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Wycoff Company Inc. v. Public Service Commission of Utah : Brief of Petitioner in Support of Petition for Writ of Review

Utah Supreme Court

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Harry D. Pugsley; Pugsley, Hayes, Rampton & Watkiss; Attorneys for Petitioner;

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IN THE SUPREME COURT
of the
STATE OF UTAH

WYCOFF COMPANY,
INCORPORATED,

Petitioner,

vs.

PUBLIC SERVICE COMMIS-
SION OF UTAH, HAL S.
BENNETT, DONALD
HACKING and JESSE R. S.
BUDGE, its Commissioners,

Respondents.

FILED

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Clark, Supreme Court, Utah

Case No. 9204

BRIEF OF PETITIONER IN SUPPORT OF
PETITION FOR WRIT OF REVIEW

HARRY D. PUGSLEY,
OF PUGSLEY, HAYES,
RAMPTON & WATKISS

721 Cont'l Bank Bldg.
Salt Lake City, Utah
Attorneys for Petitioner

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STATEMENT OF FACTS

WYCOFF C O M P A N Y, INCORPORATED,
herein referred to as "WYCOFF", is a Utah corpora-
tion operating in intrastate and interstate com-
merce as a common carrier for hire by motor ve-
hicles of certain commodities. These are primarily
newspapers, motion picture film, U. S. Mail and
express.

Authority to transport express items was first
granted by the Public Service Commission of Utah

to Petitioner in P.S.C.U. Case No. 4352-Sub 2, January 21, 1958. This was state wide in character but restricted as to the size of items to be transported. An appeal was taken to this Court by two of the protesting bus lines and certain restrictions on service between Salt Lake City and Ogden and between Salt Lake City, Park City, Tooele, and Wendover were imposed.

The original Certificate issued in said Case No. 4252-Sub 2, Certificate No. 1162-Sub 2 was dated January 21, 1958 and, so far as is here pertinent, authorized WYCOFF to transport "general commodities of 100 pounds or less in weight in express service, between all points and places in the State of Utah" etc. and this was followed by certain restrictions:

a. Applicant shall be limited to the transportation of items of not to exceed 100 pounds upon a weight basis. Shipments will not be separated for the purpose of avoiding this restriction.

b. Applicant shall not transport in excess of 500 pounds on a weight basis of such express items on any one schedule each way operating over the routes and departing at the times set forth in Exhibit 2 in this proceeding, except that applicant shall be permitted to transport not to exceed 1500 pounds on a weight basis of such express shipments from Ogden to Salt Lake City upon one of its schedules each day.

c. The schedules referred to above shall

coincide with the movements of the Deseret News newspapers and The Salt Lake Tribune newspapers as shown in Exhibit 2, and one United States mail schedule moving north from Salt Lake City and the return of all such schedules to Salt Lake City.

d. In determining the maximum weight limitation on any one schedule, all shipments shall be aggregated regardless of point of origin or destination.

e. Applicant shall not carry express shipments of the commodities sought by the application on northbound schedules from Salt Lake City or southbound schedules from points north to Salt Lake City except on those four daily schedules each way designated on said Exhibit 2 as Schedules 2, 3, 4 and 5 and 2A, 3A, 4A, and 5A respectively of Table 8 thereof.

f. "Shipment" as used herein shall refer to commodities moving on a single bill of lading from one consignor to one consignee. (R. 1840)

As a result of the appeal to this Court, and its decision October 14, 1958 in Cases No. 8861 and 8863, *Lake Shore Motor Coach Lines, Inc. et al v. Hal S. Bennett, et al*, 333 Pac. (2d) 1061, 8 Utah (2d) 293, the Commission on February 3, 1959 issued in said Case No. 4252-Sub 2 its Amended Order re-issuing Certificates of Convenience and Necessity No. 1162-Sub 2 (R. 24-25). This is substantially the same as the original Certificate issued a year earlier except it excluded service between

Salt Lake City and Ogden, etc. as required by your decision.

Then on December 21, 1959 the Commission ex parte and without notice to Petitioner, WYCOFF, issued its "Order Amending Report and Order of January 21, 1958 (R. 1) This attempted to enter a nunc pro tunc Order (going back 23 months) to change the language of the Certificate No. 1162-Sub 2 in Case No. 4252-Sub 2 by changing the word "items" in paragraph (a) to the word "shipments". This change in verbiage would substantially reduce the commodities which WYCOFF can transport and thus is the subject of this proceeding on review. The change would prohibit a shipment from tendering several packages, "items," each weighing less than 100 pounds, but combined to make a total shipment of over 100 pounds. No change in the 500 pound per schedule limitation would result either way.

The said nunc pro tunc Order (R. 1.) recites a stipulation filed in the original proceedings on June 10, 1957 (R. 1107). As a result of that Stipulation, certain but not all, of the protesting truck lines withdrew their protests but the hearings continued on at great length thereafter. The record of the presentation and acceptance of said Stipulation as shown at said P. 1107 of the record is as follows:

"SALT LAKE CITY, UTAH

June 10, 1957

(10:00 A.M. HEARING RESUMED)

COM. BUDGE: The hearing in the matter of the application of Wycoff Company, Incorporated, for a certificate of convenience and necessity, will be resumed.

The last protestant, according to my notes, was the Fuller-Toponce Company, and I think they completed their list of witnesses.

There is a stipulation that has been filed, entered into by and between Wycoff Company and Milne Truck Line, Palmer Brothers, Carbon Motorway, Inc., Ringsby Truck Lines, and Salt Lake-Kanab Freight Lines, Garrett Freight Lines, and Fuller Toponce which eliminates from dispute a number of matters with respect to the commodities and weight of commodities to be hauled by the Wycoff Company if the certificate is granted and if this stipulation is approved by the Commission.

The Commission sees no objection to accepting this stipulation. Of course, it doesn't dispense with proof as to other objections made by the protestants. So, the stipulation will be accepted by the Commission covering the protests of the companies named in it.

Who was the person to proceed:

MR. WORSLEY: Well, the testimony this morning and later today will likewise be comprised of shipper witnesses in behalf of the bus lines, Continental and Greyhound.

COM. BUDGE: Do you want to proceed then?

MR. WORSLEY: Yes, we are prepared to and would like to go ahead.

COM. BUDGE: Alright.”

The case then continued on taking testimony for three more days.

Immediately upon receipt of the nunc pro tunc Order dated December 21, 1959, Petitioner caused to be filed with the Commission its Motion to Strike Order Amending Report and Order of January 21, 1958 (R. 4) which set forth the reliance of this carrier and the shippers of being able to ship items of 100 pounds or less and not being restricted to shipments of 100 pounds or less. This Motion also asked the Commission to reconsider its said abrupt and unprecedented nunc pro tunc Order. The Commission denied this by Order dated January 15, 1960. (R. 6).

The pending Petition for Writ of Review was timely filed January 26, 1960 (R. 9) and the Writ of Review issued the same date (R. 8). Subsequently it was noted that the Commission had not changed the Amended Order of February 3, 1959 wherein Certificate No. 1162-Sub 2 was re-issued and under which WYCOFF'S operations are actually being conducted. In the interest of correcting this procedural defect, the parties have executed and filed a Stipulation with the Clerk of the Supreme Court.

This Stipulation recognizes the apparent intent of the Commission in its nunc pro tunc Order of December 21, 1959 to change “items” to “shipments” in

the then operative Certificate and therefore stipulates that said nunc pro tunc Order of December 23, 1959 shall be construed as amending the Amended Order of February 5, 1959 instead of the original Order of January 21, 1958. Petitioner so stipulated, but with a full reservation of all rights and without waiving its objections to the legality of said nunc pro tunc Order.

STATEMENT OF POINTS

POINT I

THE COMMISSION ERRED IN ISSUING ITS ORDER OF DECEMBER 21, 1959 WITHOUT NOTICE OR HEARING. AND SUCH ORDER VIOLATES THE CONSTITUTIONAL RIGHTS OF PETITIONER.

POINT II

THE COMMISSIONER ERRED AND IS WITHOUT POWER TO ISSUE A NUNC PRO TUNC ORDER CHANGING A MATERIAL PORTION OF A CERTIFICATE OF CONVENIENCE AND NECESSITY AFTER THE APPEAL PERIOD THEREON HAS ELAPSED.

POINT III

THE SHIPPING PUBLIC AND PETITIONER HAVE A CONTINUING INTEREST IN THE CERTIFICATE NO. 1162-SUB 2 AND IN THE ABSENCE OF A PROPER SHOWING OF CHANGED CIRCUMSTANCES, NO ALTERATION OF THE CERTIFICATE OF A RESTRICTIVE NATURE CAN BE IMPOSED BY THE COMMISSION ON A CARRIER.

POINT IV

THE COMMISSION ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER IN ISSUING ITS ORDER OF DECEMBER 21, 1959 PURPORTING TO MAKE A NUNC PRO TUNC CHANGE IN AN EXISTING CER-

TIFICATE OF CONVENIENCE AND NECESSITY.

POINT V

THE COMMISSION IS ESTOPPED FROM ENTERING ITS EX PARTE NUNC PRO TUNC ORDER RESTRICTING THE EXISTING CERTIFICATE NO. 1162-SUB 2 OF WYCOFF COMPANY, INCORPORATED.

ARGUMENT

POINT I

THE COMMISSION ERRED IN ISSUING ITS ORDER OF DECEMBER 21, 1959 WITHOUT NOTICE OR HEARING. AND SUCH ORDER VIOLATES THE CONSTITUTIONAL RIGHTS OF PETITIONER.

POINT II

THE COMMISSIONER ERRED AND IS WITHOUT POWER TO ISSUE A NUNC PRO TUNC ORDER CHANGING A MATERIAL PORTION OF A CERTIFICATE OF CONVENIENCE AND NECESSITY AFTER THE APPEAL PERIOD THEREON HAS ELAPSED.

POINT III

THE SHIPPING PUBLIC AND PETITIONER HAVE A CONTINUING INTEREST IN THE CERTIFICATE NO. 1162-SUB 2 AND IN THE ABSENCE OF A PROPER SHOWING OF CHANGED CIRCUMSTANCES, NO ALTERATION OF THE CERTIFICATE OF A RESTRICTIVE NATURE CAN BE IMPOSED BY THE COMMISSION ON A CARRIER.

These three points will be discussed together, as all deal with the questionable nature of the action taken by the Commission in issuing its nunc pro tunc Order in which it made a substantial and critical change in the established certificate. No prior notice of intent to make this change was given to WYCOFF. No hearing was conducted. No formal

petition had been filed with the Commission seeking this change.

The nunc pro tunc Order of December 2, 1959 is violative of the due process provisions of the Constitutions of the United States and of the State of Utah, being Articles XIV(1) and I(7) respectively.

There is an orderly procedure for a protestant in a proceeding before the Commission to attack a Certificate of Convenience and Necessity such as was issued to WYCOFF. This procedure is spelled out in the statutes relating to Motor Vehicle Transportation, namely:

54-7-15 UCA 1953 — petition for rehearing before the Commission.

54-7-16 UCA 1953 — certiorari proceedings before this Court.

Such procedure was followed after the original Certificate No. 1162-Sub 2 was issued January 21, 1958. As related in the Statement of Facts, this court reviewed the proceedings and issued its decision thereon October 14, 1958, and the Public Service Commission on February 3, 1959 issued an Amended Order in the case, deleting certain territorial rights previously granted by Certificate No. 1162-Sub 2, and then re-issued said Certificate No. 1162-Sub 2. No further petitions for rehearing or appeals were taken from the Amended Order or re-issued Certificate.

It is significant to us that none of the many protestants in the case, either truck line or bus line, made any direct issue of or attack upon the fact that the original Certificate No. 1162-Sub 2 and the re-issue Certificate provided for the movement of "items" in both paragraphs a. and b. thereof. The Certificate as re-issued in the Amended Order of February 3, 1959, became final and the periods for rehearing and/or appeal passed without further action.

WYCOFF has operated under the terms of the said Certificate in transporting express "items of not to exceed 100 pounds upon a weight basis" continuously since the January 21, 1958 Order. The shipping public has had the use and benefit of such service continuously during that period of almost two years until the purported nunc pro tunc Order.

Now, how did it come about that the Commission, on its own initiative, without any pending petition, ex parte and without notice, made this drastic change in the Certificate? The December 21, 1959 Order Amending Report and Order of January 21, 1958 recites a Stipulation filed in the original case on January 2, 1958 (this was in fact filed on June 4, 1957, see p. 1828 of the file Record and R. 1107 of the transcript). This stipulates to a limitation on "shipments of not to exceed 100 pounds". The Commission apparently "discovered" in the course

of a hearing in Case No. 4252-Sub 3, that the Certificate read "*items*" and not "*shipments*".

The applicant, WYCOFF, joined in the stipulation, as did several of the then protesting truck lines, but the hearing continued on for a period of several days after the stipulation had been filed, and testimony was taken both on behalf of the continuing protestants and the applicant, and finally the matter was submitted to the Commission for its decision on or about June 14, 1957. The Commission had the case under consideration from said date in June of 1957 until the rendition of its Report and Order on January 21, 1958. What thought processes and procedural steps were taken by the Commission in its determinations are not known to petitioner herein, but the result of the deliberations by the Commission was the Report and Order of January 21, 1958, which prescribed that WYCOFF must under its certificate engage in the transportation "of general commodities of 100 pounds or less in weight, in express service between all points and places in the State of Utah according to the schedules filed and subject, however, to the following conditions and restrictions:". Restriction (a) was the limitation "to the transportation of items not to exceed 100 pounds upon a weight basis", and (b) likewise referred to "such express items". The full content of the restrictions is set forth in the State-

ment of Facts, *supra*. When the amended order was issued by the Commission after the Supreme Court appeal, the Certificate No. 1162-Sub 2 was re-issued, again requiring the transportation of general commodities of 100 lbs. or less in weight in express service, and exception (a) was re-issued in identical language, referring to transportation of "*items*". Paragraph (b) was rewritten, but once again contained the reference to "such express items", and the balance of the restrictions were identical with the original certificate issued on January 21, 1958.

The nunc pro tunc order of December 21, 1959 referred to the Stipulation discussed above, and then proceeded to recite that the Order "was contrary to the purpose and intent of the Commission in approving said stipulation as is shown by said finding", and then ordered that nunc pro tunc as of January 21, 1958, the Order is amended and corrected by striking said word "*items*" in said paragraph (a) of the restrictions and inserting in lieu thereof the word "*shipment*".

It is true that in the findings of the original Report and Order the stipulation was copied correctly, being paragraph 4 thereof, and said findings recited that the stipulation was subject to approval and acceptance by the Commission, and that the Commission approved the stipulation. However, the findings then continued to discuss additional testi-

mony that was taken after the stipulation, referring to some 40 additional witnesses, and discusses "items" which the bus lines then handled. Paragraph 10 of the Findings, for instance reads:

"10. There can, of course, be no valid objection to applicant's proposed service with respect to express items the bus lines decline to transport; or with respect to the transportation of express items to and from points which the protestants' lines do not serve; or to Wycoff's proposed service on week-ends or other days to and from places not then served by protestants; but the bus lines contend (we refer to counsel's brief) that applicant's capacity to transport items would necessarily be limited to the unused space of trucks now used in the transportation of newspapers, films, and other items it now handles; that the evidence shows applicant has insufficient terminals throughout the state wherein express items can be stored which, according to applicant's schedules, arrive at various points in the night time, and protestants also contend that as to the route from Salt Lake City to St. George, compliance with applicant's schedules necessitates excessive speed in violation of law. Protestants further contend that there are some points, such as Price and Vernal, from which vehicles owned by applicant are not used in the transportation of express items to communities tributary to those towns."

(Record 1873-74).

Subsequent findings discuss the details of the absence of service at certain times and communities

as to "so many commodities", and then refers to a list of substantial business concerns having different types of commodities for transportation, in paragraph 14, and then in the Order which grants the Certificate No. 1162-Sub 2 proceeds to use the word "items" in both paragraphs (a) and (b) of the conditions and restrictions.

There must have been some good reason for the Commission to make the change from "shipments" to "items", and it is not our function to question the reasoning of the Commission, particularly after this Supreme Court had considered the Order, except as to certain territorial restrictions, and particularly after the Commission had re-issued the certificate in its Amended Order and continued the same language of the "items" in paragraphs (a) and (b) of the conditions and restrictions. We are now in a position where the Commission is telling the holder of the certificate that it has changed its mind, that without any hearing or notice the Commission has elected to revamp and revise the certificate that has been in force for many, many months, and delete the word "items" and substitute the word "shipments", which would be much more restrictive in the type of service which can be performed for the public.

This court discussed the action of the Commission in a somewhat similar situation in the case of

Peterson v. Public Service Commission, et al., 266 Pac. 2d 497, 1 Utah (2) 324, wherein the Commission, through the suspension of tariffs, sought to deny Peterson the right to operate between Salt Lake City and Provo, Utah, in pursuance of the certificate which had been issued to him. The court properly found that the Commission had erred in its action, and the decision, at page 499, states in part:

“Unless there is some uncertainty or ambiguity there is no basis for interpretation or clarification of the certificate. If it were permissible to go back of the language and contradict its plain terms, intolerable confusion and uncertainty would exist with regard to operating rights.

“It is the prerogative of this Court to determine whether the Commission regularly pursued its authority. Under Section 54-6-4, U.C.A. 1953 vesting in the Commission power to regulate motor carriers we do not find any authority either directly, or reasonably incident thereto, by which the Commission could arbitrarily refuse to approve a tariff, and thus nullify the rights a carrier possesses under a Certificate of Convenience and Necessity.”

We have no ambiguity or uncertainty in the Certificate No. 1162-Sub 2 issued and re-issued to Petitioner WYCOFF herein, as the words “items” and “shipments” have entirely different meanings in the transportation field, and the Commission,

as an expert in such field, has deliberately used the word "items" instead of the word "shipments" in the certificate.

We understand that the physical process of issuing a Report and Order and Certificate following a hearing is that one of the Commissioners proceeds to write up a tentative form of the Report and Order along the line decided by the Commission, and then such is circulated among the three commissioners and each makes any corrections, addenda or modifications deemed necessary by him prior to the time that the document is mimeographed prepared for final issuance. Thus all three of the commissioners, prior to the issuance on January 21, 1958, had given consideration to this matter and had, for reasons then sufficient unto themselves, approved the use of the word "items" in paragraphs (a) and (b) of the conditions and restrictions, rather than the word "shipments". The record shows that the Commission had ample opportunity to consider this matter thoroughly and carefully, as the application was originally filed in October of 1956, the first hearing thereon was March 26 of 1957, which continued, with some adjournments, until June 14, 1957, and was then under consideration from that date until January 21, 1958. Once again the matter was under consideration by the Commission following the decision of the Su-

preme Court and the issuance of the Amended Order in February of 1959.

Your attention is directed to the provisions of Section 54-7-16, U.C.A. 1953 which provides that the findings and order of the commission shall be conclusive except upon review by the Supreme Court under the certiorari provisions set forth therein, and that the review shall not extend further than to determine whether the Commission has regularly pursued its authority, including a determination of whether the order or decision under review violated any right of the petitioner under the Constitutions of the United States or of the State of Utah. Then it states: "The findings and conclusions of the Commission on questions of fact shall be final and shall not be subject to review." Particularly in this situation, where no attack was made upon the portions of the language in the certificate relating to "items" rather than "shipments", either at the original presentation of the matter before this Court or within any statutory period after the re-issuance of the certificate in the Amended Order of February, 1959. This certificate is not subject to the whim and caprice of the Commission at a later date in changing the commodities rights granted thereunder.

We anticipate that some refuge will be sought by the Commission in the language of Section 54-6-20 U.C.A. 1953, which reads: "The Commission may

at any time, for good cause, and after notice and hearing, suspend, alter, amend or revoke any certificate, permit or license issued by it hereunder". This section contemplates two basic factors — first, "good cause", and second "after notice and hearing". The "good cause" evidently intended by the Legislature would be a substantial and continued violation of the laws, rules and regulations or some other changed circumstance relating to the conduct of the motor carrier's operations following the issuance of the certificate in question. Certainly there is no showing of any change of circumstances that would cause the Commission to delete the word "items" and substitute the word "shipments" in the certificate held by petitioner WYCOFF. Rather, the facts would show that there has been a continued, bona fide exercise of the certificate from the date of its original issuance in January, 1958, and a continued service in the transportation of items as authorized and required by the said certificate. The "good cause" referred to undoubtedly contemplates that if a carrier abandons a segment of its operations, or fails and refuses to provide service in the transportation of the commodities required by its certificate, then the Commission would have a basis for modifying and perhaps restricting or revoking a certificate thus abandoned or in a state of dormancy. No such claim has been or could be asserted in this case.

The second factor in Section 54-6-20 U.C.A. 1953 is "after notice and hearing". Not the least semblance of notice or hearing exists in this case of the intention of the Commission to consider and issue the nunc pro tunc order now under attack, in which they make the deletion of the word "items" and substitute the word "shipments".

POINT IV

THE COMMISSION ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER IN ISSUING ITS ORDER OF DECEMBER 21, 1959 PURPORTING TO MAKE A NUNC PRO TUNC CHANGE IN AN EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY.

POINT V

THE COMMISSION IS ESTOPPED FROM ENTERING ITS EX PARTE NUNC PRO TUNC ORDER RESTRICTING THE EXISTING CERTIFICATE NO. 1162-SUB 2 OF WYCOFF COMPANY, INCORPORATED.

When a motor carrier has geared its operations to perform for the public the service authorized and required under its certificate, such as WYCOFF in the transportation of items as authorized by Certificate No. 1162-Sub 2, the Commission may not lightly change the commodity rights without notice to such carrier. In doing so, the Commission acts in an arbitrary and capricious manner, particularly in attempting to make the change nunc pro tunc on December 21, 1959, but as of January 21, 1958 (by our stipulation of February 1959 on the Amended Order). The carrier and the shipping public have

relied upon the permissive language of the certificate for the transportation of items of not to exceed 100 pounds.

Let us give an example of how this affects many shippers at different times by considering the situation of a wholesale shipper of drug store items on a typical Friday. Said shipper desires that the commodities reach the drug store on Saturday, but in many areas of the state no Saturday or Sunday service is provided by competing truck lines, and hence the shipper uses the service of WYCOFF. The drug store supplier has several packages going to a particular community, none of which equals 100 pounds in weight, but the combination of the packages may equal 150 or 175 pounds. Thus under the original certificate and the certificate as re-issued by the Amended Order, WYCOFF could transport these packages (items), as none of them exceeds 100 pounds in weight. But if the certificate is modified as directed by the nunc pro tunc order, the combination of items making up this shipment would exceed 100 pounds upon a weight basis, and hence the drug store would be unable to receive the same on Saturdays and Sundays by the services of WYCOFF, and in all probability the shipments would have to wait over until Monday for delivery. Not infrequently the items included in the total shipment will represent drugs and other emergency

commodities, along with the numerous other types of material handled by a drug store, and it would be very harmful to the operation of the drug store distribution business to now withdraw the availability of this week-end service for the movement thereof. Similar other circumstances arise in cases where a shipper may have several items to move to a single consignee at the same time, the total of which exceeds the 100 pound limitation, but no item of which is that heavy. We remind the court that at all times WYCOFF is subject to the overall restriction of 500 pounds upon a schedule basis, and no complaint is made by any party regarding that factor, and hence there is no danger that the continuation of the language "items" in the certificate will turn this motor carrier into a competitor with the truck lines on their large shipments in the large truck-trailer units which they operate.

Normally a Commission would not be estopped from taking any particular action, but herein we have a situation where the motor carrier itself, namely, petitioner WYCOFF, has geared its operations to accommodate the needs of the shippers of items which sometimes (but not very frequently) combine together to make shipments of over 100 pounds in weight, and the shipping public has likewise relied upon the availability of this service. No change in circumstances has been shown to reflect a need

for the change in the certificate, and hence the Commission is estopped from arbitrarily and capriciously varying the language of the certificate.

Is there any estoppel on the part of WYCOFF to assert that this certificate should not be changed, in light of the fact that the stipulation filed at the hearing referred in paragraphs (a) and (b) of the conditions and restrictions only to "shipments" rather than "items"? We believe that there is none, in light of the fact that the Commission at all times reserved its power to do as it wished with the evidence before it, both as to that evidence which was submitted prior to the time of the stipulation, and that which came in through some 41 witnesses subsequent to the stipulation. Had the hearing closed at the time of the stipulation, there might be some serious question regarding this matter, but the hearing continued on and both protestants and applicant presented additional evidence thereafter, and the Commission reserved at all times its freedom of determination until the issuance of the certificate in January of 1958. Once this certificate has been issued and has become final, it does not lie in the mouth of either the applicants, the protestants or the Commission to require a change therein, in the absence of a showing of changed circumstances at a later date.

CONCLUSION

The petitioner, Wycoff Company, Incorporated, therefore respectfully prays that the court reverse the nunc pro tunc order of December 21, 1959, and leave the Certificate No. 1162-Sub 2 in its status as issued by the Amended Order of February, 1959, and that petitioner be granted its costs of court incurred herein.

Respectfully submitted,

HARRY D. PUGSLEY,
OF PUGSLEY, HAYES,
RAMPTON & WATKISS

721 Cont'l Bank Bldg.
Salt Lake City, Utah

Attorneys for Petitioner