

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 Defendant Wycoff Company, Incorporated,
In Answer of Petition For Rehearing

Utah Supreme Court

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Recommended Citation

Legal Brief, *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 LINES, UINTAH :
FREIGHTWAYS, GARRETT :
FREIGHTLINES, INC., and :
MILNE TRUCK LINES, INC., :

Plaintiffs, :

vs. : Case No. 16455

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

Defendants. :

BRIEF OF DEFENDANT
WYCOFF COMPANY, INC.
IN ANSWER OF PETITION FOR REHEARING

Review of the Orders of the
Public Service Commission of Utah

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IN ANSWER TO PETITION FOR REHEARING

In conformity with Plaintiff's Brief, plaintiff PBI Freight Service (PBI), Four Corners Truck Service (Four Corners), Link Trucking, Inc. (Link), Magna-Garfield Truck Lines (M & G), Uintah Freightways (Uintah), Garrett Freightlines (Garrett) and Milne Truck Lines (Milne) will collectively be referred to herein as "plaintiffs" and occasionally as "protestants" or "protesting carriers". Plaintiffs will also be referred to individually by name as indicated above in parenthesis.

The defendant Public Service Commission of Utah will be referred to as the "Commission".

The defendant Wycoff Company, Incorporated will be referred to as "defendant Wycoff" or "Wycoff" or "applicant".

STATEMENT OF THE KIND OF CASE

This proceeding involves an application before the Public Service Commission of Utah in which defendant Wycoff seeks operating authority as a common motor carrier for the transportation of general commodities in express service, with certain exceptions, over regular routes between all points in the State of Utah, limited to the transportation of packages not to exceed 100 pounds each and shipments not to exceed a total of 1,000 pounds from one consignor to one consignee on the same day.

DISPOSITION IN LOWER TRIBUNAL

The Public Service Commission of Utah granted Wycoff's application.

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. Defendant Wycoff herein urges the Supreme Court to deny plaintiff's Petition for Rehearing.

STATEMENT OF FACTS

In the proceeding below Wycoff's application was opposed by eight other motor carriers operating in the State of Utah. Seven of those eight protesting carriers filed a Petition for Writ of Certiorari to this Court. Two of those seven, PBI and Four Corners, have filed a Petition for Rehearing to which this Brief is addressed. It should be noted that PBI owns 100% of the stock of Four Corners and that they have common management. (Ex. 79).

As in their original petition herein, plaintiffs have disregarded the requirements of Rule 75 and Form 35, Utah Rules of Civil Procedure, which require that their Statement of Facts should be a complete statement of material facts, not merely as they contend them to be, but viewed, as they must on appeal, favorable to the findings of the Commission. In Wycoff's original brief filed herein, at pages 4 through 20, Wycoff set out findings 2 through 23 of the Commission's Report and Order and documented each fact stated in those findings by references to the official record showing conclusively that each of those findings in their most minute detail were supported by competent evidence received by the Commission during the hearing herein. Wycoff incorporates herein by reference pages 4 through 20 of its original brief setting forth those 22 paragraphs from the Commission's Findings of Fact together with the

exhaustive references to the official record wherein those findings are supported.

Plaintiffs claim that "the unsupported allegations of the supporting shippers concerning alleged deficiencies in the existing transportation services were specifically rebutted through documentary evidence." (Plaintiff's Brief p.3). This is untrue. Plaintiffs "documented evidence" was fraught with errors and misrepresentations. (Wycoff's Original Brief p. 17 and pp. 21-22). For the plaintiffs to suggest that this Court should accept their version of the facts is nothing short of incredible. The evidence presented by the protestants was so lacking in candor and credibility as to border on the ridiculous. The 282 pages of cross-examination of the plaintiffs are so replete with examples of half-truths, omissions, and inaccuracies that it would take 282 pages to document them all. (R. pp. 935 to 1215). For instance, Mr. Hardy Roberts, President of the plaintiffs PBI and Four Corners, testified under direct examination that he "wrote virtually all" (R. p. 934) of his prepared testimony which was introduced as Exhibit No. 79. And on page 7 of his prepared testimony he states:

I have reviewed all of the public testimony offered by the public witnesses and was present during much of it.

During cross-examination, he admits he neither wrote "virtually all" of his testimony nor did he review all of the public testimony offered by the public witnesses:

Q. I thought that somewhere in your testimony you had indicated you had reviewed and read all of the testimony in this proceeding given by public witnesses.

A. Well, I don't believe I said that. If I did, I made a misstatement. I don't believe I said that. I didn't write it. If my attorney added it, I'd pick it up. I didn't write that. I was not here during part of the applicant's case.

Q. Well, let me refer you over to page 7. "immediately following the supporting public witnesses--

A. Yeah. I didn't write that sentence. I'm sorry. That's not quite accurate.

Q. That is not your testimony?

A. I--I'm that's a mistake. My attorney added that sentence. I did--have not reviewed all of the public testimony. (R. pp. 957-58).

Kent Cutler testifying on behalf of Link Trucking, Inc. at page 2 of his prepared testimony stated (Ex. 84):

Link is in full compliance with all applicable laws, rules, and regulations of the Public Service Commission, the Interstate Commerce Commission, the Department of Transportation, the State of Utah, and the Federal Government.

That statement was made for the affirmative purpose of causing the Commission to believe that Link is, in fact, in compliance with those laws, rules and regulations. Cross-examination went as follows:

Q. Are you familiar with General Order 90?

A. No, I'm not.

Q. Would you tell me on what basis you make the statement in the middle of your testimony, page 2, that Link is in full compliance with

all the governing laws, rules, and regulations of the Public Service Commission when you are not familiar with them yourself?

A. I don't know all of them. As far as I know, we are in compliance with them.

Q. Do you want to change that part of your testimony that you are in compliance?

MR. HALL: Counsel, we would stipulate if you'd like that if you want to strike that off adding the language to the best of my knowledge.

MR. WARNER: Q. Do you want to add that language to your testimony?

A. I have no objection to that.

Q. Well, it's your testimony. What is your testimony in that regard?

A. To the best of my knowledge we are in full compliance with all of the rules and regulations.

Q. Are you--how knowledgeable are you about those rules and regulations?

A. In--what respect?

Q. Well, have you ever read the General Orders of this Commission pertaining to the transportation business in the State of Utah?

A. No, I haven't.

Q. Have you ever read the laws passed by the Utah State Legislature which govern the transportation business in the State of Utah?

A. No.

Q. Have you ever read the rules and regulations of the Public Service Commission?

A. No.

Q. Have you ever read the rules and regulations of the Interstate Commerce Commission?

A. I have studied them, yes.

Q. How about the Department of Transportation?

A. No.

Q. Are you familiar with all of the laws, rules and regulations of the various federal agencies that govern Link Trucking?

A. Not all of them, no (R. pp. 1197-99).

This was not mere game playing because the fact of the matter was Mr. Cutler included in his transit studies freight bills conclusively proving illegal shipments handled by Link Trucking:

Q. I see. And you do agree, however, that Link does not have authority to pick up shipments north of the Salt Lake County line?

A. That is my understanding of the authority, yes.

Q. Would you just read into the record for us, please, each of those bill numbers and the consignor and the address at which those shipments were picked up?

A. Our Pro No. EO 3348, the shipper was Goodyear Tire in North Salt Lake. Our Pro No. EO 2971, the shipper was P & L Distributing, Woods Cross, Utah. Our Shipper No. 0--excuse me. EO 2038, the shipper was Central Solvents and Chemical in Woods Cross, Utah. And we have one shipment EO 2018, shipper was Clover Club Foods in Kaysville.

Q. In Kaysville?

A. Yes.

Q. Do you know under what authority you picked that shipment up?

A. No, I do not.

Q. Does Link Trucking, Inc. claim to have authority to serve Clover Club Foods in Kaysville?

A. No, we do not have authority to do that.

Q. You do not have authority to do that?

A. No.

Q. Do you know whether or not your company has a rate published for service to Woods Cross?

A. Woods Cross is in Davis County. We wouldn't have a rate published to it. There would be no need for it. (Emphasis added.)
(R. pp. 1206-07).

The operating witnesses for the various protestants, almost without exception, after testifying as to their intimate familiarity with the operations of their businesses and their qualifications to testify on their behalf, were unable to answer question after question concerning those operations. This was particularly true as to aspects of their operations which appeared to be blatantly illegal. Supposedly a major concern of the protestants in this case and Case No. 77-369-01 before the Commission has been the legality of Wycoff's operations and Wycoff's alleged failure to properly police those operations. (See Plaintiffs Original Brief pp. 17-25). When those

same plaintiffs took the witness stand and were faced with the issue of the legality of their own operations, they surprisingly were not sufficiently informed to admit, deny or explain the same.

For example, when Maurice J. Montoya, traffic manager-commerce for Rio Grande Motor Way, underwent cross-examination concerning compliance with the Commission's agency and leasing regulations the following exchange took place:

Q. Do you have any employees stationed at your terminal at Green River, Utah?

A. I believe we do, yes.

Q. Is it not true, Mr. Montoya, that you have an agent at Green River, Utah, rather than an employee?

A. Well, yes, I guess you [can] say that.

Q. Do you know whether or not you have a written lease or contract with your agent at Green River, Utah?

A. I don't know that but I believe we do.

Q. Do you know whether or not that written lease or contract describes the vehicle that your agent uses in transporting your freight?

A. No, I do not.

Q. Do you know whether or not that written contract, if such exists, provides for exclusive use of that vehicle by Rio Grande?

A. No, I don't.

Q. Do you know whether or not Rio Grande has ever applied for exemption to this Commission for that agent's operation?

A. No, I don't know.

Q. Okay. Do you know how long it's been since you have had an employee at Green River, Utah?

A. No, sir, I do not.

It is important to note that Green River, Utah is not a remote point in Rio Grande's operation. Rio Grande only has authority to serve between Salt Lake City, Price and Green River on a Utah intrastate basis. (See R. p. 1086).

No protestant presented a Utah systemwide transit study for comparison to Wycoff's Utah system-wide transit study covering in excess of 40,000 shipments. Rather than presenting a comprehensive transit study, the protestants chose to present limited transit studies for certain of the public witnesses. Garrett presented no transit study. (See Ex. 80). Rio Grande presented no transit study. (See Ex. 81, R. pp. 954 and 955, 1066, 1128-1137 and Ex. 82 and appendices 5-15). In some cases, the witnesses for whom transit studies were prepared had not complained of transit times. (Compare R. pp. 415-431 to R. pp. 1013-1015 and Ex. 79 p. 21). No transit studies were prepared for other witnesses who had complained of transit times. (R. pp. 988-995, 1003-1005, 1135 and 1136). The transit studies presented suffered from deficiencies including omission of shipments

(R. pp. 981 and 982, 1179-1182), inclusion of postdated freight bills (R. pp. 1018, 1034 and 1035, 1101 and 1102, 1137, 1178 and 1179), and omission of interlining carriers' transit times. (R. pp. 955, 1011 and 1012, 1025, 1127 and 1128). Each protestant presented a study to demonstrate the amount of traffic they are presently hauling which they claim would be subject to diversion if this application is granted. These studies, like their transit studies, contained flaws and inaccuracies and are misleading. They contained traffic which is presently already subject to diversion to Wycoff but on which they are successfully competing (R. pp. 960-973, 1067-1072, 1095-1100, 1119-1126, 1142-1144, 1165 and 1166, 1200-1203). Wycoff's application was limited to 1,000 pound shipments with no piece to exceed 100 pounds yet there was no attempt to omit from most of the studies those shipments in which individual pieces exceeded 100 pounds (R. pp. 973, 1067-1072, 1095-1100, 1119-1126, 1200-1203); and, in several cases, the diversion studies contained shipments in excess of 1,000 pounds. (R. p. 1203).

The remainder of plaintiff's Statement of Facts is directed to the allegation that an expansion of the Wycoff authority would result in a substantial diversion of traffic from PBI and Four Corners. This claimed "fact" is based upon the prepared testimony of Mr. Hardy Roberts, President

of PBI and Four Corners (Ex. 79) plus the gratuitous statements outside the record that PBI and Four Corners have in fact suffered a diversion of traffic due to the operations of Wycoff pursuant to their new authority. Not only are these allegations of present conditions totally immaterial and beyond the scope of this Court's review but they must be considered in light of the lack of credibility and candor exhibited by Mr. Roberts on cross-examination on this very issue:

Q. Would you accept the fact that if you went through this exhibit and counted all of the shipments that Wycoff could be handling today by reason of them being under 100 pounds that you would arrive 23 per cent of every piece of traffic you show in this exhibit could be handled by Wycoff today?

A. No, I wouldn't believe that that's right.

Q. Let's go to the first page of--

A. Yes.

Q. -- Appendix F.

A. Yes.

Q. Left-hand column. Do you want to keep count of these or mark them on your exhibit as we go along so we can make these calculations or I will --

A. Go ahead. Just count them on the page.

Q. Okay. Fourth one down on the left-hand column is two pieces 30 pounds; correct?

A. No question about it.

Q. That's -- that could be diverted by Wycoff today; is that not correct?

A. I would think so. Im not looking at the freight bill. I presume so.

Q. Well, do you know any reason why it couldn't be?

A. No, I do not.

Q. Wycoff has no restriction that would prevent that unless it happened to be to Wendover or Grantsville I assume.

A. And which we don't serve.

Q. And you don't serve those either.

A. No. We don't.

Q. Okay. So as to all of these I'm going to name you'd agree that they are traffic that Wycoff could handle?

A. I would think so.

Q. Right. Do you want to go on through this? I'll tell you how many I counted.

A. Whatever you say, yes.

Q. Okay. I counted one, two -- for the first day alone --

A. Right.

Q. -- I counted one, two, three, four, five, six, seven, eight, nine, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 --

A. On the first page?

Q. 35 on the first three pages which, or, the first four pages, excuse me.

36 on the first four pages which are a hundred pounds or under.

A. Just for a second I'll take your word. Go ahead. Where are you leading me.

Q. Well, I have multiplied that to determine that that is 23 percent of all that -- 22.5 to be exact of all the shipments shown on the first day of your diversion study that could be diverted this very day to Wycoff.

A. Okay, if your math is correct go ahead. What are you saying then?

Q. I'll further represent to you that we have done the same thing with the second day and the third day and the total of that 32 percent that you claim is divertable by Wycoff that 23 percent of those could be diverted by Wycoff today because they're under a hundred pounds.

A. If your math is correct I would accept it then.

Q. Okay. Is it true that we can't tell from this exhibit which of these shipments include shipments that Wycoff could handle today because of certain commodity exceptions they have; such as books, printer's ink, printing paper, that sort of thing?

A. That's correct. They're not identifiable on here.

Q. And -- nor can you identify those commodities and shipments on which they have authority up to a thousand pounds, such as mining supplies in to Carbon County.

A. We don't serve Carbon County.

Q. Okay. We can forget that. Such as emergency contractor's supplies.

A. That's correct.

Q. And all of their other exceptions?

A. That's correct.

Q. Nor can we tell as we've indicated earlier whether any of these shipments where they

show, for instance, nine pieces at 285 pounds whether or not one of those shipments -- one of those pieces is over a hundred pounds that is not subject to diversion even if the application is granted. We can't tell that can we?

A. Not legally subject to diversion, no.

(R. pp. 968-973).

Plaintiffs continue by claiming that since the hearing they have not been able to show a profit on intrastate traffic because of the entry of Wycoff with their new authority (Plaintiff's Brief pp. 4-5). The fact is that for several years prior to the hearing PBI and Four Corners was not making a profit on intrastate traffic but that they were perfectly satisfied with these operations being subsidized by their interstate operations:

Q. How long has PBI and Four Corners been operating at a loss on Utah intrastate traffic?

A. I don't remember exactly.

Q. Has it been more than just the past year, 1977?

A. I'd have to look at the rate application sheets to remember but it seems to me that it's been at a loss position for two or three years but I'm not sure.

Q. Could you explain to this Commission why PBI and Four Corners are not charging rates that are compensatory for their services?

A. . . . And frankly we're -- we're reasonably happy to have our interstate in effect subsidize our intrastate as long as the total of the two makes us a reasonable profit. So we haven't been too concerned with that.

MR. WARNER: Q. And so your testimony is is that your interstate traffic supports your intrastate traffic?

A. Yes. In my opinion it does. To the best we can measure it does, yes.

(R. pp. 945-946).

As conclusively demonstrated on pages 4 through 20 of Wycoff's original brief the Commission's findings are abundantly supported by the record in this proceeding. Plaintiffs failed to file any reply brief to Wycoff's original brief herein in any way discrediting those findings. Their brief in support of this petition for rehearing in no way attempts to discredit the support cited for those findings. To this very day plaintiffs have totally ignored the evidence of 48 public witnesses and 3 company witnesses spread across 924 out of 1220 pages of the record and 78 out of 84 of the exhibits introduced herein. In lieu thereof they make the empty allegation that the Commission's action was unsupported by both the facts and the law and contrary to the evidence. They urge this Court instead to adopt their version of the evidence which the Commission found "was lacking in candor and credibility to a serious extent." (Finding of Fact No. 21.) A review of pages 935 through 1215 of the record (the cross examination of plaintiffs witnesses) leads to the inescapable conclusion that the Commission kindly understated the degree to which the

plaintiffs' testimony was lacking in credibility.

ARGUMENT

PLAINTIFFS HAVE FAILED TO SHOW ANY JUSTIFICATION FOR REHEARING.

This Court should not grant a rehearing unless something new and important has been offered for consideration. See Ducheneau v. House, 4 Utah 483, 11 Pac. 618 (1886); and Jones v. House, 4 Utah 484, 11 Pac. 619 (1886). Where this court has considered and decided all of the material questions involved in a case no rehearing should be granted unless the Court misconstrued or overlooked some material fact or facts or overlooked some statute or decision which might affect the result. See Cummings v. Nielson, 42 Utah 157, 129 Pac. 619 (1912). In re McKnight, 4 Utah 237, 9 Pac. 299 (1886); and Brown v. Pickard, 4 Utah 292, 9 Pac. 573 (1886); 11 Pac. 512 (1886).

Plaintiffs rely on 5 points urging this Court to grant a rehearing herein. None of these points raise appropriate reasons for this Court to consider granting a rehearing. All but one of these points were thoroughly considered by the Commission, briefed by the parties, and considered by this Court in its opinion. The remaining point consists of empty allegations concerning plaintiffs loss of traffic to Wycoff totally unsupported by affidavit or otherwise, totally outside the scope of the record herein, and

totally based on assumption and speculation.

Plaintiff's Point I is "Wycoff does not have the financial ability to properly perform the service for which it seeks a certificate." This is the identical point made in plaintiff's original brief herein as Point I B. This point was thoroughly rebutted in Wycoff's brief as Point III appearing on pages 44 and 45. The Commission found Wycoff to be financially fit in its finding No. 11 which is fully supported by the record herein as more fully set forth in Wycoff's original brief herein on page 9. This Court specifically considered plaintiffs' allegations concerning Wycoff's financial fitness on pages 1 and 2 of the green sheet opinion issued herein.

Point II of plaintiff's brief in support of its Petition for Rehearing alleges that "Wycoff has failed to demonstrate that the existing transportation facilities are inadequate to meet the needs of the shipping public." This is the same point raised as Point I D in plaintiff's original brief. This subject matter was covered under Point II of Wycoff's original brief appearing at pages 41 through 44. The Commission considered the existing transportation facilities and determined them to be inadequate in its findings numbered 16 through 20 which findings are amply supported by the record as demonstrated in Wycoff's original brief at pages 12 through 17. This Court considered the effect the

Commission's decision would have on the existing transportation facilities as demonstrated by its reference thereto on pages 1 and 2 of its green sheet opinion.

As Point III of plaintiff's brief in support of their Petition for Rehearing they allege that "the granting of the Wycoff application has been devastating to plaintiffs." This is the one point that was not considered by the Commission, not treated in plaintiff's original brief, not treated in Wycoff's original brief, and not considered by this Court in its opinion. Even if we were to assume the allegations of plaintiffs in connection therewith to be true, and Wycoff specifically and assuredly denies the truth thereof, they have no place in the present proceedings. Plaintiffs are referring to a period of time subsequent to the conclusion of the hearings before the Commission and apparently up to and including the present date. These empty allegations are totally without support of any evidentiary proof whatsoever. Even had they been supported by affidavit they clearly are beyond the scope of this Court's consideration on this Petition for Rehearing:

On Appeal to this court we review the judgments and orders appealed from on the basis of the record upon which the trial court acted, and do not permit the supplementing of our record with matters not before the trial court. Corbet v. Corbet, 24 Utah 2d 378, 472 P.2d 430 (1970).

As pointed out in the Statement of Facts supra. Mr. Hardy Roberts, President of PBI and Four Corners, testified

that for some time in the past his companies have operated at a loss on Utah intrastate traffic, these losses being subsidized by his interstate operations. He has no objection to this and apparently anticipated that this would continue in the future. The fact that it continues to this day, if in fact it does, is not inconsistent with his testimony at the hearing. Plaintiffs allege in their brief that it has been necessary for them to seek several rate increases, that Wycoff's rates are preferential, that they have lost some traffic, and that all of their problems are a result of the Commission's granting Wycoff's application. This all assumes that the general economic downturn, increasing fuel costs, quality of service, quality of management, and numerous other factors have been of no consequence to plaintiff's operations. These empty, unsupported, and speculative assumptions and allegations cannot properly support a rehearing herein.

In Point IV of plaintiff's brief in support of their Petition for Rehearing, plaintiffs allege that "the grant of the Wycoff application is detrimental to the best interests of the people of the state of Utah." This is exactly the same point urged by plaintiffs in their original brief as Point I F. Wycoff treated this subject under Point II at pages 41 through 44 of its original brief. The Commission in finding no. 23 expressly found that the

granting of the authority sought would not be detrimental to the best interests of the people of the state of Utah and this finding is clearly supported by the record herein. (Wycoff's original brief at page 19). This Court in quoting from Uintah Freightlines v. Public Service Commission, 119 Utah 491, 229 P2d. 675 (1951) considered whether "the public interest . . . will be served by granting the application." Nothing new is raised by plaintiff's Point IV.

Point V of plaintiff's brief in support of its Petition for Rehearing alleges that "the prejudicial nature of the Commission's decision demonstrates that the Commission acted arbitrarily, capriciously, with prejudice, and therefore unlawfully." This is the same point raised by the Plaintiffs as Point I H in their original brief and treated by Wycoff at page 44 of their brief. This Court specifically recognized that the scope of its review of the Commission's orders included a determination of whether the Commission acted capriciously or arbitrarily, quoting from Lakeshore Motor Coachlines, Inc. v. Welling, 9 Utah 2nd 114, 339 P2d. 1011 (1959):

The purpose of the review is to determine whether the Commission has acted outside of its jurisdiction or in excess of its powers, or in a manner which would properly be regarded as capricious, arbitrary or wholly unreasonable in view of the record before it. . . .

This Court obviously carefully reviewed the record and determined that the "findings of the Commission are sup-

ported by substantial evidence."

CONCLUSION

This case presents a classical example of litigants dissatisfied with the fact finding of the lower tribunal and filing their appeal with this Court arguing that the lower tribunal should have adopted their version of the facts rather than the version chosen by that tribunal. The Public Service Commission received evidence from 57 witnesses in this proceeding. Fifty-one of those witnesses were called by Wycoff. The transcript of evidence in this proceeding consists of 1,220 pages, 924 of which contain testimony of the witnesses called by Wycoff. In addition the Commission received 84 exhibits most of which were several pages in length. Some of the exhibits with attached appendices exceeded 100 pages in length. Seventy-eight of the 84 exhibits were sponsored by witnesses called by defendant Wycoff. The Commission called for and received briefs on every aspect of the issues before it. It handled the receipt of evidence evenhandedly and considered each point raised by the applicant and the protestants carefully and at length. Forty-eight public witnesses, at considerable cost and inconvenience to themselves, came to Salt Lake City from 39 divergent points throughout the state to testify to the Commission of their need for Wycoff's proposed service. These witnesses collectively testified as to their need and

the inadequacies of the existing services of the protestants between 235 different city pairs. The Commission listened to the testimony of the plaintiffs and their cross-examination by Wycoff's counsel. The Commission considered the present operating authorities of the plaintiffs and reviewed their transit studies and diversion studies. The Commission considered the effect that additional competition would have upon the plaintiffs. The Commission heard un rebutted testimony concerning the character of the highways over which Wycoff proposes to operate and the effect of Wycoff's proposal thereon and its effect upon the traveling public using the same. The Commission received un rebutted testimony that the granting of the certificate applied for would not be detrimental to the best interests of the people of the state. The Commission considered the financial ability of Wycoff and the financial and operational feasibility of Wycoff's proposal. It heard evidence concerning and considered Wycoff's fitness. Having considered these and numerous other factors, the Commission concluded that the public convenience and necessity require the transportation services proposed by defendant Wycoff.


Plaintiffs have totally failed to demonstrate to this Court anything in the record or this Court's opinion justifying a rehearing herein.

Defendant Wycoff respectfully prays that

plaintiff's Petition for Rehearing be denied.

Dated this 6th day of April, 1981.

Respectfully submitted,



Frank S. Warner
WARNER, MARQUARDT & HASENYAGER
Attorney for Defendant Wycoff
Company, Inc.

CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of the foregoing Reply Brief to each of the following parties:
Rick J. Hall, Attorney for Plaintiffs, Post Office Box 2465, Salt Lake City, Uth 84110; and upon Mr. Arthur Allen, Jr., Assistant Attorney General, 236 State Capitol Building, Salt Lake City, Utah, 84114 by First Class Mail, postage prepaid, this 6th day of April, 1981.


Suzann Fries