

1982

Harry L. Young and Sons, Inc. and Ashworth Transfer, Inc. v. Public Service Commission of Utah et al : Brief of Defendant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

HARRY L. YOUNG AND SONS, INC., :
and ASHWORTH TRANSFER, INC., :

Plaintiffs, :

vs. :

CASE NO. 18351

PUBLIC SERVICE COMMISSION OF :
UTAH, and STEEL TRANSPORTERS :
OF CALIFORNIA, dba KEEP ON :
TRUCKING, :

Defendants. :

BRIEF OF DEFENDANT
STEEL TRANSPORTERS OF CALIFORNIA
dba, KEEP ON TRUCKING

APPEAL FROM ORDER OF THE PUBLIC
SERVICE COMMISSION OF UTAH

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STATEMENT OF THE CASE

The applicatation as originally filed sought authority to transport iron and steel articles between all points and places within the State of Utah (R.265). At the commencement of the hearing, the applicant proposed a restrictive amendment in an attempt to eliminate the interests of all protestants, including plaintiffs herein, Harry L. Young and Sons, Inc., (hereinafter Young) and Ashworth Transfer, Inc., (hereinafter Ashworth) (R.5,155,252). The application, as amended, is specifically set forth in Ex. A (R.325 and in the Commission's Order R.329). The application, as amended, in general terms, seeks authority to transport iron and steel articles, over irregular routes from ten named central and northern Utah

counties to all points in the State of Utah and between points within those ten named counties. The application also seeks authority to transport oil casing and tubular goods from points in Box Elder, Davis, Weber, Salt Lake and Tooele Counties to all points in the state and those same commodities within the five named counties (R.5,6).

Upon the acceptance of the amendment by the Administrative Law Judge, the protests of R. W. Jones Trucking Company, Black Hills Trucking, Inc., and Salt Lake Transfer Company were withdrawn. The plaintiffs herein did not see fit to withdraw their protests as anticipated by applicant.

Plaintiffs seek to have the Supreme Court set aside and nullify the order of the Public Service Commission granting the application as prayed.

ARGUMENT

POINT I

SCOPE OF JUDICIAL REVIEW

This Court has consistently held that it will not disurb the findings of the Public Service Commission (hereinafter Commission) where there is any competent evidence to support them. Williams vs. Public Service Commission of Utah 645 P.2d 707 (1982); Union Pacific Railroad Co. vs. Public Service Commission, 103 Utah 459, 135 P. 2d 915 (1943); Utah Light and Traction Co. vs. Public Service Commission, 101 Utah 99, 118 P.2d 683 (1941); Mulcahy vs. Public Service Commission, 101 Utah 245, 117 P.2d 298 (1941); Uintah Freight Lines vs.

Public Service Commission, 119 Utah 491, 229 P.2d 675 (1951);

Lakeshore vs. Welling 9 Utah 2d 114, 339 P.2d 1011 (1959).

It will be hereinafter pointed out in arguing the subsequent points raised by appellants that there is, indeed, extensive, competent evidence to support each and every finding of the Commission and it's decision should be affirmed.

POINT II

THE COMMISSION DID NOT ERR IN FINDING THE APPLICANT FIT TO PERFORM THE PROPOSED SERVICE

Plaintiffs contend that the Commission should have found the defendant unfit to perform the proposed operation because of the fact that it does not own transportation equipment as a corporate asset of Steel Transporters, Inc., dba Keep on Trucking.

It is difficult for us to believe that the plaintiffs are sincere in urging this point.

Keep on Trucking, Inc. is a California corporation which is the parent company of Steel Transporters of California. The applicant, in this proceeding, is the subsidiary company Steel Transporters of California, dba "Keep on Trucking", an assumed name which has been filed with the Lt. Governor. Mr. Bojanower is the president and owner of both companies. (R.7). Mr. Bojanower gave the history of the formation of the companies, indicating that the parent, Keep on Trucking Co., was formed in 1972 and subsequently thereto "Steel Transporters of California"

was formed to allow operations by the subsidiary company outside the terms of a National Master Freight Agreement, which Keep on Trucking Co. had with the Teamsters Union (R.18, 19). The applicant, Steel Transporters of California, operates under a master lease agreement with Keep on Trucking under which it leases equipment on long term contracts (R.20,38). The applicant, Steel Transporters of California, dba Keep on Trucking, has a complete interchange of equipment and finances with it's parent, Keep on Trucking. (R.38). All of the drivers' salaries will be paid by the applicant, Steel Transporters of California, dba Keep on Trucking. (R.41).

Plaintiffs contend that "applicant's failure to own any operating equipment (Tr. 31) precludes it from performing transportation service within the State of Utah under the provisions of General Order 90 of the Public Service Commission of Utah". (Plaintiffs' Brief P.14). In support of that contention, they cite a portion of General Order 90 as follows:

"The total number of lessor operated power units shall not exceed 25% of the number of power units owned by the authorized carrier, unless otherwise authorized by written application to the Commission and by the Commission's written exception to this rule." (Emphasis added).

The plaintiffs failed to quote the concluding sentence of P.4 (4) which provides:

"For the purpose of this section, the number of power units owned by an authorized carrier shall include those power units leased from rental companies without drivers." (Emphasis added).

There is absolutely no requirement by statute or by Commission rule, and particularly, by the provisions of General Order 90, that any common or contract carrier need own equipment. P.4 (4) of General Order 90 specifically provides that, for the purpose of the rule cited by plaintiffs, the power units leased from rental companies without drivers are considered to be owned by the authorized carrier. The fact that the "rental company" leasing the equipment to the applicant is the parent of the applicant does not violate the terms of this provision but is fully consonant with those terms and certainly gives the Commission much greater control over the operation than if the applicant were to lease this equipment from an unrelated third party rental company.

The rationale of P.4 (4) of General Order 90, as is well known by the applicants and their counsel, applies to the leasing by an authorized carrier of "lessor operated power units" commonly known, in the transportation industry, as owner-operators which are historically independent contractors. The order was promulgated to preclude a carrier from, in effect, leasing its authority to independent contractor, owner-operators and thus making it difficult for the Commission to control the operations of the carrier over which it has jurisdiction. It, in no way, has any bearing upon an operation by an authorized carrier who, for financial, labor or any reason whatever, determines it to be in its best interest to lease any or all of its equipment without drivers, as long as the carrier provides the drivers and controls

the operation. Applicant will not use any owner-operators in it's Utah operation (R.47). Williams vs. Public Service Commission, supra is clearly not in point as argued by plaintiffs.

POINT III

THE COMMISSION DID NOT ERR IN FINDING THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE GRANTING OF THE APPLICATION

Under this point, plaintiffs argue that the testimony of the seven supporting witnesses did not meet the statutory burden set forth in Section 54-6-5 U.C.A. (1953). In support thereof plaintiffs summarized the testimony of the seven witnesses in a single sentence each taken out of context from cross examination.

Plaintiffs further contend, under this point, that the Commission erred in failing to find that the existing services are inadequate, contending such a finding is a prerequisite to a granting of the application.

We submit that reference to the testimony of the supporting witnesses and a proper analysis of the decisions of this court provide a clear answer to plaintiffs' contentions.

MR. RONALD BRYANT testified on behalf of NUCOR STEEL. He testified that his company had just completed a "mini steel mill" at Plymouth, Utah in Box Elder County. The first truck load of steel was dispatched on July 23rd, 1981, some three weeks prior to the hearing on this application (R.54). The plant in-

vestment in this mill was \$90,000,000 (R.55). The mill operates 24 hours a day and will produce an estimated 600,000 tons per year, resulting in 90 to 100 truck loads of steel per day from the mills' loading facility. The mill operates three 8 hour shifts a day, employing scrap metal and alloys as raw materials. The complete cycle of the mill, from the time a load of scrap is dropped into the ladle until it is through the cycle and ready for delivery is two hours and 30 minutes. The mill has extremely limited storage facilities, and the operation is predicated upon available transportation of the completed products as the steel goes through the 2 1/2 hour cycle. Of the 90 to 100 truck loads a day, approximately 20% will move in intrastate commerce in the State of Utah (R.54-57). The company plans to expand the mill capacity in approximately two years by some 30% to increase it's output from 600,000 tons per year to 800,000 tons per year, which would require approximately another 30 to 35 truck loads a day (R.60). This company has used the services of the applicant on in-bound raw materials and has found that service to be very satisfactory (R.61).

As far as any impact upon the plaintiffs in this proceeding is concerned, Nucor has used Ashworth for five loads during it's three week operation and has not called upon Young for service during this initial three week period.

MR. KENNETH WILLIAMS, THE DISTRICT MANAGER OF A & M CASTLE COMPANY testified in support of the application. His company is the seventh largest steel distributor in the United

States. It is a full line distributor of non-ferrous and ferrous metals. It is also a processor to the extent of shearing, sawing and burning. The company presently receives in-bound materials from Geneva Steel in Utah County; Colorado Fuel and Iron in Colorado and from Nucor at it's Northfolk, Nebraska facility as well as from it's own warehouses in Los Angeles, San Francisco, Phoenix and Sacramento. (R.70-72). This company is in the process of changing the source of in-bound materials from Nucor from it's Northfolk, Nebraska origin to the Plymouth, Utah origin now that it's on stream. The volume from the Utah Nucor mill will be approximately 200 tons per month. Movements from the Los Angeles plant will be approximately 400 tons per month. (R.72). The witness is presently using the applicant on in-bound movements from California to the Salt Lake City warehouse. (R.72). He requires service in intrastate commerce from Nucor directly to customers throughout the State of Utah and from Nucor to his warehouse as well as from the warehouse to customers throughout the State of Utah. (R.73).

He has not used the services of Young for two or three years because of unfortunate service problems. (R.74). The volume from Nucor will increase by 50% to 300 tons a month as soon as the plant is on full stream. (R.75). His out-bound tonnages from the Salt Lake City warehouse to the State of Utah approximate 1,000 tons per month. (R.77).

We invite the Court's attention to the difference between the characterization of this witness by plaintiffs on Page

16 of their Brief and the foregoing summary of his testimony.

The plaintiffs summarize his testimony as follows:

"Uses private transportation performed with it's own trucks and has no problems with Ashworth. It's only problem with Young was two or three years ago on an interstate movement from California. Has no problems currently with intrastate movements in Utah".

Mr. Williams further testified that his company has four or five trucks, which are used only within the Salt Lake metropolitan area. (R.78-77) that some 65 to 70% of his dollar volume would be within a 30 mile radius of Salt Lake (R.78), that he has to lease, in addition to using common carriers (R.80), that he ships into all parts of Utah (R.78), that he never uses his own trucks in in-bound movements to his plant from mills such as Geneva or Nucor. Plaintiffs' characterization of the testimony of this witness is not helpful to the Court. The same incomplete summary exists with respect to each of the witnesses referred to by plaintiffs on page 16 of it's Brief.

MR GARY HOUK, the Branch Manage of THYSSEN METAL SERVICE, testified in support of the application. His company has a warehouse located west of Salt Lake City where they receive import steel from the west coast. It is there processed and distributed throughout the State of Utah. (R.89-90). At present, his company has been in Utah for only a year and is presently carrying "flat-roll" products. They intend to expand to other types of iron

and steel articles. A week prior to his testimony, his company planned on adding a new structural type galvanized steel to the inventory. The market for his company's products is throughout the State of Utah for the housing industry. Mr. Houk testified that the housing industry is down at the present time and he is looking forward to an increase in that market which would require additional transportation throughout the State of Utah. (R.91). His market in the State of Utah is statewide, both as to the origin and destination. His company's movements could be to and from warehouse facilities or directly to destination points throughout the state. (R.93). The prices for his product are controlled by United State Government regulations and his only competitive advantage over other companies is transportation service. He has used the applicant in other areas and feels that the service they have provided and propose to provide under the scope of this application would give his company a competitive edge. (R.93-94). He testified at length concerning a service problem with Young (R.94 et seq).

MR. ROBERT STEWART testified on behalf of the AZCON CORPORATION. His company is presently obtaining iron and steel articles from the Nucor facility at Northfolk, Nebraska at the rate of 300 to 400 tons per month. His company, Like A. M. Castle and Co., previously mentioned, is presently changing the origin from interstate commerce in Northfolk, Nebraska to the Nucor Steel Company origin at Plymouth, Utah. The volume is

approximately 300 to 400 tons per month, which may possibly increase when the origin changes to Plymouth and the transportation is in intrastate commerce. (R.107-108). His company has used the services of the applicant and he testified the applicant provides the type and kind of service he needs for the new intrastate movement from Nucor. (R.108). His company is completing a storage facility near the Nucor Steel Mill in Box Elder County. He is supporting the applicant for transportation from the plant at Nucor to the warehouse in Box Elder County as well as from both the Nucor plant and the warehouse to customers throughout the entire state. He is also supporting the application for movements from both the Nucor plant and the company warehouse to his company's facility in Lindon, Utah County. (R.108-111). He has used the services of the applicant and testified that transportation service is one of the important elements to enable his company to be competitive. He feels that the services of the applicant are necessary in this regard. (R.111-112). We, again, invite the Court's attention to the summary of the testimony of this witness by the plaintiffs as follows:

"Azcon Corporation has never had a need to call on any authorized carriers to date from Plymouth, Utah origin".

That statement, taken out of context, is true, but it does not aid the reader or the Court in any way in analyzing the testimony of the supporting witness as to the change of origin for his in-bound material from an interstate movement from Nebraska

to the intrastate origin of Nucor and the other elements set forth above.

MR. WENDELL GARLICK THE TRAFFIC MANAGER OF SYRO STEEL testified in support of the application. Syro Steel is in the business of fabricating highway steel products, including highway guard rails; culvert plate-knockdown culvert plates; bridge rail; overhead signs relating to those and fabricated materials. (R.115). He testified that his in-bound traffic in intrastate commerce comes primarily from U. S. Steel at Geneva, Utah County. Counsel advised the witness that the applicant had eliminated Utah County as a origin point in an attempt to satisfy the interest of the plaintiffs herein and did not pursue that testimony further. (R.115). His company is planning on using the Nucor plant at Plymouth as an additional and an alternate source for in-bound materials to the Salt Lake City plant. (R.118). His company is supporting the applicant for transportation of involved products not only from Nucor to his plant but from the plant to customers throughout the entire State of Utah. (R.118-119). He testified at length concerning a service problem with Young (R.116-118). He has not used Young for the last three years because Young's equipment was not available. (R.117-125). Ashworth occasionally has not had equipment available when requested. (R.117). His use of Ashworth and Young has been primarily, if not entirely, from U. S. Steel at Geneva in Utah County. In those instances U. S. Steel makes the transportation arrangements. In any event, Utah County has

been amended out of the application and movements from Geneva to the witness' plant in Centerville, Davis County, is outside the scope of the application. (R.125).

MR. LORING RUTT, THE PRESIDENT OF RUTT STEEL testified in support of the application. His company imports line pipe and seamless casing from Japan, which is stored in Wilmington and Oakland, California and subsequently sold to the overthrust belt area in Utah and Wyoming. (R.131-132). The products he imports and sells are extremely expensive and specifically manufactured for deep drilling in the oil fields in the overthrust belt area throughout northeastern and eastern Utah. The product costs from two to six times that of ordinary pipe and tubing. (R.133). He needs a specialized service to enable his company to trace the commodities in case of loss or damage and primarily to provide a specialized service in the loading, unloading, transporting and servicing of this highly specialized and sophisticated line of products. (R.133-136). The applicant has provided this specialized service in California in all respects in handling of the material, the coding of the material, the loading and unloading as well as transporting same. The witness testified that this service was excellent and it was the type and kind of service which he needs in the Utah operation. (R.135-137). The consequences of loss or damages to his commodities are tremendous since the product is in short supply and cannot be replaced. A customer relying upon the safe del-

ivery of the commodities for a drilling project would have to shut down operations in the event of loss or damage. (R.134-139). His company is supporting the applicant for transportation from the applicant's storage facilities at Ogden throughout his market area in the State of Utah. (R.138-139).

The last supporting shipper was MR. THOMAS C. DUFF representing PACIFIC GAS AND ELECTRIC COMPANY and it's wholly owned subsidiary NATURAL GAS COMPANY. Natural Gas Company has approximately 880,000 acres under lease in the State of Utah. (R.156-157). He is constantly looking for new leases and is planning drilling operations at any point throughout the entire State of Utah. (R.157). His company is a customer of the previous witness, Rutt Steel, and would purchase pipe and tubing from Rutt Steel for use throughout the State of Utah. (R.157). His company is supporting the application for transportation within the State of Utah not only from the applicant's storage yard in Ogden, but also for movements to and from the nearest storage yard to any drilling site involved throughout the entire State of Utah. (R.157-158). He has used the services of the applicant, which have been excellent, and he testified that such service was the type and kind required by his company throughout the entire State of Utah. (R.158-159).

In summary we respectfully submit that the applicant has met the test set forth by this Court in Mulcahy vs. Public Service Commission, supra, that:

"It is not required that the facts found by the Commission be conclusively established, nor even that they be shown by a preponderance of the evidence. If there is in the record competent evidence from which a reasonable mind could believe or conclude that a certain fact existed, a finding of such fact finds justification in the evidence, and we cannot disturb it. Fuller-Toponce Company vs. Public Service Commission, 99 Utah 2d 28, 96 P.2d 722".

The applicant has gone to the other extreme and has clearly shown, by a preponderance of the evidence, a need for the service proposed, based upon new, potential and future traffic requiring additional service.

Adequacy of Existing Service

Under this point, plaintiffs complain that the Commission erred in not making a finding that the existing services of Ashworth and Yound were adequate, citing cases which are factually clearly distinguishable from the present case.

In Ashworth Transfer Co. vs. Public Service Commission 2 Utah 23, 268 P.2d 990, this Court quoted, with approval, the holding in Mulcahy, supra, that the statute does not require that the Commission find that the present facilities are entirely inadequate. It merely requires that the Commission "shall take into consideration*** the existing transportation facilities". It is obvious from the language of the order granting the application and the order denying the petition for rehearing, as well as the evidence, that the Commission did take these matters into consideration.

An analysis of the evidence outlined above clearly shows a new and unprecedented demand for transportation, particularly in light of the future requirements dramatically set forth in the testimony of the supporting shippers.

Reference to the order of the Commission denying the plaintiffs' petition for rehearing and reconsideration indicates clearly that the Commission did take into consideration the existing facilities in light of the evidence produced. The Commission there stated:

"We*** deny the protestant's (sic) petition with the following comments. Under the existing law, this Commission is entitled to take into account the prospective need, as well as that existing strictly at the time the application is heard. We believe the record amply supports the proposition that the establishment of Nucor Steel's plant in Plymouth, Utah bids fair to increase the demand for transportation of steel commodities very substantially. The present economic turndown may delay the plant's achieving immediately full productive capacity, but we do not believe it is wise for this Commission to assume that economic conditions will not improve within the foreseeable future." (R.357).

Indeed, the record would support a finding of inadequacy should that be required by the statute. Ashworth had served only one shipper within the territorial scope of the application, that being Nucor for five loads within the three weeks immediately prior to the hearing on the application. Of the seven supporting shippers, three testified as to service deficiencies on the part of Young.

In Lakeshore Motor Coachlines, Inc. vs. Bennett 8 Utah 2d 293; 333 P.2d 1061, this Court made the following

statement concerning potential and future need as it relates to the consideration of adequacy of existing service:

"Our understanding of the statute is that there should be a showing that existing services 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 justify the additional proposed service."
(Emphasis added)

In Mulcahy, supra, the Court held that the Commission "Should look to the future as well as the present" need.

We respectfully submit that the Commission's finding that public convenience and necessity require the granting of the application is fully supported by the evidence and by the applicable law.

POINT IV

THE COMMISSION DID NOT ERR IN FAILING
TO FIND THAT THE GRANTING OF THE CER-
TIFICATE TO STEEL TRANSPORTERS WILL BE
DETRIMENTAL TO THE BEST INTERESTS OF
THE PEOPLE OF THE STATE OF UTAH

This point is really the correlary of the preceeding argument that the Commission failed to find that existing services are inadequate. We there stated that the Commission did consider the existing services and concluded, under the evidence, that the present, potential and future need require the granting of the application.

In support of it's argument, under this point, plaintiffs cite Lakeshore Motor Coachlines vs. Bennett, supra,

We submit that this Court in that case clearly in-

licated by the language just quoted that a showing of potential business would justify the granting of an application.

Ashworth Transfer Co. vs. Public Service Commission, supra, was the case in which the Commission granted the application of Harry L. Young and Sons, Inc. authorizing its present operations over the protest of Ashworth Transfer and Salt Lake Transfer. That case was based upon evidence of "growth of the gas and petroleum industry in the State of Utah" as testified by a newspaper man and an oil geologist. Neither of the witnesses was a shipper and Ashworth claimed, in that case, that such evidence did not satisfy the statutory requirements for public convenience and necessity. The Court held "Evidence of growth of an industry within the state is competent in a hearing to determine public convenience and necessity. Uintah Freight Lines vs. Public Service Commission, Utah, 223 P.2d 408".

The Commission properly found that public convenience and necessity requires granting of the application and such finding precludes the requested negative finding that the granting of the application "will be detrimental to the best interests of the people of the State of Utah".

Under this point, plaintiffs argue that the granting of the application fails to protect the interest of the plaintiffs. Ex. 17 (R.298) was submitted on behalf of Ashworth Transfer, Inc. to show shipments and revenue within the State

of Utah. On cross examination, the witness for Ashworth Transfer sponsoring this exhibit admitted that approximately 90% of the shipments and 90% of the revenue was derived from the areas amended out of the application in an effort to protect the interests of Ashworth and Young. (R.205)

Ashworth holds authority, not only to serve within the State of Utah, but also holds authority covering the transportation involved here from the Interstate Commerce Commission between all points and places in the states of Idaho, Wyoming, Colorado, New Mexico, Arizona and Nevada, which are within the market area of the new Nucor plant. (R.198,199).

Young likewise, in addition to it's intrastate authority, holds authority from the Interstate Commerce Commission covering transportation of the iron and steel articles involved herein between all points and places within the 11 western states. That authority was, just recently acquired, in July of 1981. Under that authority, Young intends to solicit all of the traffic of Nucor in interstate as well as intrastate traffic. (R.236,237).

Ex. 21 (R.287) was submitted by Young purporting to show shipments involved in the application. Upon cross examination, Mr. Young, who sponsored the exhibit, admitted that there was no commodity description on the exhibit and there was no way to tell whether or not the shipments involved were within the scope of the application involving iron and steel

articles as opposed to other commodities which, because of their size or weight, require special handling, etc. (R.236-244). The witness also admitted, on cross examination, that the 54 loads, which he testified, were transported for Syro Steel, all originated at Geneva, Utah destined to Syro and were, therefore, outside the scope of the application as amended. (Tr. 245).

We submit that the plaintiffs have made no showing whatever that the granting of the application would be detrimental to the best interests of the people of the State of Utah.

POINT V

THE COMMISSION DID NOT ERR IN GRANTING THE APPLICATION AS AMENDED

We respectfully submit that the Commission did properly analyze the evidence, which was given in support of the application, as amended and which clearly showed a need from the 10 enumerated counties to all points in the State of Utah and between points in those enumerated counties.

Plaintiffs cite Milne Truck Lines, Inc. vs. Public Service Commission 11 Utah 2d 365 (1961), 359 P.2d 909 in support of this argument. That case is clearly distinguishable from the instant case. In Milne, the Court reversed an order of the Commission granting authority to Clark Tank Lines to transport flour, sugar, powdered milk and salt used or suitable for human consumption, in bulk, between all points and places within the State of Utah. We have no quarrel with the decision

in that case based upon the evidence involved. The application was supported by a single shipper, namely Pelton Spudnut, Inc. which operated a plant in Salt Lake City. In-bound movements of flour were shipped, satisfactorily, via rail, from Ogden to Salt Lake City. In-bound shipments of salt were made from Morton Salt Company, located 10 miles west of Salt Lake City, and shipments of sugar were needed from West Jordan, 12 miles from Salt Lake City. Additionally, Pelton received powdered milk from Beaver by the complaintant, Milne Truck Lines. There were only four commodities involved, namely flour, salt, sugar and powdered milk. Only four origins were mentioned. The single destination of these commodities was the Pelton plant in Salt Lake City. The Court specifically observed that "the record shows only a present need***for such service". Not only was there no showing of territorial points throughout the State of Utah, but there was, in that case, a showing that existing services were adequate for the limited movements involved. That case has no bearing whatever on the case at hand.

The Commission has, historically, issued authorities covering statewide or areawide territorial grants. The authority of protestants Young and Ashworth are of that nature. In Ashworth Transfer vs. Public Service Commission, supra, the Commission granted Ashworth it's statewide authority, based upon the testimony of a newspaper man and an oil geologist as heretofore indicated. Ashworth objected that there was no evidence produced showing a need for each and every commodity

involved in the commodity description. In rejecting such contention, this Court stated:

"It is conceded by the applicant (Young) that he did not produce evidence by direct testimony as to a public need for a common carrier to transport each of the items enumerated in PSCU's order.

"Indeed, even if he had secured witnesses on the specific items, plaintiffs' complaint might still subsist, for it would be impossible to produce evidence of a need for transportation of all of the items which might be encompassed within the general phrases of the authority (involved)".

That same rationale applies to representative territorial points as well as representative commodities. Each of the witnesses testified as to a need for service to all points in the State of Utah. Several of the witnesses testified as to a need for transportation, not only directly to customers, but also to storage points from which additional service would be required directly to the consumer. It is well known, in the transportation industry, that return shipments from destination are often required either to the original shipping point or to other destination points. The Commission has long recognized this principal and has consistently and routinely granted areawide or statewide authority upon representative showings. We submit that the evidence, in this case, far exceeds the minimal showings historically required by the Commission in this regard.

CONCLUSION

The findings of the Commission are based upon competent evidence of record and fully support the granting of the application as amended.

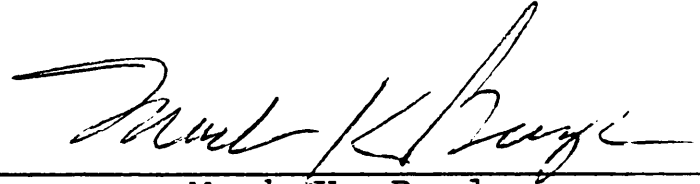
WHEREFORE it is respectfully requested that this Court affirm the order of the Commission.

DATED this 29th day of June, 1982.

Respectfully submitted,

BOYLE & BOYLE

By



Mark K. Boyle

Attorneys for Defendant
Steel Transporters of California
dba Keep On Trucking

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 1982, I mailed two (2) true and correct copies of the foregoing Brief, postage prepaid, to Lon Rodney Kump, Esquire, 333 East Fourth South, Salt Lake City, Utah 84111, and to Arthur A. Allen, Jr., Esquire and David L. Wilkinson, Esquire, Office of the Attorney General, 114 State Capitol Building, Salt Lake City, Utah 84114.

