’s review is to determine whether the Commission had substantial evidence upon which to base its decision. That case is interesting because it involved service to the Uintah Basin by the Uintah Freight Lines and because the Commission found, and the Court upheld the finding, that Uintah Freight Lines was rendering reasonably adequate service and that granting the application would be detrimental to the best interests of the

people of the area. The Court upheld the Commission in permitting the existing carrier to improve its service after application had been made for an extension of service by a competitor, and still further, that the service was reasonably adequate. In the case now before the Court, there is no testimony of any need by any shipper in the Uintah Basin or in Salt Lake City for additional service between those points. If such need existed the Commission, according to the Goodrich case, should give existing carriers opportunity to satisfy the need before a new carrier will be permitted to come in. In the absence of any evidence of need, there is obviously no occasion to extend additional service and a fortiori no showing of public need that additional service is required.

In *Utah Light & Traction Co. v. Public Service Commission*, 101 Utah 99 at 114, 118 P. 2d 683, this Court said:

“If the need for new or additional service exists, it is the duty of the commission to grant certificates of convenience and necessity to qualified applicants, but when a territory is satisfactorily serviced, and its transportation facilities are ample, a duplication of such service which unfairly interferes with the existing carriers may undermine and weaken the transportation set up generally and thus deprive the public of an efficient permanent service.

And in that case the Court considered the desirability of providing service from rural communities

to a metropolitan area. That case involved passenger bus service into areas not previously served by any carrier and the Commission found that in order to give reasonably adequate service there should be direct service into Salt Lake City rather than require interchange of passengers at the point where the new carrier's service came into the territory of the existing carrier. This is not at all the problem which faces the Commission and the Court in the case at bar; since in this case there is already existing service into Uintah Basin by the three plaintiffs, all of whom render service to and from Salt Lake City, and no showing that any additional service is required to or from Salt Lake City, or to or from any other point serving Uintah Basin points.

In *McCarthy et al. v. Public Service Commission, et al.*, 111 Utah 489, at 494, 184 P. 2d 220, the Court was considering certificates of public convenience granted to eight carriers of sand, gravel, and other aggregates who had formerly operated outside the jurisdiction of the Commission. This Court reversed the Commission both because there was no evidence of need for certification as common carriers and, also, because the witnesses who testified, testified that they were satisfied with the service as it had been rendered. After referring to Section 76-5-18, U.C.A., 1943, this Court noted that the certificates would be improvidently granted unless the Commission received "evidence from which it could find that there is a public need for the services of a common carrier of sand, gravel, etc. Was there

such evidence? We believe not.” And the Court then said that the carriers had testified that they did not intend to change their type of service from contract carriers to common carriers and noted:

“All the representatives of the public for whom the carrier-defendants served, testified that they were completely satisfied with the service rendered at the present time. We find no evidence that there is a need to change these contract carriers into common carriers.”

And so in the case before the Court, the only witness from Uintah Basin, Mr. Campbell, testified that the service of Uintah Freight Lines has been satisfactory (R. 208), and then testified, “I didn’t say anything about from Salt Lake to Vernal; I said from Price to Vernal,” and then agreed that he was appearing only to be sure that Mr. Prichard could continue to serve him between the Price area in Carbon County and the Vernal area in Uintah County, which is within the present authority of Mr. Prichard.

## II.

THE FINDING OF THE COMMISSION THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRES THE SERVICE OF THE APPLICANT TO ALL POINTS IN THE STATE OF UTAH IS NOT SUPPORTED BY ANY SUBSTANTIAL EVIDENCE.

In line with previous decisions on the matter of public convenience and necessity, your Court will agree

that it is not the mere convenience of the applicant nor his desire to expand his operations, but a genuine requirement that must be shown. Though no mention is made by the public witnesses of seventeen of the counties in the state of Utah, still the order of the Commission would extend the services of the applicant to all seventeen of these counties. There is no evidence in the record as to necessity for service nor as to inadequacy of service as to any of these seventeen counties.

The evidence relating to transportation facilities to and from Salt Lake County can be regarded only as affirming the fact that there are already more than enough carriers holding broad authority to serve all shippers and having more than adequate personnel and equipment to provide such service. The Court should keep in mind the duty which has rested upon these protestants to maintain a reasonably adequate staff of employees and supply of operating equipment to render the service needed by the public. The evidence is undisputed that they have done so and that if additional business is taken away from them by this applicant, they will be crippled in their ability to serve the public.

We recognize the duties of the Commission to hear the evidence and adduce certain determinations and an order based upon the *facts* shown by such evidence. However, the Commission is a limited creature of law and may not arbitrarily substitute its own opinions, likes or dislikes for the evidence produced at a hearing



of an application. "Public convenience and necessity" must be found, not private advantage to an isolated shipper or carrier. There must be evidence that the *public* needs this type of service. It is, of course, impossible to bring in all of the public at a hearing of this nature, but in lieu thereof, the applicant should present to the Commission evidence from a representative group of *substantial* shippers of the various commodities affected by the application.

Not one of the public witnesses expressed to the Commission any future need for carrier services that could not be met by the protestants in the daily conduct of their respective businesses. Not one of the public witnesses was presently experiencing any difficulty in the transportation of commodities. None of them knew whether they would need the truck facilities at any time in the future, nor as to what points or places would be involved in the movement of the same.

Reference was made as to "dead-head" operations in hauling large and bulky commodities, such as tractors, tanks, etc. This type of movement is almost always a one-way haul and thus no advantage could accrue to the shippers by addition of another motor carrier in the field already filled to over-brimming.

### III.

THE GRANTING OF THE SAID AUTHORITY TO APPLICANT WILL BE DETRIMENTAL TO THE PROTESTANTS, PLAINTIFFS, AND TO MOTOR CARRIER SERVICE



OTHERWISE AVAILABLE TO SHIPPERS WITHIN THE STATE OF UTAH.

It appears from the testimony of the officers of protestants, as set forth in the Statement of Facts, that they have idle men and equipment, that they have never failed to respond to a request for service, and that they are in a position to render additional transportation services. It is the theory of regulation of motor carriers under the Utah Motor Transportation Act that certificated carriers shall be allowed to serve shippers within their territories so long as they render adequate service to the public. To permit applicant to have a certificate in this case would deprive existing carriers of business which they are able to serve, and would deprive them of revenue which they need.

#### IV.

THE GRANTING OF THE APPLICATION WILL BE DETRIMENTAL TO THE BEST INTERESTS OF THE PEOPLE OF THE STATE OF UTAH AND OF THE TERRITORY AFFECTED BY THE REPORT AND ORDER.

Applicant may argue that the interest of the public requires as many carriers as possible to serve any given point so that the service will be as good as possible. This is a short-sighted view which fails to recognize that the public interest is served by having good carriers rendering a prompt and efficient service and realizing a return on their investment.

Kansas Gas & Electric Co. v. Public Service Commission, 124 Kan. 690, 261 Pac. 593, 595;

McFayden v. Public Utilities Consolidated Corporation, 50 Ida. 651, 299 Pac. 671, 673.

The Utah Motor Transportation Act (76-5-17, U.C.A., 1943) charges the Public Service Commission with so regulating common carriers as to assure adequate transportation service, and also "to prevent unnecessary duplication of service between these motor carriers." The carriers already serving the territories involved in this complaint having idle equipment and men, and in the absence of any testimony showing a need for additional service, no case is made out for issuing a certificate to an additional carrier.

In *Chicago Ry. Co. v. Commerce Commission* (Ill.), 167 N.E. 840, at Page 850 the Illinois Supreme Court said:

"Where one company can serve the public conveniently and efficiently, it has been found from experience that to authorize a competing company to serve the same territory ultimately results in requiring the public to pay more for transportation in order that both companies may receive a fair return on the money invested and the cost of operation."

And this Court has also gone on record against

doubling up available facilities in a territory already satisfactorily served in *Utah Light & Traction Co. v. Public Service Commission*, 101 Utah 99, 118 Pac. 2d, 683, at Pages 690 to 691, where it said:

“If the need for new or additional service exists, it is the duty of the Commission to grant certificates of convenience and necessity to qualified applicants, but when a territory is satisfactorily serviced, and its transportation facilities are ample, a duplication of such service which unfairly interferes with the existing carriers may undermine and weaken the transportation setup generally and thus deprive the public of an efficient permanent service. \* \* \*”

## V.

THE COMMISSION FAILED AND NEGLECTED TO MAKE ANY FINDING REGARDING THE ADEQUACY OF THE TRANSPORTATION SERVICE NOW RENDERED BY AND AVAILABLE TO THE PUBLIC THROUGH THE PROTEST-CARRIERS, PLAINTIFFS HEREIN.

Section 76-5-18, U.C.A. 1943, directs the Public Service Commission “before granting a certificate to a common motor carrier” to “take into consideration \* \* \* the existing transportation facilities in the territory proposed to be served.”

These protestants produced testimony as to their transportation facilities and as to the service which they have rendered in the territories involved. All of the evidence was that their service has been satisfactory,

and that they are able to render additional services within the territory to which applicant's rights would be extended by the protested certificate.

The Commission has made no finding that existing transportation facilities in any part of the State of Utah are inadequate, and on the record made no such finding is supportable. Surely the Commission cannot successfully ignore the requirement that transportation facilities be found to be inadequate by failing and refusing to make a finding on this issue, in the face of the petition for rehearing pointing out such failure.

## CONCLUSION

The Public Service Commission has acted improvidently in this case in ignoring existing transportation facilities in the State of Utah ready and available to serve shippers throughout the state, and especially in the area not already within the authority of the applicant. No need in the public for additional services has been shown, and it appears that these protestants would be injured by the granting of this certificate.

In behalf of Uintah Freight Lines it is contended that no substantial evidence shows any need for additional service to or from points in Uintah and Duchesne Counties on the one hand and points outside of applicant's six original counties on the other hand, and that insofar as the Commission's order authorizes service beyond the original six counties, it is in error.

In behalf of protestants and plaintiffs Ashworth

Transfer Company and Salt Lake Transfer Company it appears that there is no evidence whatsoever in the record showing any need for service, or even a mention of shippers in the following Utah counties: Cache, Davis, Box Elder, Morgan, Rich, Tooele, Juab, Millard, Beaver, Iron, Washington, Wayne, Garfield, Sevier and Sanpete. And there is no substantial evidence showing a need for service beyond applicant's original authority under which he was authorized to render service to or from any points in Carbon, Emery, Duchesne, Uintah, Grand and San Juan Counties over irregular routes and to connect with the rail head at Heber City in Wasatch County.

The Public Service Commission should be directed to make findings in accordance with the evidence and to deny the application of Guy Prichard.

Respectfully submitted,

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 LINES.

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