

1966

Joseph M. Lewis, Executor of the Estate of Orson Lewis dba, Lewis Bros Stages and Bingham Stage Lines v. Public Service Commission of Utah: Hal S. Bennett, Donald Hacking and Raymond W. Gee, Its Members; and Wycoff Company, Barton Truck Line, Inc., Uintah Freightways, Magna Garfield Truck Line, and Link Trucking, Inc. v. Public Service Commission of Utah Hal S. Bennett, Donald Hacking and Raymond W. Gee, Its Members, and Wycoff Company, Garrett Freightlines, Inc., Lake Shore Motor Coach Lines, Inc., Continental Bus System, Inc., American Bus Lines. Inc .. Denver-Salt Lake Pacific Stage. Rio

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Grande Motorway, Milne Truck Lines, Inc., Palmer Bros. Incorporated, Mt. Hood Stages, Dba Pacific Trailways v. Public Service Commission of Utah: University of Utah Hal S. Bennett, et al., Its Members: and Wycoff Company, Incorporated : Brief of Plaintiffs Barton, Uintah, Magna-Garfield and Link

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# IN THE SUPREME COURT of the STATE OF UTAH

JOSEPH M. LEWIS, Executor of the Estate of  
ORSON LEWIS dba LEWIS BROS. STAGES,  
and BINGHAM STAGE LINES, a corporation,  
*Plaintiffs,*

Case  
No.  
10351

vs.

PUBLIC SERVICE COMMISSION OF UTAH;  
HAL S. BENNETT et al., its Members; and  
WYCOFF COMPANY, INCORPORATED,  
*Defendants.*

BARTON TRUCK LINE, INC., UINTAH  
FREIGHTWAYS, a corporation, MAGNA-GAR-  
FIELD TRUCK LINE, a corporation, and LINK  
TRUCKING, INC.,  
*Plaintiffs,*

Case  
No.  
10357

vs.

PUBLIC SERVICE COMMISSION OF UTAH;  
HAL S. BENNETT et al., its Members; and  
WYCOFF COMPANY, INCORPORATED,  
*Defendants.*

GARRETT FREIGHTLINES, INC., LAKE  
SHORE MOTOR COACH LINES, INC., CON-  
TINENTAL BUS SYSTEM, INC., AMERICAN  
BUS LINES, INC., DENVER-SALT LAKE-PA-  
CIFIC STAGES, RIO GRANDE MOTORWAY,  
INC., MILNE TRUCK LINES, INC., PALMER  
BROS. INCORPORATED, MT. HOOD STAGES,  
the PACIFIC TRAILWAYS,  
*Plaintiffs,*

Case  
No.  
10360

vs.

PUBLIC SERVICE COMMISSION OF UTAH; UNIVERSITY OF UTAH  
HAL S. BENNETT, et al., its Members; and  
WYCOFF COMPANY, INCORPORATED,  
*Defendants.*

MAY 12 1966

BRIEF OF PLAINTIFFS BARTON, UINTAH,  
MAGNA-GARFIELD and LINK

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Appeal from the Order of the Public Service Commission of Utah

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# IN THE SUPREME COURT of the STATE OF UTAH

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JOSEPH M. LEWIS, Executor of the Estate of  
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and BINGHAM STAGE LINES, a corporation,  
*Plaintiffs,*

Case  
No.  
10351

vs.

PUBLIC SERVICE COMMISSION OF UTAH;  
HAL S. BENNETT et al., its Members; and  
WYCOFF COMPANY, INCORPORATED,  
*Defendants.*

---

BARTON TRUCK LINE, INC., UINTAH  
FREIGHTWAYS, a corporation, MAGNA-GAR-  
FIELD TRUCK LINE, a corporation, and LINK  
TRUCKING, INC.,

Case  
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10357

*Plaintiffs,*

vs.

PUBLIC SERVICE COMMISSION OF UTAH;  
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WYCOFF COMPANY, INCORPORATED,  
*Defendants.*

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GARRETT FREIGHTLINES, INC., LAKE  
SHORE MOTOR COACH LINES, INC., CON-  
TINENTAL BUS SYSTEM, INC., AMERICAN  
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CIFIC STAGES, RIO GRANDE MOTORWAY,  
INC., MILNE TRUCK LINES, INC., PALMER  
BROS. INCORPORATED, MT. HOOD STAGES,  
dba PACIFIC TRAILWAYS,

Case  
No.  
10360

*Plaintiffs,*

vs.

PUBLIC SERVICE COMMISSION OF UTAH;  
HAL S. BENNETT, et al., its Members; and  
WYCOFF COMPANY, INCORPORATED,  
*Defendants.*

---

BRIEF OF PLAINTIFFS BARTON, UINTAH,  
MAGNA-GARFIELD and LINK

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Defendant Wycoff Company, Incorporated will here-  
after be referred to as Wycoff; defendants Public Service

Commission of Utah, Hal S. Bennett, Raymond C. Donald Hacking will hereafter be referred to as the Commission; plaintiffs Joseph M. Lewis, Bingham Lines, Barton Truck Line, Inc., Utah Freight Lines, Magna-Garfield Truck Line, Link Trucking, Inc., Lake Shore Freightlines, Inc., Lake Shore Motor Coach Lines, Inc., Continental Bus System, Inc., American Bus Lines, Denver-Salt Lake-Pacific Stages, Rio Grande Motor Inc., Milne Truck Lines, Inc., Palmer Bros. Incorporated, Mt. Hood Stages, dba Pacific Trailways, will hereafter be referred to respectively as: Lewis, Bingham, Barton, Utah, M & G, Link, Garrett, Lake Shore, Continental, American, Denver, Rio Grande, Milne, Palmer, and Mt. Hood.

### STATEMENT OF THE KIND OF CASE

This action involves an application of Wycoff for a Certificate of Convenience and Necessity to operate as a common motor carrier of contractor's equipment, parts and supplies in a scheduled service, excluding, however, commodities in bulk and commodities which because of size or weight require special equipment and any shipments weighing in excess of 1,000 pounds, the territorial scope of the application to be statewide over all highway within the State of Utah.

### DISPOSITION BY THE PUBLIC SERVICE COMMISSION OF UTAH

The Commission issued its report and order granting to Wycoff authority to operate as a common motor

part in the transportation of emergency shipments of contractor's supplies, contractor's equipment or parts except in a scheduled service, excluding commodities in bulk or commodities which because of size or weight require special equipment and any shipments weighing in excess of 1,000 pounds, between all points and places in Utah.

### RELIEF SOUGHT ON APPEAL

Barton, Uintah, M & G, and Link, plaintiffs, seek reversal of the order of the Commission dated the 14th day of January, 1965.

### STATEMENT OF FACTS

In addition to Barton, Uintah, M & G, and Link, there are eleven additional plaintiffs seeking reversal of the order of the Commission. The territorial scope of the various plaintiffs differ and separate briefs are being written by plaintiffs not herein specifically named. This statement of facts will of necessity be limited to the proceedings as they pertain to the plaintiffs Barton, Uintah, M & G, and Link.

Wycoff, pursuant to its Certificate of Convenience and Necessity No. 1162-Sub 2, holds authority to operate as a common carrier by motor vehicle for the transportation of general commodities of 100 pounds or less in weight in a scheduled express service between all points and places in the State of Utah, except between Salt Lake City and Ogden, between Salt Lake City and Park

City, between Salt Lake City and Brigham City, between Salt Lake City and Wendover, and between Salt Lake City and Tooele, subject to certain restrictions set forth in its Certificate of Convenience and Necessity. The scheduled service shall coincide with the delivery of newspapers. (Abstract 4) The express schedule of Wycoff (Exhibit 3) will be used in connection with the transportation of contractor's equipment, parts and supplies unless changed and said change reported to the Commission. (Abstract 4)

Since May of 1961 Wycoff has been serving government supply houses and contractors under a series of temporary authorities (Abstract 7). Exhibit 4 contains a list of shipments purportedly involving contractor's supplies and weighing in excess of 100 pounds handled by Wycoff during a sixty-day period. It discloses 21 shipments to Vernal, Utah, which town is located in the area served by Uintah and Link. In the area served by Barton, it discloses three shipments to Logan, Utah, no shipments to Willard, Utah, one shipment to Desert View, Utah, and three shipments to Smithfield, Utah. It discloses no shipments to the western part of the state of Utah served by Barton and no shipments into the area served by M & G. In determining whether or not a shipment involves contractor's equipment, parts or supplies, Wycoff does not concern itself with the actual contract involved. If the shipment goes to a construction site or is in some way associated with a contract situation and provided it involves parts or supplies, Wycoff can



ges that it has authority to handle the movement. The  
 (Exhibit 7) bills disclose boxes, cartons, crates, etc. (Exhibit  
 Abstract 7).

In Vernal, Utah, Wycoff maintains one one-ton truck  
 and a driver who lives in Vernal. It does not operate on  
 Sundays into Vernal and its schedule departs from Salt  
 Lake to Vernal at 12:01 P.M. If a shipment is tendered  
 to Wycoff after 12:01 P.M., the shipment would have to  
 wait until the following day for handling. (Abstract 8).  
 There are no newspapers handled by Wycoff from Salt  
 Lake to Vernal, Utah. (Abstract 6). Schedules into the  
 area served by M & G and Barton are as disclosed by  
 Exhibit 3. (Abstract 8).

Supporting the application were companies and in-  
 dividuals engaged in the contracting business and in the  
 business of selling contractor's equipment, parts and  
 supplies. (Abstract 8-32). A summary of their testimony  
 as it pertains to Barton, M & G, Link and Uintah discloses  
 as follows:

#### *W. W. Clyde and Company*

This company constructs airports, roads, dams, and  
 bridges and operates from time to time in all areas of  
 the state of Utah. About 90% of its supplies come from  
 Salt Lake City, Utah. Within the Salt Lake City area,  
 W. W. Clyde and Company provides its own trucking ser-  
 vice and would continue to do so in the future. It has no  
 need for service into Salt Lake County. In the Vernal  
 area, the last job was approximately four to five years

ago and it used its own equipment and would not to do so except on an emergency basis. It would have no objection to using the services of Link or Uintah, but would prefer to use Link over Wycoff if its service would get the freight there first. In fact, if Link or Uintah has a schedule going to Vernal at approximately the same time as that of Wycoff from Salt Lake City, Utah, and provided there is a pick up service, the services of Link or Uintah would meet the needs of W. W. Cate and Company. The bulk of shipments are in the neighborhood of 100 pounds or less, and in fact, many of them are 20 pounds or less. (Abstract 8-11).

#### *Cate Equipment Company*

Cate Equipment Company is a retail distributor of construction equipment. About 90% of its shipments constitute replacement parts for their equipment and generally the contractor specifies the routing. The services of Barton have been adequate. Within Salt Lake County Cate Equipment Company is not supporting a need for the services of Wycoff. The peak period of calls from contractors is from 1:00 P.M. to 12:00 A.M. and thus it could get better service from a carrier operating schedules at 12:00 P.M. and at 5:00 or 5:30 P.M. for Salt Lake City to Vernal than it could from a carrier operating only one schedule daily at 12:01 P.M. Link could have served its customers served by Wycoff in the Uintah Basin. (Abstract 11-13).

#### *Strong & Company*

Strong & Company is a general contracting company

operating in highway work. The only item for which it Wycoff is in the transportation of repair parts. In the Ogden area nearly all shipments are delivered to an engineer's house by the Salt Lake supplier and Wycoff has been used on a few emergencies only. Within Salt Lake County, Strong and Company has never used common carrier service and is not supporting the application of Wycoff in the area. Assuming a carrier holds appropriate authority and its services are dependable in that machinery parts will be picked up and placed in a proper position in the vehicle so that they can be removed upon arrival at the destination, and assuming that the carrier operates schedules in addition to those operated by Wycoff, that type of service would be more satisfactory than the Wycoff service. (Abstract 11-15).

#### *Wheeler Machinery Company*

Wheeler Machinery Company is in the business of supplying construction machinery repair items and mechanical items to contractors. It uses all types of truck service, common carriers, railroads, trucklines, airlines, parcel post and buslines. Within the Uintah Basin, the primary product moving is parts and there has been no dissatisfaction with the service of Link. It is not acquainted with the express service operated by Uintah. (Abstract 15-16).

#### *Rocky Mountain Machinery Company*

This company sells and services construction machinery and has a need for the emergency transportation

of machinery parts. It has no complaint concerning the services of Uintah, Link or Barton, and if Link's schedules would get the parts to the Basin earlier than Wycoff, Rocky Mountain would prefer to use Link than Wycoff. This company has no need for a transportation service within Salt Lake County and is supporting the application so far as Salt Lake County is concerned. (Abstract 16-18).

### *Tiago Construction Company*

This company is in the highway construction business. With the exception of emergency parts, all shipments are held in their yard at Salt Lake and are locally transported in their own equipment. It does not have any jobs in progress in Tooele County and has not acquainted itself with the services of Barton. In Weber County, including Ogden, it uses its own equipment as is able to satisfactorily serve its own needs. When using the services of Link have been satisfactory. Of primary concern to Tiago is the carrier who can get the product there the fastest. It has used the services of Uintah in the Uintah Basin, it received a drop-off service both day and night at the jobsite and has found the services to be very satisfactory. (Abstract 18-20).

### *Fife Construction Company*

Fife has occasion to require the transportation of machinery parts and supplies from Salt Lake City, Utah to their jobsites near Ogden, Utah. In general, however, it uses its own equipment. Fife is familiar with the ser-

of Barton and uses them daily. There have been no complaints concerning Barton's services which have not been rectified. It has no need for services into the Uintah Basin and there is no need contemplated in the future, nor does it have any need for services in the area served by Lewis Bros. and Bingham. (Abstract 18-22).

#### *Wycoff Machinery Company*

This company handles industrial machinery and maintains a large stock of parts in Salt Lake City, Utah. The average weight of shipments handled by Wycoff company is 21 pounds. This company is not acquainted with the fact that Uintah has an express schedule into the Uintah Basin. It is not supporting the application within Salt Lake County. (Abstract 22-23).

#### *Heiner Equipment Company*

The services of Lake Shore between Salt Lake and Ogden have been used and have been satisfactory. The important thing is not the carrier but the schedule moving next out of Salt Lake. The company is acquainted with the services of Barton on freight moving north to the Idaho border and has received no complaints concerning its services. The need of Heiner Equipment Company is not a specific need but is a need for all possible transportation. Within the Uintah Basin, if Link or Uintah can get it there first, they call them. Heiner Equipment Company is satisfied with the services of Link and Uintah and where their schedules are more frequent it would be perfectly satisfied with the services

offered by them. Transportation within Salt Lake City is either performed on their own vehicles or is arranged for the customer. The services of M & G have been used and are satisfactory. (Abstract 24-25).

*Wasatch Electric Company*

This company is in the electrical construction business and uses all types of common carriage. The average shipment handled for it by Wycoff is 100 pounds. There has been no traffic moving between Ogden and Salt Lake since 1954.

*Armco Equipment Company, Ross-Cowan Equipment Company, and Utah Bit and Steel*

Generally speaking, anything under 100 pounds requiring a transportation service is moved by Wycoff. Between Salt Lake and Ogden the company uses Lar-Shore and has found the service to be satisfactory. It has used the services of Barton into the Ogden area and into the Tooele area and has found their services to be good. The same is true concerning the services of Uintah (Abstract 27-28).

*Interstate Electric Company*

This company is in the heavy line and inside wire construction business and operates throughout the entire state of Utah. Between Salt Lake City and Ogden said company uses its own equipment. The services of Barton have been used both into the Ogden and Dugway areas and at the present time there is no real need into Dugway or Ogden for the transportation of small parts.

Shipments to Roy and Thiokol, Utah, it has used Barton's services on both large and small shipments and has experienced no difficulty. On shipments to the Uintah Basin, the only items moving are small emergency parts under 100 pounds. The witness is not familiar with the service offered by Link.

*Bailey, Inc.*

Bailey sells tires, tubes and batteries and uses all modes of transportations. On shipments moving between Salt Lake City and Ogden, it uses its own company trucks. It uses Barton on both large and small shipments into Ogden and Tooele and has experienced no difficulty with their services. Within the Uintah Basin, it does not require any transportation services within the foreseeable future. When the services of Link and Uintah have been used, they have been satisfactory. (Abstract 34-31).

All companies testified that they had been using the services of Wycoff since it had received its temporary authority to handle the transportation of contractor's equipment, parts and supplies. They have used Wycoff in the transportation of emergency parts and its services have been satisfactory to excellent. (Abstract 8-31).

The services and facilities offered by the protestants Barton, Uintah, Link and M & G are set out as follows:

*Barton Truck Line, Inc.*

Barton holds Certificates of Convenience and Necessity, No. 1074 and No. 1127 and Subs, for the transportation of commodities generally between Salt Lake

City, Utah and the Utah-Nevada border, and between Salt Lake City, Utah and the Utah-Idaho border, serving all intermediate points. It has terminals at Salt Lake City, Tooele, Ogden and Logan, Utah; employs approximately 146 people; and operates approximately 125 pieces of equipment as disclosed by Exhibit 93. Equipment stationed at each terminal. Approximately six months prior to the hearing, Barton acquired additional trucks at an approximate cost of \$150,000.00. (Abstract 227)

Barton maintains scheduled services with approximately fifteen schedules daily into the Ogden area, one daily schedule to Tooele, two daily schedules into the Tooele Army Depot, and one daily schedule to the Dayway Proving Grounds. In addition, it has two schedules weekly into Wendover, Utah from Salt Lake City, Utah and as many as requested from Tooele to Wendover, Utah. It operates one daily schedule to Thiokol, which is same day service, a daily schedule to Tremonton and Brigham City, Utah, two daily schedules from Salt Lake City, Utah to Logan, Utah, and one schedule from Ogden, Utah to Logan, Utah, three schedules to Clearfield, Utah daily, three schedules weekly from Ogden, Utah to Thiokol, and two daily schedules to Hill Field, Utah. It operates two drop runs which cover the points of Wood Cross, Bountiful, Farmington, Kaysville, Layton, Syracuse, Warren, West Warren, Sunset and Roy, Utah. The drop run is a peddler type service where freight is delivered to the individual farmhouse or store between Salt Lake City and Ogden, Utah. In addition, it offers



special service to its customers. It has approximately 12 pickups with two-way radios and offers a radio dispatch service making possible momentary pick ups and deliveries. Upon request, Barton has increased its number of schedules and has made special runs for shippers. (Abstract 35-36).

Barton renders and has rendered a service to contractors for the transportation of contractor's equipment, parts and supplies and for equipment house dealers, and has received no substantial complaints concerning its services. An attempt was made by Barton to determine the volume of traffic insofar as contractor's equipment, supplies and parts are concerned. The scope was found to be so vast that it was impossible to separate said commodities from the rest of the freight. The business is seasonal and during the spring and summer months when construction work increases, Barton's business increases accordingly. It is dependent upon this type of business in its operation and the grant of the application would divert substantial tonnage presently moving into the northern and western parts of the state. (Abstract 36-37).

Barton has been able to handle all freight tendered to it and the granting of the application would require a curtailment of its services to the public, including the reduction in its number of schedules since the grant of authority would divert substantial traffic. Barton handled direct deliveries to contractors within the area it serves. (Abstract 37).

*Magna-Garfield Truck Line*

M & G holds authority from the Public Service Commission of Utah to perform a transportation service, the transportation of commodities generally from Salt Lake City, Utah to points such as Garfield, Bachelus, Jordan, South Jordan, Riverton, Bluff, Dell, Harriman and Bingham, serving all intermediate points.

M & G has terminals at Salt Lake City, Utah and maintains the necessary equipment facilities and personnel to serve all people within the scope of its authority. The operation is on a scheduled basis with two schedules out of Salt Lake every day serving Bennion, West Jordan, Lark, Kennecott, Bingham Canyon and Magna-Garfield area in Granger. It has an express schedule leaving Salt Lake at 1:00 each day for express or emergency type shipments to any customer who needs the type of service, and operates on an on-call basis daily including Saturdays and Sundays. (Abstract 37-38)

The area served by M & G is small and there is always available equipment to handle any freight tendered to it at any time and a pick up will be made at any time upon request.

M & G has been in business since 1927 and has served the area to the satisfaction of its customers. It handles daily the transportation of contractor's supplies and the grant of the application would prevent it from rendering the service which is presently being rendered by it. The company is owned by W. Claude Smith and Mr. Fred

individuals are dependent upon it for their livelihood operating within Salt Lake County and as far as the junction of U.S. Highways 89 and 91 near Dragoon, Utah, are 30 cartage carriers, as disclosed Exhibit 76. (Abstract 38).

M & G has received no complaints as to its service in the granting of a new authority into the sparsely settled area served by it would be detrimental to it. It handles daily and hourly the transportation of contractor's supplies.

*Link Trucking, Inc.*

Link renders a transportation service in the transportation of commodities generally, pursuant to its Certificate of Convenience and Necessity No. 1374 (Exhibit 73).

In general, Link renders a transportation service between Salt Lake City, Utah and the Uintah Basin, which basin includes the towns of Roosevelt, Duchesne, Myton and Vernal, Utah. In addition, it renders a service to certain points in Daggett County and from Utah County and Morgan, Helper, Heber, Price and from coal mines in Carbon and Emery Counties to points in the Uintah Basin and certain points in Daggett County, Utah.

Link maintains a scheduled service as disclosed by Exhibit 74. It has three schedules daily departing from Salt Lake City for Vernal, Utah at 2:30 A.M., 11:30 A.M. and 11:30 P.M. with arrival at Vernal at 7:00 A.M., 4:30 P.M. and 6:00 A.M. In addition, it has three sche-

dules departing from Vernal, Utah at 9:30 A.M., 11:00 P.M. and 11:00 A.M. with arrival at Salt Lake City at 2:30 P.M. and 10:00 P.M. It has nonscheduled service when required. (Abstract 39-40).

Link has facilities at Salt Lake City, Vernal and Myton, Utah and has equipment as disclosed by Exhibit 75. Its telephone facilities for incoming calls are available from 7:00 A.M. to 7:30 P.M. daily. Part of the equipment is equipped with side doors and wheels for convenient street delivery.

Link provides a complete pick up and delivery service and its operations include an expedited express radio service. It handled the transportation of contractor equipment, parts and supplies to the Uintah Basin on a regular basis and performs a pick up and delivery service when the facilities are open. It provides daily service and never leaves freight on the dock at the end of the day. It has adequate equipment to perform all services and has been able to handle all traffic tendered to it, including expedited deliveries of contractor's supplies on an emergency basis direct to the jobsite. (Abstract 40).

There are presently three carriers handling the transportation of freight moving in an express service from Salt Lake to the Uintah Basin and the volume of traffic is such that any one carrier could handle the total freight or merchandise. The further dilution of traffic reduces the volume of business and has a serious detrimental effect. (Abstract 40-41).

### *Uintah Freightways*

Uintah is a common motor carrier of property handling freight and express between Salt Lake City, Utah and the Uintah Basin. Included within the territorial scope of Uintah's authority are the counties of Sevier, Wasatch, Daggett, Duchesne and Uintah, Utah, disclosed by its Certificate of Convenience and Necessity No. 1288. (Abstract 41).

Uintah has terminals located at Salt Lake City, Daguerre, Vernal and Duchesne, Utah. It operates on a round-trip basis, 7 days a week, 24 hours a day. Uintah has an express schedule leaving Salt Lake at 12:00 P.M. each day and a regular freight schedule leaving Salt Lake at 11:00 P.M. each day. It operates a pick up and delivery service in connection with its freight and express operations and uses a drop box with side doors for expedite loading and unloading. With the exception of its express schedule, Uintah operates 7 days weekly and its facilities are available 24 hours each day. (Abstract 41).

Exhibits 54, 55, 56, 57, 58 and 59 contain an abstract of freight and express handled by Uintah for W. W. Clyde and Company, Wheeler Machinery Company and Tago Construction Company. As disclosed by the "Uintah Parcel Express" freight bills attached to said exhibits, it performs same day service.

Uintah Freightways has handled the transportation of substantial amounts of contractor's equipment, parts

and supplies into the Uintah Basin, has rendered a service to all shippers who have required its services, and being the supporting shipper witnesses, can and has provided the type of service contemplated by the application of Wycoff, and has received no complaints concerning its services from the shippers supporting the application. (Abstract 42-43).

The population of the Uintah Basin is approximately 15,000 people and there are presently two active common carriers serving the area, exclusive of Wycoff, which carriers provide an express service. In addition, there are numerous special haulers such as Ashworth, Salt Lake Transfer and Hatch operating on both an interstate and intrastate basis, and other carriers such as Ringler serving the area on an interstate basis. The grant of the requested authority in such a sparsely populated area would substantially lower revenues of existing carriers and be of serious consequence to their operations. In a 60-day period, Wycoff has made three shipments of contractor's equipment, parts and supplies into the Uintah Basin. (Abstract 42-43).

## ARGUMENT

### POINT I.

THE EVIDENCE FAILS TO DISCLOSE ANY INADEQUACY OF SERVICES PRESENTLY OFFERED BY PLAINTIFFS BARTON, M & G, LINK AND UINTAH AND THE FINDING OF THE COMMISSION THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE ADDITIONAL SERVICE IS ARBITRARY AND CAPRICIOUS.

The plaintiffs Barton, M & G, Link and Uintah col

may render a complete transportation service between all points north, east and west of Salt Lake City, and the Utah state lines. The purport of testimony supporting shipper witnesses was to the effect that it would be convenient and desirable to have another carrier available for quick transportation. There is no evidence in the record which in any way shows that existing services are in some measure inadequate or that the demand as to potential business is such that public convenience and necessity justify the additional proposed service. In fact, the evidence is to the contrary.

Within Salt Lake County, the area served by M & G, a witness when asked testified that it had no need for service in Salt Lake County and that it was not supporting the application of Wycoff in said area. A broad aside grant of authority in light of such evidence is directly contrary to the holding in the case of *Milne Tank Line, Inc. v. Public Service Commission of Utah*, 71 Utah 2d 365 (1961), 359 P.2d 909, wherein the court held:

"The evidence before the Commission showed a need for the service proposed by the defendant, Clark Tank Lines, Inc., within a restricted area and by a small number of shippers. Such evidence is insufficient to support the order as made by the Commission granting to Clark Tank Lines authority to render the proposed service between all points and places within the state of Utah."

As an expedient and without regard to the record, the Commission authorized the invasion of a new carrier

service into an area embracing the western slopes of Lake County, which area is presently served by M & N truckline which constantly maintains on hand sufficient equipment to handle any and all freight tendered to it any time, offers both a scheduled and non-scheduled service, maintains a pick up and delivery service, handles daily the transportation of contractor's supplies, is dependent entirely upon its truck operations for its living and which company has received no complaints concerning its services. The grant of authority to Wycoff is directly contrary to the holding in the case of *Lakeshore Motor Coach, Inc. v. Bennett*, 8 Utah 2d 293 (1958), 30 P.2d 1061, as follows:

"However, a review by this Court is provided for, and it is undoubtedly intended to amount to something more than a mere rubber stamping of any action the Commission might take by placing some control upon extremes of arbitrary action by the Commission. It cannot go so far as to be an order creating new carrier authority, which in effect takes business away from existing carriers upon a showing which under scrutiny is so ephemeral as to practically vanish. To do so would constitute the Commission as an autocratic authority with arbitrary power which would render the foundations of the business of existing carriers insecure as to make operations and planning hazardous and render all attempts to defend their authority futile."

The *Lakeshore Motor Coach, Inc. v. Bennett*, supra, involved a proceeding before the Public Service Commission of Utah where Wycoff sought to increase its authority to transport small express shipments in area



is served by other carriers. The evidence paralleled the evidence in the instant proceedings in that the witnesses, without pointing to any deficiency in existing services, and bearing in mind only their self-interest, asked the speediest transportation possible with the best carriers the better. Many witnesses were not aware of the extent of services presently available and those who knew of existing services had found the same to be satisfactory. With such a record, the court reversed the order of the Public Service Commission within the areas served by the plaintiffs-protestants, that is to say, between Salt Lake City and Ogden, between Salt Lake City and Bingham Canyon, between Salt Lake City and Anthon, and between Salt Lake City and Tooele, the same areas served by the plaintiffs-protestants Barton and M & G. The record fails to disclose any change in transportation requirements within the above named areas since the year 1958. It does disclose, however, an expansion of service and facilities on the part of Barton and M & G, with the addition of new equipment, increased schedules, etc. Said carriers have risked their capital on the assumption that they are entitled to protection against competition until their competitors or someone else establishes by substantial evidence a failure to perform the services which the Commission has authorized and ordered them to perform. There is no such evidence in this record.

Attached to Exhibit 4 are the supporting freight bills, numbers H98435, K029586, L010268, K055824, K060114, J25485, and H84828, involving the movement of

contractor's equipment, parts and supplies during sixty-day period by Wycoff, and are the only bills to disclose both the date of pick up and the date of delivery. Without exception, all freight bills disclose second day delivery.

Barton, with its more than fifteen daily schedules to the Ogden area, three daily schedules to the area west of Salt Lake to the Utah-Nevada border, daily schedules to Thiokol, Tremonton, Brigham City and Logan, pick up and delivery service between Salt Lake City and Ogden, and schedules out of Ogden to points north, together with its one-way service, radio dispatch, pick up and delivery, provides a complete service available to the contracting trade, which makes possible in many instances same day delivery as without question second day delivery as presently provided by Wycoff and as above indicated. The fact that Barton has been able to give this all inclusive service to the contracting trade is evidenced by the statements of supporting shippers, all of whom testified that Barton's services were adequate and that they had no complaints concerning Barton's services.

M & G, with its limited territorial scope, scheduled and nonscheduled services, pick up and delivery, and other benefits offered to the shipping public, can as does provide same day service, a service not provided by Wycoff and as evidenced by the freight bills above mentioned.

The record is void of any evidence of lack or inadequacy of service to the Uintah Basin, the area served by

and Uintah. Wycoff maintains one daily schedule going from Salt Lake City, Utah to the Uintah Basin. Its schedule departs at 12:01 P.M. (Exhibit 3). Wycoff intends to provide the same service as provided by Link schedules, with any change in scheduled service to be reported to the Commission (Abstract 4). On shipments tendered to it after 12:01 P.M., that shipment must have to wait until the following day for handling. Uintah maintains three schedules daily departing from Salt Lake City, Utah at 2:30 A.M., 11:30 A.M. and 11:30 P.M. respectively. Uintah maintains two schedules daily, including an express schedule, departing from Salt Lake City, Utah at 12:00 P.M. and 11:00 A.M. daily. In addition, both companies provide a complete pick up and delivery service, operate 7 days weekly and have an on-call service when required.

The area served by Uintah and Link is sparsely populated with a total population in the entire Basin of approximately 15,000 people. Shipper testimony discloses that if Link or Uintah has a schedule going to Vernal at approximately the same time as that of Wycoff from Salt Lake City, and provided there is a pick up service, the services of Uintah or Link would meet the need. It likewise discloses either a lack of acquaintance with the services offered by Link or Uintah, or complete satisfaction with the services received. There is no evidence in the record to show or even indicate a lack or inadequacy of service in said area by anyone who knew or had attempted to use the services of either carrier.

The Commission in granting authority to go into the areas served by Uintah, Link, Barton and M&A failed in its duty to protect and conserve existing service and thus insure economic stability and continuity of service at a time when the record affirmatively shows that existing services are adequate and that a further transgression would result in a reduction of service, curtailment of service and consequential injury to the public.

The order of the Commission is directly contrary to the case of *Lake Shore v. Bennett*, supra, wherein the court stated:

"Proving that public convenience and necessity would be served by granting additional ~~car~~ authority means something more than showing the mere generality that some members of the public would like and on occasion use such type of transportation service. In any populous area it is easy enough to procure witnesses who will say that they would like to see more frequent and cheaper service. That alone does not prove that public convenience and necessity so require. Our understanding of the statute is that there should be a showing that existing 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 believe that public convenience and necessity justify the additional proposed service. For the rule to be otherwise would ignore the provisions of the statute and also would make meaningless the holding of formal hearings to make such determinations and render futile efforts of existing carriers to defend their operating rights."

## POINT II.

THE VOLUME OF TRAFFIC IS INSUFFICIENT TO  
 JUSTIFY THE GRANT OF ADDITIONAL AUTHORITY INTO  
 AN AREA ADEQUATELY SERVED AND IS CONTRARY TO  
 THE BEST INTERESTS OF THE PEOPLE OF THE STATE  
 OF UTAH

By granting to Wycoff authority to serve areas  
 already adequately served, the Commission created a  
 duplication of service which unfairly interferes with  
 existing carriers, undermines and weakens the transpor-  
 tation service generally and deprives the public of an  
 efficient and permanent service. Before a certificate of  
 convenience and necessity can issue it must be shown that  
 a new service will serve a useful public purpose, re-  
 sponsive to a public demand or need which cannot be  
 furnished equally well by existing carriers and that the  
 new service will not endanger or impair the operations  
 of existing carriers contrary to the public interests.

Elementary in determining the need for additional  
 service is the volume of traffic available and requiring  
 a transportation service. Exhibit 4, which is representa-  
 tive of the volume of contractor's equipment, parts and  
 supplies handled by Wycoff, discloses no shipments with-  
 in Salt Lake County, three shipments to the Uintah  
 Basin, no shipments to Ogden, three shipments between  
 Salt Lake City and Logan, nine shipments between Salt  
 Lake City and Willard, one shipment to Deseret, Utah,  
 three shipments to Smithfield, Utah and no shipments  
 from Salt Lake City to the Utah-Nevada border. Said  
 shipments disclose that 3,104 pounds of contractor's

supplies weighing in excess of 100 pounds per shipment were handled by Wycoff during a sixty-day period between the points above mentioned.

Wycoff is not authorized under its express authority Certificate of Convenience and Necessity No. 1162-Salt Lake County, between Salt Lake City and Ogden, Utah, between Salt Lake City and the Utah-Nevada border. It cannot perform a transportation service between Salt Lake City and the Uintah Basin, including Vernal, since its schedules must coincide with the movement of newspapers and there are no newspapers being handled by Wycoff and moving to points within the Uintah Basin. With the exception of the revenues received from the transportation of newspapers, magazines, periodicals, motion picture film, candy, confections, popcorn, popcorn items, bull semen and cut flowers when said commodities move in the same vehicle with contractor's equipment, parts and supplies, Wycoff's revenue on traffic handled within the area served by plaintiffs, with the exception of that area north of Ogden, Utah, is dependent upon the revenue received from the transportation of the items which are the subject matter of this proceeding.

It is apparent from the volume of traffic heretofore handled that the operation of Wycoff in the transportation of contractor's equipment, parts and supplies has not been wholly successful. In fact, it is apparent that the volume of traffic is not sufficient to warrant the operation. To justify it, Wycoff must anticipate a larger

... traffic through solicitation of business now  
... by plaintiffs. Wycoff pleads that it would offer  
... specialized service which is needed and will not  
... the other carriers. The lack of need and effect on  
... carriers is apparent. The most that can be said  
... of the Commission is that, without regard  
... evidence, it created a new carrier in an area  
... properly served, weakening the transportation  
... and depriving the public of efficient and perma-  
... service.

### CONCLUSION

The naked statements of shipper witnesses to the  
... that they desire the services of Wycoff; their  
... statements that the services of Barton, Link, Uintah and  
... M & G have been satisfactory; the many schedules and  
... availability of equipment, personnel and facilities; the  
... availability of same day service, a service not offered by  
... Wycoff as evidenced by freight bills; the limited volume  
... of traffic; and the affect of the grant of authority upon  
... existing carriers and the transportation industry general-  
... ly, does not justify the injection of an additional carrier  
... into areas already properly served. The statewide grant  
... of authority by the Commission to Wycoff is arbitrary,  
... capricious and void and the order of the Commission  
... should be reversed.

Respectfully submitted,  
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