

1979

# PBI Freight Service and Four Corners Trucking v. Public Service Commission of Utah et al : Reply to Petition for Rehearing

Utah Supreme Court

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Rick J. Hall; Richards, Brandt, Miller, Nelson & Zarr; Attorneys for Plaintiffs;

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## Recommended Citation

Reply to Response to Petition for Rehearing, *PBI Freight Service v. Public Service Comm. Of Utah*, No. 16212 (Utah Supreme Court, 1979).

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FILED

SEP 19 1979

Clerk, Supreme Court, Utah

IN THE SUPREME COURT  
OF THE STATE OF UTAH

PBI FREIGHT SERVICE and FOUR :  
CORNERS TRUCKING, :  
Plaintiffs and : REPLY TO PETITION FOR  
Appellants, : REHEARING  
vs. :  
RAY BETHERS TRUCKING, INC. and : No. 16212  
THE PUBLIC SERVICE COMMISSION :  
OF UTAH, et al., :  
Defendants and :  
Respondents.

TO: THE SUPREME COURT OF THE STATE OF UTAH AND THE HONORABLE  
CHIEF JUSTICE AND ASSOCIATE JUSTICES THEREOF:

Ray Bethers Trucking, Inc. replies to the Petition for  
Rehearing dated August 30, 1979, which was filed by appellants  
pertaining to the Decision of this Honorable Court filed August 14,  
1979.

I.

The Petition and Brief filed in support thereof continues  
to argue appellants' evidence and ignores the evidence relied  
upon by the Public Service Commission of Utah and this Honorable  
Court in affirming the decision of the Commission. The Petition  
claims there has been no showing that existing services are  
inadequate. Inadequacies in existing service were set forth at  
pages 3 through 7 of the Brief of Respondent filed herein on  
March 12, 1979. These facts of record were relied upon by the  
Commission in granting this application. Inadequacies in existing  
service consist of the following:

A.

Delays in Appellants' Service

PBI takes two to seven days to get a truck to the  
plant of the supporting shipper. (Tr. 84) The supporting

shipper described the service of PBI as unacceptable. (Tr. 105) They require equipment from a motor carrier on the day it is requested and not two to seven days from when it is requested. (Tr. 105) Evidence of delays was produced by PBI's own shipping documents where one load which was to have been delivered during the week of November 20th was not delivered until November 29. (Tr. 151-152)

B.

Specialized Services

Bethers operates a ten-wheel boom truck for delivery to job sites (Tr. 12). This type of truck is not operated by PBI nor Four Corners. (Tr. 157) Bethers' trailers are specially equipped with corner irons and chain softeners to prevent damage to the wallboard intransit. (Tr. 10) The marketing area of the supporting shipper includes the entire state. (Tr. 56) Neither PBI nor Four Corners can serve all points in Utah. Under temporary authority Bethers has provided transportation services for the supporting shipper to cities such as Tremonton, Ogden, Tooele and Price (Tr. 140-141), which cannot be served by any other motor carrier directly. To serve these points PBI must interline with other unspecified motor carriers (who because of their failure to appear in opposition have evidenced no interest in the traffic). The supporting shipper described the unsatisfactory nature of such interline service. (Tr. 72-73)

All of the foregoing are inadequacies in the existing motor carrier transportation service. For PBI to continue to argue that there is no inadequacy in existing service is to misstate the record.

II.

The Petition for Rehearing argues many points, each of which are either insignificant or immaterial and collectively do not justify a reversal of the Decision of this Honorable Court filed August 14, 1979 herein. Taking each of the points

argued in the Petition for Rehearing:

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*Library Services and Technology Act, administered by the Utah State Library*

#1. Both ~~statements~~ <sup>statements</sup> are correct. Bethers' interstate

~~statements are correct.~~

authority extends to all points in Utah and the temporary authority issued by the Commission extends to all points in Utah. The Petition does not state why this should be a basis for a rehearing.

#2. By this point the Petition merely points out that authority to serve a city includes authority to serve its commercial zones. This is no basis for a rehearing because there is no question that plaintiffs are unable to serve cities which the supporting shipper desires to serve, such as Tremonton, Ogden, Tooele and Price. (Tr. 140-141)

#3. The Decision did erroneously state that PBI operates 3 tractors when the evidence shows it does operate 42 tractors. (Ex. 7, R. 264) However, this is immaterial because the important numbers were that PBI operates only 7 flatbed trailers contrasted with the 95 flatbed trailers operated by Bethers. (Tr. 9) The wallboard must move in flatbed trailers. (Tr. 63) The number of tractors operated is not material. The significant fact is the delay in obtaining a tractor from plaintiffs-appellants compared to defendant-respondent Bethers.

#4. Wycoff holds only express and package delivery rights. (Tr. 114) Wycoff could not transport the supporting shipper's full truckloads of wallboard. Petitioners misstate the record by arguing this point.

#5. Petitioners' argument does not change the fact that petitioner's service is circuitous resulting in a wasting of fuels. (Tr. 141)

#6. Petitioners' monopoly should not be protected if the shipping public requires a better service. No evidence is cited that the granting of this application is detrimental to the best interests of the people of the State of Utah. This is because the contrary is true and is evidenced by the facts of record set forth under Bethers' argument pertaining to inadequacy of existing service.

#7. No citations are made to the record in support of this point and it is submitted that it is petitioners that mis-

#8. See evidence cited under prior point establishing that existing service is inadequate. Probably the most glaring fact continually ignored by petitioners is that their service was so unsatisfactory that the supporting shipper had to operate its own equipment prior to the granting of authority to Bethers.

#9. This Honorable Court has correctly stated the law and the record contains competent evidence supporting the Commission's findings.

#10. Wycoff transports express and package delivery, which is of no service to the supporting shipper, who has full truckloads of wallboard. The fact that there may be interstate carriers authorized to serve the shippers is immaterial.

#11. There is no reason why the Court should have stated these facts and they are no basis for a Petition for Rehearing. The important fact is that it takes 2 to 7 days for petitioners to get a truck to the plant of the supporting shipper.

#12. Petitioners continue to argue their interpretation of the facts and ignore the evidence set forth by Bethers under Point I herein.

#13. Petitioners cite no reason why this should be a basis of a Petition for Rehearing.

#14. The petition claims that PBI maintains tarps and tie-down equipment for the protection of the wallboard. However, the cite to Tr. 115 does not support this statement.

#15. If any savings of fuel can be obtained, it is significant. Arguing that savings might be minimal is no basis for a Petition for Rehearing.

#16. This is no basis for a Petition for Rehearing because there are points both in Salt Lake County and the State of Utah which petitioners cannot serve. Because only PBI and Four Corners protested this application, there is no evidence of continuing service to points in Utah beyond their authority.

#17. Petitioners continue to argue that this traffic is "as much as 40% of its net profit" when their president

testified:

"If I may add, it's only--this sheetrock is approximately 5 percent of our total revenue. But it probably contributes to as much as 20 or 30 or 40 percent of our total profit, both directly and indirectly, as I just mentioned." (Tr. 120)

A petition which misstates the record is not worthy of consideration.

#18. Reading of the testimony shows that the Court correctly characterized this testimony. If the supporting shipper agreed that existing service was adequate, it would not have gone to the time and expense of sending a representative from Portland, Oregon, to the hearing and in preparing Exhibit #2 (R. 214).

#### CONCLUSION

It is submitted that the points raised in the Petition for Rehearing singly or collectively do not justify a rehearing in this proceeding. The petition is a reargument of points made by petitioners in their prior brief and oral argument to the Court. Petitioners have not raised any additional facts or law not already considered.

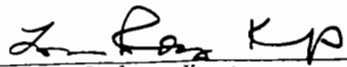
WHEREFORE, it is respectfully requested that the Petition for Rehearing be denied.

DATED this 19th day of September, 1979.

Respectfully submitted,

RICHARDS, BIRD & KUMP

By

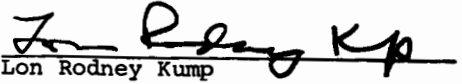
  
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Respondents

#### CERTIFICATE OF SERVICE

I hereby certify that two (2) copies of the foregoing Reply were mailed, postage prepaid, to the following parties this 19th day of September, 1979: Rick J. Hall, Attorney for Plaintiffs-Appellants, 48 Post Office Place, P. O. Box 2465, Salt Lake City,

Utah 84110; Donald K. Hales, Division of Public Utilities, Department of Business Regulation, State of Utah, 330 East Fourth South, Salt Lake City, Utah 84111; and Arthur A. Allen, Jr., Assistant Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114.

  
Lon Rodney Kump