

1963

# Uintah Freightways v. Public Service Commission of Utah et al : Brief of Appellant

Utah Supreme Court

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William S. Richards; Gustin, Richards & Mattsson; Attorneys for Appellant;

A. Pratt Kesler; Mark K. Boyle; Attorneys for Respondents;

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IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

UINTAH FREIGHTWAYS, a  
corporation,

*Plaintiff and Appellant,*

—VS.—

PUBLIC SERVICE COMMISSION  
OF UTAH and HAL S. BENNETT,  
DONALD HACKING and JESSE  
R. S. BUDGE, Commissioners of the  
Public Service Commission of Utah,  
and PACIFIC INTERMOUNTAIN  
EXPRESS CO. and CLARK TANK  
LINES COMPANY,

*Defendants and Respondents.*

FILED

JUL 10 1963

Clerk, Supreme Court, Utah

Case No. 9886

BRIEF OF APPELLANT

Appeal From The Order of the Public Service  
Commission of Utah

WILLIAM S. RICHARDS  
GUSTIN, RICHARDS &  
MATTSSON

*Attorneys for Appellant*

A. PRATT KESLER, *Attorney General*

MARK K. BOYLE

*Attorneys for Respondents*

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IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

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UINTAH FREIGHTWAYS, a  
corporation,

*Plaintiff and Appellant,*

—vs.—

PUBLIC SERVICE COMMISSION  
OF UTAH and HAL S. BENNETT,  
DONALD HACKING and JESSE  
R. S. BUDGE, Commissioners of the  
Public Service Commission of Utah,  
and PACIFIC INTERMOUNTAIN  
EXPRESS CO., and CLARK TANK  
LINES COMPANY,

*Defendants and Respondents.*

Case No. 9886

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BRIEF OF APPELLANT

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STATEMENT OF THE KIND OF CASE

This is an investigation by the Public Service Commission of Utah to determine why the rate published by Uintah Freightways for the transportation of crude oil in bulk between specific points within the Uintah Basin, Utah, should not be permanently suspended.

## DISPOSITION BY PUBLIC SERVICE COMMISSION OF UTAH

This matter was heard by the Public Service Commission on the 18th day of December, 1962, and on the 5th day of March, 1963, said Commission issued its order directing Uintah Freightways to cease transportation of petroleum or petroleum products in bulk in tank vehicles and suspended and cancelled item No. 324-2 of Second Revised Page 34-A of Tariff 5-G PSCU No. 5 filed October 25, 1962.

### RELIEF SOUGHT ON APPEAL

The Uintah Freightways, plaintiff and appellant, hereafter referred to as appellant, seeks reversal of the order of the Public Service Commission dated March 5, 1963, and asks that the Commission be directed to reinstate and make permanent the tariff heretofore filed and above referred to.

### STATEMENT OF FACTS

On October 25, 1962, appellant caused to be published a tariff naming a rate for the transportation of crude oil in bulk between points in the Uintah Basin, Utah, which tariff became effective on the 30th day of November, 1962. Thereafter the Public Service Commission of Utah, hereafter referred to as Commission, issued its Investigation Docket No. 95 requiring appellant to appear and show cause, if any there may be, why the tariff above mentioned should not be permanently suspended and why

### 3.

the Commission should not take such other and further action as allowed by law.

The appellant, Uintah Freightways, holds authority from the Commission to operate as a common carrier of property, handling both freight and express, in intrastate commerce. Appellant's authority is in three parts and reads as follows:

#### "ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That Uintah Freightways, be, and it is hereby issued Certificate of Convenience and Necessity No. 1288 authorizing it to operate as a common carrier of property handling both freight and express in intrastate commerce, as follows:

- A. 1. Between Salt Lake City, Utah and all points within the Uintah Basin<sup>2</sup> over U. S. Highway 91 from Salt Lake City to Provo, thence over U. S. Highway 189 to Heber City and thence over U. S. Highway No. 40 and various Utah State and County Highways to all points within the Uintah Basin with permission to use the Orem Cut-off designated as Highway U-52 as alternate route, serving to, from and between all Uintah Basin points.
2. Between Salt Lake City, Utah, and all points within the Uintah Basin over U. S. Highway No. 40 and other various Utah State and County Highways to all points within the Uintah Basin serving to, from and between all Uintah Basin points.
3. No local service between Salt Lake City, Utah, and Provo, Utah, including Provo, between

Salt Lake City and Park City including Park City or between Salt Lake City and Heber City including Heber City is authorized except service is authorized between Salt Lake City and Heber City including both termini on both routes, on the one hand, and all points in the Uintah Basin, on the other, and service is authorized to the intermediate and off route points of Vivian Park, Wildwood, Charleston, Daniels, Center Creek, Keetley, Midway and Hot Pots.

- B. Between Vernal, Utah, and Price, Utah, via Duchesne County, Utah serving Vernal, Utah and Price, Utah and all intermediate points.
- C. Between all points in Utah authorized in A and B above, on the one hand, and all points in Daggett County, Utah, on the other, over irregular routes, on call, except service to and from Daggett County points is specifically restricted against the movement of household goods as usually defined, explosives, petroleum and petroleum products in bulk, and commodities which be reason of their sizes, shape, weight, origin or destination require special handling and special equipment.

2. The Uintah Basin as used here is the area encompassed in Duchesne and Uintah Counties and that portion of Wasatch County in the natural drainage area of the Green River."

By its authority, Uintah Freightways, under parts A and B, is authorized to transport all kinds of property between points therein designated which includes points in Redwash Oil Field, Utah, and covered by the tariff in question (R. 110, 153). Under Part C of its authority appellant is restricted in Daggett County against the move-

ment of household goods, as usually defined, explosives, petroleum and petroleum products in bulk and commodities which, by reason of their size, shape, weight, origin or destination, require special handling and special equipment (R. 111).

In concluding that appellant has no authority under its certificate to transport petroleum or petroleum products in bulk in tank vehicles, the Commission holds that parts A and B of appellant's certificate, which contained no exceptions, and part C, which contains exceptions, grants identical operating rights (R. 200).

In summary, the undisputed evidence discloses that appellant's authority dates back to October 1926 when it was first issued to the Sterling Transportation Company (R. 89). From time to time said authority has been enlarged and transferred and was ultimately purchased by appellant from the Ringsby Truck Lines, Inc. on September 22, 1958 (R. 111). When appellant was issued its certificate of convenience and necessity on September 22, 1958, respondents, Pacific Intermountain Express Company and Clark Tank Lines Company, petroleum haulers, did not appear in protest notwithstanding the fact that the Commission by express direction included their names as those entitled to notice of the hearing, which presumably they received (R. 79-81, 106, 111).

Appellant's predecessors in interest, Sterling Transportation Company and Uintah Freightlines, handled the transportation of liquid petroleum products in bulk,

as disclosed by their annual reports (Ex. 2). Since obtaining its authority, appellant has actively solicited any and all traffic available and has discussed with Mr. Kenneth H. Sowards, commissioned agent for the Continental Oil Company, and with representatives of the Standard Oil Company and other companies the transportation of petroleum and petroleum products in bulk (R. 37-40, 41, 57-58). Upon receiving its first request for the transportation of petroleum products in bulk, appellant made application to publish a rate in Intermountain Tariff Bureau, Inc., Tariff No. 5-G, said rate to be by special publication and on one day notice. The special permission was denied and appellant then published the rate on statutory notice (R. 56-57).

Appellant has actively protested any and all applications for certificates of convenience and necessity involving the area wherein it does business and to appellant's knowledge there have not been any applications filed since the year 1958 for certificates of convenience and necessity to transport petroleum products in bulk (R. 57). Respondents, Clark and Pacific, have both appeared at hearings in protest of the granting of applications for the transportation of general commodities and at said hearings have attempted to elicit from the general commodity carrier an exception to the transportation of petroleum products in bulk (R. 67-70).

There is no finding of uncertainty or ambiguity in appellant's certificate, as disclosed by the Commission's report and order (R. 196-200).

## ARGUMENT

## POINT I.

THERE IS NO AMBIGUITY IN APPELLANT'S CERTIFICATE OF CONVENIENCE AND NECESSITY, AND SAID CERTIFICATE IS NOT SUBJECT TO INTERPRETATION OR CLARIFICATION.

The purported finding of fact No. 2 of the Commission states in part as follows:

“The sole question for determination is the interpretation to be given to said certificate No. 1288.” (R. 196)

It is only where a certificate of convenience and necessity is ambiguous or uncertain that it is subject to interpretation or clarification by the Public Service Commission of Utah. *Peterson v. Public Service Commission of Utah et al.* (1954), 1 Utah 2d 324, 266 P.2d 497. The *Peterson* case involved a proceeding to review an order of the Commission permanently suspending tariffs filed by Wally Motor Lines, and referred to in the Court's opinion as *Peterson*, for the transportation of commodities between Salt Lake City and Provo, Utah, via Heber City. The right to render the service involved hinged upon the language of the certificate. At the hearing no question was raised that the rates proposed were excessive, discriminatory or in any way unfair or improper. The hearing resolved itself around the interpretation of the *Peterson* certificate. In reversing the Commission's order permanently suspending the tariffs filed by *Peterson*, the Supreme Court states:

“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.”

The case of *Salt Lake Transfer Company v. Barton Truck Lines, Inc.* (1959), 8 Utah 2d 401, 335 P.2d 829, involved proceedings to review the construction that the Public Service Commission had placed upon certificates of convenience and necessity authorizing Salt Lake Transfer Company to operate as a common motor carrier. The correctness of the rule set forth in *Peterson v. Public Service Commission*, supra, was reiterated by the Supreme Court as follows:

“We do not gainsay the correctness of the rule set forth in *Peterson v. Public Service Commission*, relied upon by plaintiffs; that the extent of the carrier’s authority is to be found from the terms of the certificate. We there said that it is not permissible, ‘to go back of the language and contradict its *plain terms*\* \* \*.’”

In the case of *W. S. Hatch Company v. Public Service Commission* (1954), 3 Utah 2d 7, 277 P. 2d 809, involving a petition by Hatch for authority to haul acid used in uranium mining, the Commission denied in part Hatch’s application and permitted a protest by another carrier upon the ground that its authority includes the right to transport acid in bulk in tank cars. The specific issue before the Supreme Court was whether or not the

protestant Prichard's authority included the right to haul acid. In the Hatch case the Court states:

"The interpretation of the Certificate presents a question of law only. The extent of Prichard's authority must be as found within the four corners of the Certificate and the rights thereunder must be such as are fairly understood from the import of its language. Unless there is some uncertainty or ambiguity in the Certificate there is no basis for interpretation or clarification. Operating rights may not be extended by interpretation, and Prichard's authority could not be augmented in this proceeding wherein he appeared only as a protestant."

The Commission, in arriving at its order, relies upon the case of *Milne Truck Lines, Inc. v. Public Service Commission of Utah* (1962), 13 Utah 2d 72, 368 P.2d 590. In this case Milne, in contemplation of transporting petroleum and petroleum products in bulk in tank vehicles, caused to be published a tariff. An investigation and suspension hearing was ordered by the Commission to determine Milne's authority to handle the transportation of petroleum and petroleum products in bulk.

Milne presented no evidence at the hearing and relied entirely upon the interpretation of its certificate. The Milne case is distinguished from the instant matter in the following particulars:

(a) Milne's authority is for the transportation of "commodities generally," and in addition gives Milne authority to handle the transportation of such items as

explosives, airplane parts etc. Appellant's authority is for the transportation of "property" *with certain exceptions* under part C of its authority.

(b) In the *Milne* case the Supreme Court noted that Milne had always reported under the category of general freight but never under liquid petroleum products. Appellant's predecessors in interest reported in its annual report under both general freight and petroleum products (Ex. 2).

(c) In the *Milne* case evidence was offered by the protesting carriers to show that Milne was never issued authority for the transportation of petroleum products in bulk, nor did Milne hold itself out to perform this service. Milne presented no evidence to the contrary. Appellant has actively solicited the transportation of petroleum products in bulk, and immediately upon receiving its first request for the transportation of said products made application to publish a rate and made arrangements to procure the necessary equipment (Ex. 4, R. 55-56). No evidence was offered to the contrary by the Commission or protesting carriers Clark and Pacific.

(d) In the *Milne* case there was no evidence offered that Milne or any other general commodity carrier had ever protested the granting of authority to transport petroleum products in bulk. The evidence discloses in the instant matter that the authorities of Pacific and Clark were both granted prior to the issuance to appellant of its authority, and that appellant has actively protested any

and all applications for certificates of convenience and necessity within the area served by appellant. There is no evidence to the contrary.

(e) In the *Milne* case no evidence was offered concerning the protest of carriers specializing in the transportation of petroleum and petroleum products in bulk. The evidence in the instant matter discloses that the Commission, by express direction, required notice to be sent to respondents Pacific and Clark of the hearing resulting in the granting to appellant of its authority, and discloses that both Pacific and Clark have appeared in protest to the granting of applications for the transportation of general commodities and at said hearings have attempted to elicit from the general commodities carriers an exception to the transportation of petroleum products in bulk.

The Commission erroneously interprets the decision in the *Milne* case, *supra*, claiming that said case holds that the word "property" in appellant's certificate does not, under the facts and circumstances in the instance matter, include all articles of commerce. This is not the holding of the *Milne* case. In that case the term "commodities generally" was subject to interpretation and the Supreme Court states:

"The meaning of the term 'commodities generally' must be ascertained from the particular facts of each case."

In addition the Commission in its order quotes in finding number 7 the language cited by appellant in its reply brief and taken from the *Milne* case as follows:

“under Milne’s all inclusive interpretation of ‘commodities generally’ the further designation of commodities would be unnecessary.” and then interprets contrary to the law set forth above.

Appellant agrees with the Court’s reasoning in the *Milne* case, *supra*, that where certificates of convenience and necessity authorize the transportation of commodities generally, and in addition authorize the transportation of such items as explosives, airplane parts, supplies, equipment etc, that the further designation of commodities would be unnecessary if the term “commodities generally” includes all property capable of transportation. By the same token, where a certificate of convenience and necessity authorizes the transportation of property without exception in certain areas, and then expressly excludes the transportation of certain commodities in other areas including liquid petroleum products in bulk, the exclusion would be wholly unnecessary if the word “property” did not include those items expressly excluded. Part C of appellant’s authority reads as follows:

“Between all points in Utah authorized in A and B above, on the one hand, and all points in Daggett County, Utah, on the other, over irregular routes, on call, except service to and from Daggett County points is specifically restricted against the movement of household goods as usually defined, explosives, petroleum and petroleum products in bulk, and commodities which *be* reason of their size, shape, weight, origin or destination require special handling and special equipment.”

It is apparent that appellant is only restricted against the movement of petroleum and petroleum products in bulk where said products originate at or are destined to Daggett County, Utah.

The case of *Coastal Tank Lines, Inc. et al v. Charlton Bros. Transportation Company, Inc.* (1948), 48 MCC 289, is an action by a specialized petroleum products carrier challenging the right of Charlton Bros. Transportation Company, Inc. to handle the transportation of petroleum products in bulk in tank vehicles under its general commodities authority.

The certificate of Charlton Bros. Transportation Company, Inc. authorizes it to engage in transportation in interstate and foreign commerce as a common carrier by motor vehicle over regular and irregular routes between certain points or territories in Maryland, Pennsylvania, Virginia, and West Virginia. The certificate contains three descriptions, each relating to different points or territories of the kinds of commodities Charlton may transport. In part one the carrier is authorized to handle the transportation of general commodities except livestock, dangerous explosives, household goods, coal, sand and lime. In part two the carrier is authorized to handle the transportation of general commodities except explosives and commodities of unusual value and household goods. In part three the carrier is authorized to handle the transportation of general commodities except livestock, explosives, household goods and loose bulk goods requiring special equipment. It was conceded at the time

of the hearing that the carrier could not handle the transportation of petroleum products in bulk, in tank vehicles under part three of its authority. *The question before the Commission was whether in descriptions one and two the term "general commodities" includes petroleum products in bulk, in tank trucks.* The complainants and integrators specialize in the transportation of petroleum products and contended that the term "general commodities" does not include petroleum products in tanks and that the transportation thereof by Charlton is being performed without authority. The Commission states:

"We believe the weight of authority supports the conclusion that the term 'general' commodities' in certificates of public convenience and necessity means all types of commodities, except to the extent restricted. To hold, for example, that two certificates, one containing authority to transport general commodities without exceptions, and another, authority to transport general commodities, except petroleum products, in bulk, in tank trucks, grant identical operating rights, is to do violence to the plain meaning of the terms of the certificate. Interpretations of certificates based on classifications of motor carriers, or on the basis of matters antecedent to the issuance of a certificate, the terms of which are not patently ambiguous, can only lead to instability in the motor carrier industry and uncertainty among their patrons as to the operating rights of motor carriers.

While it may be that when the certificate was originally issued to the defendant, petroleum products, in bulk, in tank trucks, should have been excepted from the grant of authority, they

were not, and we may not now by interpretation, so modify the certificate."

Appellant's certificate is clear, definite and certain and the attempt on the part of the Commission to interpret said certificate contrary to its terms is arbitrary, capricious and is not supported by the evidence and is contrary to the law.

## POINT II

THE FINDINGS AND ORDER OF THE COMMISSION ARE NOT SUPPORTED BY ANY COMPETENT EVIDENCE AND THE ORDER OF THE COMMISSION IS ARBITRARY AND CAPRICIOUS.

Where the Commission acts in an arbitrary and capricious manner its order is without authority and must be set aside. Orders issued in the complete absence of factual support are clearly arbitrary, capricious and void. *Salt Lake Transfer Company v. Public Service Commission of Utah* (1960), 11 Utah 2d 121, 355 P2d 706. The Commission in its finding number 2 recognizes that one of appellant's predecessors in interest, Sterling Transportation Company, transported crude oil and gasoline in bulk and crude oil and gasoline from 1940 to 1946. It then concludes that having failed to transport the products after 1946 it should be deemed to have abandoned any claim for such transportation if it ever possessed an authority to do so. Such a finding is not a statement of fact but a mere conclusion, wholly unsupported by the evidence and contrary to the law. By Investigation Docket No. 95 appellant was not called

upon to show cause why its authority to handle the transportation of petroleum products in bulk should not be treated as having been abandoned and thus cancelled. Abandonment as applied to property is the voluntary relinquishment of the possession of a thing by the owner with the intention of terminating his ownership. *Ballentine Law Dictionary* 1930; *Sven J. Johanson et al.*, d/b/a *Johanson Carbic Oilfield Trucking & Moving*, Application No. 16645, Permit No. B-3566, Public Utilities Reports, Volume 3, Pur. 3d 1960, page 520.

The mere fact of an interruption in operations does not automatically revoke a certificate. *Quaker City Bus Line-Pur-Blackhawk Line*, MC-F 1546, 38 MCC 603. A continual holding out as willing to perform the service is contrary and inconsistent with abandonment. *Charlton Bros. Transportation Co., Inc.-Pur-Rogers*, MC-F-1864, 39 MCC 610; *Beef River Valley Telephone Co.*, 2 U-989, Certificate of Convenience and Necessity 54, Volume 16, Public Utilities Reports, New Series 1937, page 361.

The evidence is undisputed that appellant has continuously since obtaining its authority held itself out as ready, able and willing to handle the transportation of petroleum products in bulk in tank vehicles.

The statement of the Commission in finding number 2 that appellant never attempted to engage in any transportation of petroleum products in bulk in tank vehicles prior to the filing of the subject Tariff is contrary to the evidence. The undisputed evidence is that appellant

has since receiving its authority actively solicited any and all traffic available including the transportation of petroleum and petroleum products in bulk in tank vehicles. In addition appellant has made numerous inquiries concerning the availability of equipment should it be tendered traffic requiring the use of liquid bulk equipment, and upon receiving its first request published the tariff in question (R. 55-58, 37-40, 41). Business prudence will not dictate a substantial investment in equipment, said equipment to remain idle pending a request for its use, and in the interest of the public a carrier must operate economically. So long as the carrier has available to it the necessary equipment when the need arises it is in a position to properly service its certificate.

The Commission in finding number 6 states:

“The Commission must decide each case on its own merits. It should not give a word or phrase an enlarged meaning which it was never intended to have; — *a meaning which the owner of the certificate never intended it should have and which in many respects its owner would not now wish to claim.*” (Emphasis added)

There is a complete absence of factual support for the above quoted language and it is contrary to the plain language of appellant's certificate and of appellant's intentions and claims as evidenced by the record. In fact, if appellant never intended or wished to claim its certificate permitted the transportation of petroleum and petroleum products in bulk in tank vehicles, this proceeding would not now be before the Court.

The fact that appellant, without protest, permitted other petroleum carriers to secure certificates of convenience and necessity is immaterial. It is possible that additional service may be required notwithstanding the fact that there is in existence carriers presently authorized to render such service. In addition appellant's authority was not granted until after the issuance to Clark and Pacific to their certificates of convenience and necessity.

The Commission in finding number 4 states:

“The word ‘*property*’, in common parlance, has a very broad application, but what might be the result if we should give to it the application for which Freightways here contends? If ‘*property*’, without exclusions includes petroleum in bulk, in tank vehicles, then it includes everything transportable and Freightways can transport throughout all its territory other than to and from Daggett County household goods, boilers, stressed concrete *girders*, oil and gas rigs, tractors on flat rack trucks, in fact, every conceivable article or product known to commerce. Uintah Freightways, of course, does not claim such a right at this time, but its claim to transport such items would be just as valid as to transport petroleum and petroleum products in bulk in tank vehicles.”

The word “property” as used in appellant's certificate means “that which is palpable or tangible and is material and physical in its nature.” 42 *Am. Jur.*, Property, Section 11, page 194. Petroleum and petroleum products in bulk are capable of being touched or felt and are tangible, material and physical in nature.

Where the Commission interprets the English language contrary to the well-established definitions, thus nullifying rights *bargained and paid for* by appellant, the action on its part is arbitrary and capricious. In addition such action can only lead to instability in the motor carrier industry and create uncertainty in the minds of the shipping public concerning the products carriers can handle. Through specialization we cannot, by mere misuse of the English language, eliminate the general commodity carrier anymore than we would seek to eliminate the general physician or general practitioner.

To say that appellant does not claim the right to handle the transportation of household goods, boilers, stressed concrete girders, oil and gas rigs, tractors on flat rack trucks and every other conceivable article or product known to commerce through all its territory, other than to and from Daggett County, is a conclusion of the Commission unsupported by any evidence and is clearly arbitrary and capricious. Appellant has since first receiving its authority and does now hold itself out as ready, able and willing to handle the transportation of the items referred to above, and in fact engages in such transportation.

In general the purported findings of the Commission are mere conclusions of either law or fact and are without any factual support and are clearly arbitrary, capricious and void.

## POINT III.

THE PERMANENT SUSPENSION OF ITEM 324-2 OF SECOND REVISED PAGE 34-8 OF TARIFF 5-G PSCU NO. 5 IS CONTRARY TO THE STATUTES OF THE STATE OF UTAH, IS ARBITRARY, CAPRICIOUS AND UNCONSTITUTIONAL.

Under Section 54-6-4, *Utah Code Annotated* 1953, the Commission cannot arbitrarily refuse to approve a tariff, thus nullifying appellant's right under its certificate of convenience and necessity. In this connection we call the Court's attention to the case of *Peterson v. Public Service Commission of Utah*, supra, which states:

"It is the prerogative of this Court to determine whether the Commission regularly pursued its authority. Under Sec. 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."

## POINT IV.

THE COMMISSION ERRED IN DENYING APPELLANT'S OFFER OF PROOF CONCERNING AUTHORITIES OF CERTAIN CARRIERS.

Appellant offered in evidence the authorities of Garrett Freight Lines, Inc., Lyman Truck Line, Linck Trucking, Inc., Uintah Truck Express Company, L. R. Reid & Sons Truck Line and Park City Truck Lines (R. 52-53). The purpose of this offer was to prove that

the Commission has heretofore issued authorities, general in their terms, with explicit exclusions as to certain commodities including in some instances petroleum products in bulk.

As stated in Point I, where a certificate of convenience and necessity authorizes the transportation of property without exception in certain areas and then expressly excludes the transportation of certain commodities in other areas, the exclusion would be wholly unnecessary if the word "property" did not include those items expressly excluded. *Milne Truck Lines, Inc. v. Public Service Commission of Utah*, supra; *Coastal Tank Lines, Inc. et al. v. Charlton Bros. Transportation Company, Inc.*, supra.

## CONCLUSION

Appellant's authority authorizes it to transport property without exception in part A and B and has an express limitation in part C. If the term "property" did not include the transportation of petroleum and petroleum products in bulk in tank vehicles, the express limitation in part C would be wholly unnecessary. Appellant's predecessors in interest handled the transportation of petroleum and petroleum products in bulk. Appellant has since it acquired its authority considered itself ready, able and willing to handle the transportation of petroleum products in bulk and has continuously since its inception solicited said business.

The interpretation placed on appellant's authority by the Commission is contrary to the plain, certain and unambiguous terms of the certificate, has no factual support and is clearly arbitrary, capricious and void. We respectfully submit that appellant has authority to transport petroleum and petroleum products in bulk in the area covered by Item 324-2 of Second Revised Page 34-A of Tariff 5-G PSCU No. 5, and that the order of the Commission should be reversed and said Commission should be ordered to reinstate and make permanent said Tariff.

Respectfully submitted,

WILLIAM S. RICHARDS  
GUSTIN, RICHARDS &  
MATTSSON  
Attorneys for Appellant