

1981

Pbi Freight Service, Four Corners Trucking, Link Trucking, Inc., Magna-Garfield Truck Line, Uintah Freightways, Garrett Freightlines, Inc. And Milne Truck Lines, Inc v. Wycoff Company, Incorporated, And Public Service Commission of Utah, Et Al. : Brief of Plaintiff Four Corners Truck Service In Support of Petition For Rehearing

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *PBI Freight v. Wycoff Co.*, No. 16455 (Utah Supreme Court, 1981).
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IN THE SUPREME COURT OF THE STATE OF UTAH

PBI FREIGHT SERVICE, FOUR CORNERS)
TRUCKING, LINK TRUCKING, INC.,)
MAGNA-GARFIELD TRUCK LINE, UINTAH)
FREIGHTWAYS, GARRETT FREIGHTLINES,)
INC. and MILNE TRUCK LINES, INC.,)

Plaintiffs,)

vs.)

WYCOFF COMPANY, INCORPORATED, and)
PUBLIC SERVICE COMMISSION OF UTAH,)
ET AL.)

Defendants.)

CASE NO. 16455

BRIEF OF PLAINTIFF
FOUR CORNERS TRUCK SERVICE
IN SUPPORT OF PETITION FOR REHEARING

Review of the Orders of the
Public Service Commission of Utah

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FILED

MAR - 2 1981

MAR - 2 1981

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Clor's, Supreme Court, Utah

IN THE SUPREME COURT OF
THE STATE OF UTAH

PBI FREIGHT SERVICE, LINK)
TRUCKING, INC., FOUR CORNERS)
TRUCK SERVICE, MAGNA-GARFIELD)
TRUCK LINES, INC., UINTAH)
FREIGHTWAYS, GARRETT FREIGHT)
LINES, INC., and MILNE TRUCK)
LINES, INC.,)

Plaintiffs,)

vs.)

WYCOFF COMPANY, INCORPORATED)
and PUBLIC SERVICE COMMISSION)
OF UTAH ET AL,)

Defendants.)

PETITION FOR REHEARING

No. 16455

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

Four Corners Truck Service ("Four Corners") and PBI
Freight Service ("PBI"), two of the above-named plaintiffs, by and
through counsel, represent to the court as follows:

That the Decision of this Honorable Court in the above-
referenced matter, filed February 2, 1981, is in error in the
following regards:

1. Said Decision fails to discuss whether the Commission
properly considered the financial ability of the applicant to
properly perform the service sought under the certificate.

2. Said Decision fails to address itself to the adequacy
of the existing transportation facilities in the territory
proposed to be served.

3. Said Decision fails to address the devastating impact
of a grant of the Wycoff application on carriers presently

operating transportation facilities in the territory proposed to be served.

4. Said Decision fails to address the detriment to the best interests of the people of the State of Utah resulting from a grant of the Wycoff application.

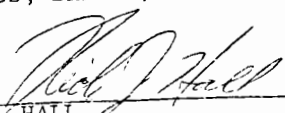
5. Said Decision fails to address the prejudicial nature of the Report and Order of the Commission.

WHEREFORE, it is respectfully submitted by plaintiffs PBI and Four Corners that the Record before the court demonstrates that the Commission's Report and Order as affirmed by the Commission's erratum Order is not supported by substantial evidence, the applicant Wycoff Company Incorporated has failed to meet the statutory requirements for receiving a Certificate of Public Convenience and Necessity for lack of financial ability, because plaintiffs demonstrated the adequacy of the existing transportation facilities, that the grant of authority of Wycoff is devastating to the existing carriers and thereby detrimental to the best interests of the people of the State of Utah and that the prejudicial nature of the Commission's Report and Order demonstrates the arbitrary, capricious, prejudicial and therefore unlawful nature of the same.

It is therefore respectfully requested that the court reconsider its Decision filed February 2, 1981; and upon reconsideration and rehearing, and upon consideration of the Brief of plaintiffs in support of this Petition, and upon consideration of the Record and all prior pleadings herein; that this Honorable Court set aside its Decision filed February 2, 1981, and thereby enter its Order setting aside and nullifying the Order of the defendant Public Service Commission dated March 13, 1979, and of May 1, 1979, in its Case No. 78-369-01.

DATED this 2 day of March, 1981.

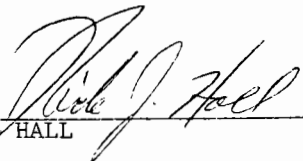
RICHARDS, BRANDT, MILLER & NELSON



RICK J. HALL
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CERTIFICATE OF SERVICE

I hereby certify that I mailed two copies of the foregoing Petition to each of the following parties: Frank S. Warner, attorney for defendant Wycoff, 543 - 25th Street, Ogden, Utah 84401; and to Mr. Arthur Allen Jr., Assistant Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114, by first-class mail, postage prepaid, this 2 day of March, 1981.



RICK J. HALL

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IN THE SUPREME COURT OF THE STATE OF UTAH

PBI FREIGHT SERVICE, LINK)
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FREIGHTWAYS, GARRETT FREIGHT)
LINES, INC., and MILNE TRUCK)
LINES. INC..)

Plaintiffs,)

CASE NO 16455

vs.)

WYCOFF COMPANY, INCORPORATED)
and PUBLIC SERVICE COMMISSION)
OF UTAH, et al.,)

Defendants.)

BRIEF OF PLAINTIFFS FOUR CORNERS TRUCK SERVICE
AND PBI FREIGHT SERVICE
IN SUPPORT OF PETITION FOR REHEARING

STATEMENT OF THE CASE

This proceeding involves an application before the defendant Public Service Commission of Utah (Commission) filed by defendant Wycoff Company, Incorporated (Wycoff) seeking an extension of the existing Wycoff authority from 100 pounds per shipment per day to a limit of 1,000 pounds per shipment per day with no individual package to exceed 100 pounds.

DISPOSITION BY THE PUBLIC SERVICE COMMISSION OF UTAH

The Commission granted the application of Wycoff.

Plaintiffs filed a Petition for Reconsideration and Rehearing and a Motion to Stay with the Commission, both of which were denied. The Commission issued an Erratum Order which amended only one finding.

RELIEF SOUGHT ON APPEAL

By decision filed February 2, 1981, the Supreme Court affirmed the decisions of the Commission; plaintiffs now seek to have the Supreme Court rehear and reconsider its decision and upon said rehearing to have the Supreme Court set aside and nullify the Orders of the defendant Commission dated March 13, 1979 and May 1, 1979.

STATEMENT OF FACTS

Wycoff seeks authority to increase the 100 pound per shipment limitation contained in its Certificate No. 1679 to 1,000 pounds per shipment. Wycoff also seeks to have its authority expanded to include service between all points in the State of Utah with the exception of a portion of San Juan County. (R. p.5 and p.1222).

The application was opposed by Four Corners Truck Service (Four Corners), PBI Freight Service (PBI), and by the other plaintiffs. Plaintiffs, individually and collectively through interline, hold authority to and transport general commodities throughout the area sought to be served by applicant. (Exs. 79, 80, 81, 82, 83 and 84). Four Corners holds authority for the transportation of general

commodities in Certificate No. 1612 between Salt Lake City, Utah and Blanding, Utah serving intermediate and off-route points in Utah, Grand, and San Juan Counties, but is restricted against transporting shipments between Salt Lake City, on the one hand, and points in Utah County on the other. PBI holds general commodities authority between Salt Lake City and Utah County points and generally south to most points in central Utah. PBI provides scheduled service to 97 different communities and various intermediate and off route points such as ranches and farms. (Ex. 79, App. At B).

Forty-eight public witnesses offered evidence in support of the application. (R. 57-924 and Exs. 17-78). Almost without exception, the unsupported allegations of the supporting shippers concerning alleged deficiencies in the existing transportation services were specifically rebutted through documentary evidence. (Exs. 79-84). The same exhibits demonstrate that all plaintiffs, PBI, and especially Four Corners, are dependent upon Utah intrastate shipments of less than 1,000 pounds for their livelihood and continued existence.

An expansion of the Wycoff authority resulting in a loss of traffic to PBI Four Corners and the other plaintiffs affects the ability of them to continue to provide a transportation service to the shipping public of the State of Utah which they are obliged to serve. (Exs. 79-84).

Four Corners, PBI and the other plaintiffs presently maintain sufficient amounts of personnel, terminals, equipment, and service capacity to meet the needs of the shipping public in the areas they are authorized to serve. In the case of Four Corners, it has only the authority between Salt Lake City, Utah and the sparsely populated areas of Grand and San Juan Counties. Four Corners has no "subsidies" like corresponding interstate authority, newspapers, or mail contracts.

The documented evidence of Four Corners demonstrates that the service presently being provided for the only supporting shipper presented by Wycoff from the area of Grand and San Juan Counties is more than adequate to meet the needs of said shipper. (Ex. 79 pp.12, 13). A detailed summary of the transit studies offered by PBI and Four Corners is contained at pages 1393 through 1395 of the record. Exhibit 79 further demonstrates that Four Corners and PBI have expended risk capital in facilities, equipment, and personnel for providing a transportation service within their authorized territories.

The intrastate Utah operations of PBI and Four Corners are not profitable at the present time. Four Corners found it necessary to apply to the Public Service Commission for a ten percent rate increase just prior to the Commission's decision in this matter. (Ex. 79). Since said time, diversion of traffic to Wycoff in the Four Corners area has

continued to result in decreased operating efficiencies and increased costs, resulting in less available service from Four Corners at a higher cost to the shipping public. Four Corners has been unable to generate a net profit, notwithstanding subsequent rate increases, since the grant of authority to Wycoff. There is simply not enough traffic moving in and out of Grand and San Juan Counties to support two competing carriers. Even prior to the grant of authority to Wycoff, Four Corners was operating between Salt Lake City/Provo on the one hand, and Moab/Monticello/Blanding on the other every day with less than one-half of a load of freight. (Ex. 79 p.12.) Of course, since the grant to Wycoff, this situation has worsened.

The dilution of available traffic by Wycoff has had the same effect on PBI. Notwithstanding four rate increases since 1978, PBI has not been able to show a profit on intrastate traffic because sharing the larger shipments with Wycoff makes it unprofitable and wasteful for both operations to exist.

Wycoff was unable to demonstrate its financial ability to properly perform the service sought to the Commission. (Ex. 17 p.3 and the cross-examination of Mr. Casper, R. p.45-53).

On the whole, the public testimony offered in support of the Wycoff application was not probative, was not

documented was in very general terms, and not convincing. Many of the public witnesses themselves demonstrated that their allegations of transportation deficiencies were without basis and that in fact the existing transportation facilities of the plaintiffs were more than adequate. Twenty-two such examples with exhibit and record citations were outlined in plaintiffs' original Brief herein at pages 11-15, and for brevity are hereby incorporated by reference.

Notwithstanding all of the foregoing, the Commission granted the application as applied for. This action is unsupported by both the facts and the law, and is contrary to the evidence, demonstrating that the Commission acted arbitrarily, capriciously, with prejudice, and therefore unlawfully.

ARGUMENT

POINT I.

WYCOFF DOES NOT HAVE THE FINANCIAL ABILITY TO PROPERLY PERFORM THE SERVICE FOR WHICH IT SEEKS A CERTIFICATE.

Section 54-6-5 Utah Code Annotated (1953, as amended) requires the Commission to consider the financial ability of the applicant before granting operating authority and requires the Commission to deny such applications if the applicant is financially unable to properly perform the service sought. It was demonstrated before the Commission that at the time of hearing in this matter, Wycoff's current

assets (cash) were decreasing as was working capital. At the same time, Wycoff's current liabilities were excessively high. (Ex. 17 and R. pp.45-53). These facts combined with a continuing net loss on operations and plans to spend \$3,000,000.00 for a new terminal cast serious doubt upon Wycoff's financial ability to conduct the proposed operations. The annual report of Wycoff for the third quarter of 1980 shows an operating ratio of 105.6 for a net loss of 5.6 percent of gross revenue.

Wycoff has failed to demonstrate that it is financially able to conduct the proposed operation, prohibiting a grant of authority and requiring this court to set aside the Orders of the Commission prepared by counsel for Wycoff, which erroneously find Wycoff financially fit.

POINT II.

WYCOFF HAS FAILED TO DEMONSTRATE THAT THE EXISTING TRANSPORTATION FACILITIES ARE INADEQUATE TO MEET THE NEEDS OF THE SHIPPING PUBLIC.

The record in the instant matter demonstrates an uncontroverted showing by plaintiffs PBI and Four Corners that the existing service provided by them is meeting the needs for transportation expressed by the public witnesses in a consistent, satisfactory and reasonable manner. The evidence offered by plaintiffs was well-documented and could not be refuted or rebutted by Wycoff.

PBI and Four Corners maintain sufficient equipment, terminals, offices and schedules to provide for the needs of the shipping public in their authorized areas. (Ex. 79)

Wycoff presented testimony from less than one-half of one percent of the regular customers of PBI and from only one witness located in the service area of Four Corners. Such a miniscule representation cannot be said to speak for the shipping public in those areas.

Notwithstanding, PBI and Four Corners demonstrated in Exhibit 79 that the service provided by them for the shipping public and for the shippers who appeared is in fact consistent, satisfactory, and reasonable.

The only shipper from the Four Corners service area was shown to have been provided with an overnight delivery record of 98.1 percent by Four Corners and a 100 percent handling record without exception as to shortage, overage, or damage during a six month documented study. (Ex. 79 pp.11, 12).

Similar studies, showing shipments moving between all of the PBI service area, consistently showing in excess of 95 percent perfect overnight service, were made for the other shippers who use the service of PBI. (Ex. 79 pp.13-30 and Appendices). Such an exemplary service record in an industry subject to the mechanical, weather, human, and logistical variables involved in providing a transportation

service to the public must be rewarded, not punished by a dilution of the traffic. The documentary evidence offered by plaintiffs Four Corners and PBI was uncontroverted and disproved the unsupported contentions raised by various witnesses for applicant. The choice of the Commission to give credence to the unsupported and undocumented allegations of the shipper witnesses in deference to the well-documented evidence of the excellent service of plaintiffs is arbitrary and capricious and must be overturned.

In the case of Lake Shore Motor Coach Lines v. Bennett, 333 P.2d 1061, 8 Ut.2d 293 (1953), this court had before it a situation identical to the instant matter. The Commission had granted a motor carrier additional operating authority by expanding the scope of an outstanding certificate. Upon review, this court set aside the modification in the certificate because the applicant had not shown that the public convenience and necessity justified the proposed service. In its decision, the court stated at 8 Ut.2d 297:

Proving that public convenience and necessity would be served by granting additional carrier authority means something more than showing the mere generality that some members of the public would like and on occasion use such type of transportation service. In any populous area it is easy enough to procure witnesses who will say that they would like to see more frequent and cheaper service. That alone does not prove that public convenience and necessity so require. Our understanding of the statute is that there should be a showing that existing ser-

VICES are in some measure inadequate, or that public need as to the potential of business is such that there is some reasonable basis in the evidence to believe that public convenience and necessity justify the additional proposed service. For the rule to be otherwise would ignore the provisions of the statute; and also would make meaningless the holding of formal hearings to make such determinations and render futile efforts of existing carriers to defend their operating rights." (Emphasis added)

In specifically addressing itself to the evidence before it, this Court said at 8 Ut.2d 298:

" . . . we make this generalization: there is ample specific evidence of the adequacy of carrier service in those areas and there is no specific affirmative showing of either lack or inadequacy of service in such areas by anyone who knew of and had attempted to use the services which were available." (Emphasis added)

The court also found in the Lake Shore case that the shippers knew of the carrier service available but failed to use those services or as in the instant matter found the services to be adequate when used. At 8 Ut.2d 298, the court said:

"Nevertheless, upon a survey of the record, we find no witnesses that made showing for the defendant (applicant): that he (shipper witnesses) was aware of the extent of the services presently available; that he had attempted to make use of them and found the services wanting; nor did the witnesses express actual dissatisfaction with the services presently offered. There being no such evidence we see no basis for a finding that public convenience and necessity require additional service. The finding to that effect was therefore capricious and arbitrary." (Clarification supplied)

The concurring opinion in Lake Shore, supra, is to similar effect at 8 Ut.2d 299 as follows.

"HENROID, Justice (concurring):

"I concur for the sole reason that no one has shown from the record any evidence reflecting any inadequacy of service resulting from the operations of plaintiffs in their respective spheres, while on the contrary the service affirmatively was shown to have been satisfactory.

Existing carriers that have expended risk capital, and have complied with tariff and other Commission requirements, ordinarily are entitled to protection against competition until a proposed competitor or someone else established by substantial evidence a failure to perform the service which the Commission has authorized and ordered them to perform." (Emphasis added)

Plaintiffs have affirmatively shown, through documentary evidence, that the service provided has been adequate to meet the needs of the shipping public. This was borne out by the supporting shippers themselves.

The evidence in this matter discloses the service of the existing plaintiff carriers to be adequate. This Honorable Court, in a similar case, Mulcahy, et. al. v. Public Service Commission, et. al , 117 P.2d 298 (1941), had this to say:

"An applicant desiring to enter a new territory, or to enlarge the nature or the type of the service he is permitted to render must therefore show that from the standpoint of a public convenience and necessity there

is a need for such service; that the existing service is not adequate and convenient, and that his operation would eliminate such inadequacy and inconvenience. He must also show that the public welfare would be better served if he rendered the service than if the existing carrier were permitted to do so. The paramount consideration is the benefit to the public, the promotion and advancement of its growth and welfare. Yet the interests of the existing certificate holder should be promoted so far as that can be done without injury to the public either to its present welfare or hindering its future growth, development, and advancement." (Emphasis added)

The Utah Supreme Court also addressed itself to this issue in the case of Utah Light and Traction Co. v. Public Service Commission, *supra*, when it held: .

"If a 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 served, 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. True, existing carriers benefit from the restricted competition, but this is merely incidental in the solution of the problem of securing adequate and permanent service. The public interest is paramount." (Emphasis added)

The record in the instant matter will not support the Commission's Finding of Public Convenience and Necessity requiring the proposed service of Wycoff and therefore, this Honorable Court must set aside the Order of the Public Service Commission as it is not in accord-

ance with the evidence of record.

III

THE GRANTING OF THE WYCOFF APPLICATION HAS BEEN DEVASTATING TO PLAINTIFFS.

Since the grant of authority to Wycoff, a portion of the traffic previously handled by PBI and Four Corners has been diverted to Wycoff. Plaintiffs cannot afford any diversion of traffic and revenue when costs of operation are constantly rising. Appendix E to Exhibit 79 demonstrates that PBI and Four Corners were operating at a loss on Utah intrastate traffic at the time of hearing in this matter. Since that time, notwithstanding four rate increases since 1978, PBI as well as Four Corners still operate at a net loss on intrastate traffic, directly attributable to the diversion of traffic to Wycoff.

Several decisions of the Utah Supreme Court affirm the need to prohibit carriers from unnecessarily duplicating the service of existing carriers. In the case of Wycoff v. Public Service Commission, 227 P.2d 323; 119 Ut. 342 (1951), this court affirmed a denial of an application based on the sufficiency of existing services. The decision of the court included the following language:

"* * * competition is desirable if the volume of business will permit solvent operations, but, if the field is not limited, insolvency and unsatisfactory service results. The Commission, having

granted defendant a Common Carrier Certificate to operate in the area involved, could reasonably conclude that the theatres would be adequately and properly serviced and that the granting of either of plaintiffs' applications would be detrimental to the interests of all of the exhibitors and that neither operator could afford to serve them properly."

In the instant matter the expanded authority of Wycoff has decreased the amount hauled by plaintiffs. The volume of business is fixed and it will not permit several solvent operations and thus the grant of authority to Wycoff has unduly burdened PBI and Four Corners.

Utah Light and Traction v. Public Service Commission, 118 P.2d 683, 101 Ut. 99 (1941) Rudy v. Public Service Commission, 265 P.2d 400, 1 Utah 2d 223 (1954); and Goodrich v. Public Service Commission. 198 P.2d 975, 114 Utah 296 (1948), all stand for the principle that additional service must not be authorized when there is evidence of the adequacy of an existing carrier. In Utah Light and Traction, supra, the Supreme Court said:

"When a territory is satisfactorily serviced and its transportation facilities are ample, a duplication of such services 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. The public interest is paramount."

Such a duplication has taken place. The traffic Wycoff has diverted is not new traffic but existing traffic. It is not a new service which Wycoff renders but rather a duplication of the existing adequate service. This diversion of traffic from the plaintiffs to Wycoff is not justified and must be remedied by this court setting aside the Orders of the Commission.

POINT IV.

THE GRANT OF THE WYCOFF APPLICATION IS
DETRIMENTAL TO THE BEST INTEREST OF THE
PEOPLE OF THE STATE OF UTAH.

Section 54-6-4 Utah Code Ann. (1953, as amended), requires the Commission to consider whether granting an application will be detrimental to the best interest of the people of the State of Utah. Diversion of traffic from PBI and Four Corners by Wycoff has continued to increase the cost per unit to transport it. As indicated previously, PBI has been forced to apply for four separate rate increases since the grant of the Wycoff authority. Notwithstanding, neither PBI nor Four Corners has been able to generate a profit on Utah intrastate traffic. The more expensive transportation service is detrimental to the people of the State of Utah who make use of the service of PBI and Four Corners. The grant of authority to Wycoff has resulted in a disruption of the previously adequate transportation scheme and has resulted in increased costs to the shipping public.

As argued before the court orally on February 15, 1980, the Wycoff tariff, not revealed until after the Commission proceedings, provides for preferential rates on more lucrative traffic. This was pointed out in the Affidavit of plaintiff, Milne, in support of plaintiffs' Motion for Stay in this matter before this court. The preferential Wycoff rates result in the plaintiffs transporting the low density shipments with high susceptibility to damage while Wycoff transports the more lucrative, higher density traffic. The passing on of the increased costs to shippers and receivers of freight is not in the public interest.

This situation is most compelling in the case of Four Corners. There simply is not enough traffic in Grand and San Juan Counties to justify the authorization of an additional carrier when Four Corners already competes in these counties with Monument Valley Stage Lines and United Parcel Service. The result is the present situation of both Four Corners and Wycoff serving the area, both at much less than capacity because of the unnecessary duplication of services. This, combined with Wycoff's ability to discriminate and "skim" the best traffic has resulted in an intolerable situation for Four Corners which is ultimately being borne by the shipping public in the form of increased costs. Continuation of this situation will inevitably lead to the ultimate demise of Four Corners even though it is providing

the service it is ordered to do in an excellent manner. Loss of the service is not in the public interest

POINT V

THE PREJUDICIAL NATURE OF THE COMMISSION'S DECISION DEMONSTRATES THAT THE COMMISSION ACTED ARBITRARILY, CAPRICIOUSLY, WITH PREJUDICE, AND THEREFORE UNLAWFULLY.

As has been discussed, the Report and Order of the defendant Commission dated March 13, 1979, is not in accordance with the evidence offered and demonstrates the Commission's predisposition in deciding this case. The Report and Order accepts only the unfounded evidence offered on behalf of applicant and ignores the well - documented evidence offered by plaintiff's.

A reading of the Report and Order makes obvious the predisposition on the part of the Commission and also demonstrates the fact that the Commission adopted, without proper scrutiny, the outrageously one-sided draft Report and Order prepared by counsel for defendant Wycoff.

On review, this court must ascertain whether the Commission's decision is based upon substantial evidence. When, as here, it is not it must be set aside as being arbitrary and capricious. Uintah Freightlines v. Public Service Commission, 119 Ut. 491, 229 P.2d 675 (1951), and cases cited therein. Because the Commission's order does not have substantial support in the record as demonstrated

above, and in plaintiff's Petition for a Writ of Certiorari it must be set aside

CONCLUSION

The defendant Commission ignored the failure of Wycoff to demonstrate itself financially capable. The defendant Commission ignored Wycoff's failure to demonstrate that the public convenience and necessity require the proposed operation. The defendant Commission ignored the documented evidence offered by plaintiffs demonstrating the adequacy of the existing service. The defendant Commission ignored the detrimental effects upon plaintiffs and in turn upon the shipping public upon a grant of the Wycoff application.

The defendant Commission, in failing to consider the evidence of plaintiffs and in adopting a Report and Order prepared by applicant's counsel, replete with bias and prejudice, has acted in an arbitrary, capricious, and unlawful manner.

It is time to look beyond the often cited standard for appeal of an administrative agency decision that when there is any underlying evidence to support the findings, they must be affirmed. What this Court must now do is to go on to the second standard under the statutory scope of review in order to make the determination that the defendant Public Service Commission has, in fact, exceeded its authority by granting additional operations to Wycoff without regard to

the stringent standards for Public Convenience and Necessity contained in §54-6-5, Utah Code Ann. (1953, as amended). The decisions of the defendant Commission must be set aside. The Commission has exceeded its bounds and taken a rapid departure from the historical and statutory scheme for regulating motor carriers in this state.

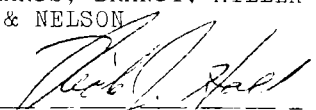
Such a departure is not within the province of the Public Service Commission. It rests with the Legislature. The Public Service Commission is a creature of statute and regulates at the pleasure of the Legislature and cannot ignore the statutory standards that have been set for it. Sound economics and meaningful regulation of the motor carrier industry require that this court now set aside the decisions of the defendant Commission. To do otherwise is to sanction deregulation of Utah intrastate transportation without legislative mandate.

The Report and Order of the defendant Commission dated March 13, 1979, and the Erratum Order dated May 1, 1979 are not supported by the evidence, the Commission has acted outside of its jurisdiction, in excess of its powers and in a manner that must be regarded as capricious, arbitrary,

and wholly unreasonable in view of the record before it,
requiring this Court to set said Orders aside.

Respectfully submitted,

RICHARDS, BRANDT, MILLER
& NELSON




Rick J. Hall
Attorneys for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of the
foregoing Brief by first-class postage prepaid, this 2
day of ^{March} February, 1981 to each of the following parties:

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