

1963

Uintah Freightways v. Public Service Commission of Utah et al : Brief of Defendants and Respondents

Utah Supreme Court

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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

OCT 8 - 1963

Clerk, Supreme Court, Utah

Case
No. 9886

BRIEF OF DEFENDANTS AND RESPONDENTS

Appeal From The Order of the Public Service
Commission of Utah

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Case
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BRIEF OF DEFENDANTS AND RESPONDENTS

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

On March 5, 1963, the Public Service Commission issued its order permanently suspending item No. 324-2 of Second Revised Page 34-A, of Tariff 5-G, PSCU No. 5, filed October 25, 1962 by Uintah Freightways and directing Uintah Freightways to cease transportation of petroleum or petroleum products, in bulk, in tank vehicles, under or pursuant to said tariff.

RELIEF SOUGHT ON APPEAL

Plaintiff and appellant seeks reversal of the order of the Public Service Commission dated March 5, 1963.

STATEMENT OF FACTS

Appellant's statement of facts is filled with argument and conclusions .

On October 25, 1962, the Intermountain Tariff Bureau, Inc. issued a Second Revised Page 34-A to become effective on November 30, 1962 in Tariff No. 5-G, PSCU No. 5. The effect of said publication was to designate a new item (324-2) naming a rate of 8¢ per barrel, per hour, for hauling crude oil, in bulk, between specific points in the Uintah Basin area. The publication was made for, and on behalf of, Uintah Freightways, appellant herein. Respondents filed written objections asking that the tariff be suspended. The Commission refused respondents' request for temporary suspension and set the matter for hearing, which was held in Salt Lake City on December 18, 1962.

Pursuant to such hearing, the Commission, on March 5, 1963, issued its report and order directing appellant to cease transportation of petroleum or petroleum products, in bulk, in tank vehicles, and suspended and cancelled the above-mentioned tariff. The authority held by appellant under which it claims the right to transport petroleum and petroleum products, in bulk, is contained in Certificate of Convenience and Necessity No. 1288 issued to it on September 22, 1958. That certificate authorizes it to "operate as a common carrier of property handling both freight and express in intrastate commerce, . . ." between the points involved.

It is this language upon which appellant bases its claimed right to transport petroleum and petroleum products, in bulk.

The certificate under question is an outgrowth of a certificate originally issued to Sterling Transportation Company in 1926, Certificate No. 247. (R. 89) The language of the Commission's initial order dated October 2, 1926, in Case No. 885, was as follows:

"ORDERED FURTHER, That the Sterling Transportation Company be, and it is hereby, authorized to operate an automobile freight line (under Certificate of Convenience and Necessity No. 274) between Vernal and Salt Lake City, Utah, via Duchesne, Utah, serving all points within but not without the Uintah Basin; that is to say, that it shall not receive freight at Heber City, Utah, destined to Salt Lake City or intermediate points beyond Heber City, Utah, nor at Salt Lake City when destined to Heber City or to intermediate points between Salt Lake City and Heber City, Utah." (R. 89)

It should be noted that this original certificate contained no commodity description whatever and merely authorized Sterling Transportation Company to operate an automobile freight line. Tariffs were filed pursuant to the certificate on August 11, 1926, and supplemental tariffs were filed on October 22 and October 23, 1926. Neither of these tariffs contained any published rate on bulk petroleum products.

On August 26, 1938, in Case No. 2131, the Commission amended and clarified the above certificate No. 274 held by Sterling Transportation Company in the following language:

“IT IS ORDERED, That Certificate of Convenience and Necessity No. 274, granted to the Sterling Transportation Company, a corporation, by the Public Utilities Commission of the State of Utah, on October 2, 1926, be, and the same is hereby amended and clarified so as to authorize said Sterling Transportation Company, a corporation, to operate as a common motor carrier of property, *handling both freight and express*, between Salt Lake City and all points within the Uintah Basin and east of Heber City, Utah, via either of the two following routes: . . .” (R. 91) (Emphasis Added)

On February 17, 1947, the Commission issued an order changing the corporate name of Sterling Transportation Company to Uintah Freight Lines and continuing in effect Certificates of Convenience and Necessity Nos. 274, as amended, and 503, as originally granted, under the name of Uintah Freight Lines. (R. 95)

On August 28, 1956, the Commission cancelled Certificates of Convenience and Necessity Nos. 274 and 503 held by Uintah Freight Lines and issued a new Certificate of Convenience and Necessity No. 1168 to Ringsby Truck Lines, Inc. pursuant to a joint application of Uintah Freight Lines and Ringsby Truck Lines whereby the latter was to assume the operating rights held by the former. The language of the new certificate issued to Ringsby was essentially the same as that held by Uintah Freight Lines and is in substantially the same language as that presently held by appellant. The pertinent portion of the certificate, that is the commodity description, was, and is, identical with that issued in 1938 to Sterling Transportation Company in certificate No. 274, as amended. That language was, and is, “to operate as a common carrier of property, *handling both freight and express.*” (R. 96-99) (Emphasis Added)

On August 6, 1957, the Commission issued its report and order in Case No. 4325 — Sub 1 pursuant to the application of Ringsby Truck Lines, Inc. granting additional authority to Ringsby “authorizing it to operate as a common carrier by motor vehicle for the transportation of *commodities generally*, excluding household goods, explosives, *petroleum and petroleum products in bulk*, and commodities which by reason of their size, shape, weight, origin or destination require special handling or special equipment, over irregular routes, on call, between all points in Utah which applicant is now authorized to serve under Certificate of Convenience and Necessity No. 1168 on the one hand, and all points in Daggett County, Utah, on the other hand,” (R. 104) (Emphasis Added)

In its Findings of Fact in this proceeding, the Commission stated:

“In addition to the services offered by protestants Ashworth Transfer Inc. and Salt Lake Transfer Company who are specialized heavy haulers holding statewide authority in Utah, *other specialized haulers* such as household goods carriers and *bulk petroleum carriers* are authorized to serve the area intrastate.” (R. 103) (Emphasis Added)

This authority issued to Ringsby Truck Lines was subsequently transferred to appellant and is contained in part C of its present certificate.

On September 22, 1958, the Commission, in Case No. 4656, issued Certificate of Convenience and Necessity No. 1288 to appellant, Uintah Freightways, pursuant to a joint petition by Ringsby and appellant. The authority thus issued to appellant is that previously held by Ringsby and is the authority which it contends authorizes it to transport petroleum and petroleum products, in bulk. The authority reads now as it did in 1938: “to operate as a common carrier of property *handling both freight and express* in intrastate commerce . . . ” (R. 110) (Emphasis Added)

We think it important to briefly set out the history of the authorities of respondents Clark Tank Lines Company, hereinafter referred to as “Clark” and Pacific Intermountain Express Co., hereinafter referred to as “P.I.E.”.

On July 31, 1956, P.I.E. acquired the authority previously held by Collett Tank Lines which authorizes it

to transport petroleum and petroleum products, in bulk, in tank trucks and trailers over irregular routes between all points and places in the state of Utah. (R. 114) This statewide authority was obtained by Collett Tank Lines in 1953. (R. 121) Collett Tank Lines first began transporting petroleum and petroleum products, in bulk, in the state of Utah in 1941. (R. 132)

Clark obtained its authority to transport petroleum and petroleum products, in bulk, between all points and places in the state of Utah in 1953 at the same time Collett Tank Lines obtained identical authority. (R. 139) Clark began transporting petroleum and petroleum products, in bulk, in the state of Utah by acquiring the authority previously held by Paul J. Cox which was issued in August, 1943. (R. 145)

Neither appellant or any of its predecessors appeared in opposition to any of the applications, proceedings or hearings by which respondents Clark and P.I.E., or their predecessors, acquired their specialized authority for handling bulk petroleum and petroleum products. (R. 66)

On pages 5 and 6 of its brief, appellant states that Uintah Freight Lines and its predecessor, Sterling Transportation Company, handled transportation of liquid petroleum products, in bulk, and cites as authority therefor, Exhibit 2. Such is not the case. Exhibit 2 clearly shows that the *only* bulk transportation performed was in the years 1938 and 1939, in an unidentified amount, by Sterling Transportation Company. This fact was properly noted by the Commission in its order. (R. 196-

197) Sterling Transportation hauled no bulk petroleum at any other time. Uintah Freight Lines never hauled any bulk petroleum. Ringsby has never hauled any bulk petroleum, nor has appellant hauled any bulk petroleum at any time.

Appellant has never owned any equipment suitable for the transportation of bulk petroleum products (R. 24) nor has it ever had a tariff on file which would allow such transportation. (R. 26)

ARGUMENT

Point I.

APPELLANT'S CERTIFICATE IS SUBJECT TO INTERPRETATION BY THE COMMISSION

The Commission properly stated the issue in its Findings of Fact:

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

We do not question the authorities and the prior opinions of this Court to the general effect that if a certificate is clear and unambiguous and if there is no uncertainty therein, there is no basis for interpretation. Appellant quotes from the case of *Salt Lake Transfer Company vs. Barton Truck Lines, Inc.* (1959), 8 Utah 2d 401, 335 P. 2d 829. However, it does not continue with the pertinent portions of the quotation. This Court held in that case:

“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 * * *.’ However, that is only one side of the coin. The other is that when the language is reasonably susceptible of different interpretations it can only be properly understood in the light of existing circumstances and the purpose behind it. We are unable to see any particular merit in plaintiffs’ contention, but if there be any, this case is a good example of the necessity of looking to the background and character of the grant to determine the rights existing thereunder.

“The order made finds further support in the doctrine of administrative interpretation: that where the grant is open to doubt or uncertainty, some weight is to be given to the interpretation and application the commission has made. Further implementing this conclusion is the fact that the plaintiffs themselves have heretofore conformed their operations with the Commission’s interpretation, . . . ”

That each case must be determined upon its own merits is clearly set forth in the language of this Court in *Milne Truck Lines, Inc. vs. Public Service Commission of Utah* (1962), 13 Utah 2d 72, 368 P. 2d 590. That case is absolutely controlling in this situation. In that case this Court sustained an order of the Public Service Commission holding that the authority of Milne authorizing it to transport “commodities generally” did not

include the authority to transport petroleum and petroleum products in bulk. In that case as in this case, there had been no holding out by the carrier, no tariff published, and no equipment available for such transportation. The Court stated:

“In the instant case there is evidence that neither the Public Service Commission nor the carriers operating in this area have ever assumed that the term ‘commodities generally’ included petroleum and petroleum products in bulk in tank vehicles.”

Appellant contends that it is authorized to transport “property handling both freight and express” and urges that the term property is broader than the term general commodities or commodities generally as construed in the *Milne* case. Under appellant’s theory if “property” is a part of the commodity description and is all inclusive and broader than the term “general commodities,” there would be no need to add the phrase “handling both freight and express.”

Actually the word “property” is not a part of the commodity description in appellant’s certificate and is not used to describe the scope of the authority granted but is merely the term used by the Commission to denote whether or not the authority relates to the transportation of “property” or “passengers.” This is evident by the form used by the Commission for applications for Certificates of Public Convenience and Necessity (Form No. A-27). In the caption of that form, there is a space for insertion of either the term “passengers” or “property”, and there are subsequent provisions for the commodity description.

In other words, the appellant's certificate authorizes the transportation of "property" as opposed to "passengers", and the descriptive portion of the commodity description is "freight and express." The term "express" has been consistently defined by the Utah Commission and by the Interstate Commerce Commission as involving an expedited type of service not provided by general commodity carriers, usually at an increased rate and normally relating to small shipments of limited weight.

In the recent case of *Railway Express Agency, Incorporated, Extension — Nashua*, MC 66562 (Sub No. 1515), 15 F.C.C. 35, 508, 91 M.C.C. 311, the Interstate Commerce Commission stated:

"Later, in *Transportation Activities of Arrowhead Freight Lines* (11 Federal Carriers Cases 33,239), 63 M.C.C. 573, and in *Mistletoe Exp. Service Extension — Texas* (9 Federal Carriers Cases 32,793), 61 M.C.C. 737, 747, it was emphasized that the term 'general commodities moving in express service' includes a *bona fide holding out*, together with the *ability to transport* any commodity which may be safely transported in ordinary van-type equipment, including those requiring a maximum degree of care or security or both; *but that it does not include the transportation of liquid commodities in tank vehicles, . . .*" (Emphasis Added)

See also *Railway Express Agency, Incorporated, Extension*, MC 66562 (Sub No. 217), 3 F.C.C. 30,064, 31 M.C.C. 363, *Railway Express Agency, Incorporated, Extension*, MC 66562 (Sub No. 194), 3 F.C.C. 30,359,

31 M.C.C. 603 and *Arrowhead Freight Lines, Ltd.*, No. MC C-1052, 9 F.C.C. 32, 615, 61 M.C.C. 131.

Thus if appellant is to prevail, it must be on the proposition that the single term "freight" authorizes the transportation of bulk petroleum products notwithstanding a previous history that none of the carriers in the state of Utah, including appellant, nor the Commission has ever given it such a construction.

We think it must be conceded that the term "freight" means something less than the term "general commodities" as that term was construed in the *Milne* case. The Utah Legislature has so treated it. In the definition of the term "automobile corporation" in Section 54-2-1 Utah Code Annotated, 1953, the statute refers to persons, corporations, and others engaged in the business of transporting "freight, merchandise, or other property." Paragraph (14) of the same section defines the term "common carrier" by distinguishing between "freight, refrigerator, oil, stock, and fruit car corporations engaged in the transportation of property." Furthermore, if the term "freight" was all inclusive, as urged by appellant, there would be no necessity for the additional authority to handle "express." The Legislature has again clearly indicated that it considers the terms "freight and express" to be less than all inclusive. In Section 59-15-4 Utah Code Annotated, 1953, creating a sales tax on transportation, the Legislature levied a tax "for all transportation . . . provided, that said tax shall not apply to intrastate movements of *freight and express*." (Emphasis Added) Thus it is not subject to question that appellant's position in

this case is much weaker than was Milne's position in the case above referred to.

In the *Milne* case, this Court also stated:

"The distinction made in these reports between 'general freight' and 'liquid petroleum products' would seem to indicate that the terms 'general commodities' and '*general freight*' are not understood to include petroleum products in bulk."
(Emphasis Added)

Appellant states in its brief in several instances that it has protested all applications for authority to transport petroleum products, in bulk, since it was certificated in 1958 and adds as an aside that no such applications have been filed. To claim any benefit from such a statement is, in our opinion, nonsensical. The fact of the matter is that the record clearly shows that neither appellant nor any of its predecessors appeared in protest to *any* of the applications or hearings of any of the carriers possessing the specialized authority to transport petroleum and petroleum products, in bulk. (R. 66) Appellant wants to take credit for the fact that no bulk petroleum applications have been filed since its certification in 1958 and wants to ignore the failure of its predecessors to appear in protest to the applications of respondents and their predecessors, and paradoxically it wants to take credit for the fact that one of its predecessors (Sterling Transportation Company) did haul some unknown quantity of bulk petroleum in 1938 and 1939. We submit that appellant can gain no comfort from such inconsistent positions.

This Court in the *Milne* case, *supra*, indicated that the failure to protest such applications by a general freight or general commodity carrier was of considerable importance. The Court stated:

“When a carrier which has not previously transported petroleum products in bulk applies to the Commission for authority to do so, almost invariably, the carriers already possessing such authority submit a formal protest to the Commission. Even though there is no evidence that *Milne* or any other general commodity carrier has ever protested the granting of such authority, *Milne* contends that it has always had authority to transport petroleum products in tank vehicles.

“There is no indication in the record that *Milne* or any other general commodity carrier has ever held itself out to the public as a carrier of petroleum products; nor is there any indication that they ever assumed they had authority to do so. On the other hand, as has been pointed out, there is evidence that both the Commission and the carriers have made a distinction between *general freight* and petroleum products in bulk transported in tank vehicles.” (Emphasis Added)

Appellant, in its Statement of Facts, makes the statement that it has actively solicited any and all traffic available, including bulk petroleum products, since it received its authority in 1958, and again repeats this contention in its Argument on page 10 of its brief. The Commission found to the contrary. Its finding is fully supported by the evidence.

It is undisputed that the appellant has never owned any equipment suitable for bulk petroleum transportation

and it has never had a tariff on file permitting such transportation. Section 54-3-6, Utah Code Annotated, 1953, makes it unlawful for a carrier to perform transportation without an appropriate tariff on file.

We respectfully direct the attention of the Court to the testimony of Witness Smith, the traffic manager of appellant, and Witness Grua, its president and general manager. On direct examination, Witness Smith testified directly and specifically that he personally had solicited bulk petroleum transportation. (R. 16, 17) However, on cross-examination, he reluctantly admitted that he had not. (R. 23)

Mr. Grua testified generally concerning the solicitation of bulk petroleum products which consisted of a vague reference to a single contact with Standard Oil Company in 1961 in which he stated that the solicitation included all of the products manufactured by Standard Oil Company but that they did not get far enough in the conversation to discuss the availability of equipment or the lack of a tariff. (R. 60) The other so-called solicitation consisted of contacts with his personal friend, Mr. Sowards, who has an interest in H. S. Sowards & Sons, a company domiciled in Vernal, Utah, which itself transports petroleum products as a commission agent for Continental Oil Co. Continental Oil Co., not H. S. Sowards & Sons, pays the freight and has the authority to give the business to a soliciting carrier. Mr. Sowards admitted on cross-examination that he had no authority to award this business to appellant or anyone else. (R. 46) Certainly common sense dictates that if Grua were serious in soliciting bulk petroleum business from Con-

tinental Oil, he would have made his contact directly with that company which pays the freight, selects the carrier, and has the authority to award the business, and not with his friend in Vernal who was unable to give the business to him had he wanted to.

We cannot believe that appellant is serious in its contention that it has ever actually solicited bulk petroleum business and held itself out for such transportation. We think the record clearly shows that it has not and that no carrier can hold itself out to perform a transportation service for which it has no equipment available and no tariff on file. Certainly the evidence clearly supports the Commission's finding that it has not held itself out for such transportation.

The Commission's interpretation is further borne out by an examination of the history of bulk petroleum transportation in the state of Utah. At the time Sterling Transportation Company was issued its authority, there was no outstanding authority for petroleum products, in bulk. This specialized authority was issued to respondents and other carriers in similar situations during the war emergency in 1941 and 1942. The meticulous care taken by the Commission in determining what bulk petroleum authority should be issued is evidenced by Commissioner Hacking's dissent in 1947 in Case No. 2894 granting Clark Tank Lines Co. additional authority. He stated:

"I dissent. I do not believe that the record supports the application for additional operating authority in the State of Utah for the transportation of petroleum and petroleum products in bulk in tank-truck and tank-trailer. The record shows

that during the early days of the recent war railroad tank cars being used in the transportation of petroleum and petroleum products in bulk were withdrawn from service in this area suddenly placing a very heavy burden on tank-truck transporters. It further appears that during the following years until cessation of hostilities, there was an increased distribution of gasoline occasioned by war installations which was noticeably reduced after the war and railroad tank cars are back in service in this area.

The record further shows that since October 14, 1936, R. A. Gould has served as a contract carrier of petroleum products in bulk in the State of Utah, and that since November 19, 1941, Owen M. Collett has been authorized and has served the shippers of the State of Utah for the transportation of petroleum and petroleum products. Under press of war emergency, contract carrier permits #138 and #290 in the name of R. A. Gould were cancelled, and a temporary certificate of convenience and necessity #634 was issued on April 29, 1944. On the 15th day of July, 1943, contract carrier permits #274 and #285 issued to Owen M. Collett were cancelled, and temporary certificate of convenience and necessity #616 was issued. Each of the above mentioned carriers and particularly Owen M. Collett has greatly increased the amount of equipment operated since the beginning of the war.

It further appears that said existing contract carriers subsequently operating as common carriers of petroleum products in bulk at the time of the taking of the testimony in this case, were financially able, and had sufficient equipment to handle all of the petroleum and petroleum pro-

ducts in bulk reasonably anticipated to be shipped in intrastate commerce in Utah by motor vehicle. Before any additional permanent operating authority, arising out of the war emergency is granted, R. A. Gould and Owen M. Collett should be given a reasonable opportunity to demonstrate whether or not they can adequately meet the service requirements following post war adjustments and there should be convincing evidence that these two carriers are unable or unwilling to meet the reasonable demands that might be made of them. I do not believe any such showing has been made in this record.

After careful examination of the evidence, I find that there is no showing of convenience and necessity for applicant's service as described in his application, and therefore, the application should be denied." (R. 142B, 142C)

It is apparent that neither appellant's predecessors nor the Commission considered such predecessors or other general commodity carriers as being in the bulk transportation business. This again points up the importance of their failure to appear and protest such applications. If they were, in fact, holding themselves out for such transportation and claiming authority to perform it, their failure to make such facts known, must work as an estoppel at this late date.

Appellant argues that inasmuch as there is an exclusion in part C of its authority relating to bulk petroleum products the omission of such exclusion in the portion under consideration is of importance. There might be some substance to this contention if the different portions of appellant's authority had been issued at the same time.

However, part C was issued to Ringsby Truck Lines in 1957, and the restriction against the transportation of bulk petroleum products was voluntarily placed upon the authority by the Commission even though the certificated bulk petroleum carriers did not protest the application. (R. 103) Their failure to so protest is further evidence that they did not consider general commodity carriers or general freight carriers as even asserting a right to transport bulk petroleum products.

Appellant cites the case of *Coastal Tank Lines, Inc. et al vs. Charlton Bros. Transportation Company, Inc.* (1948) 48 M.C.C. 289, to the effect that the Interstate Commerce Commission has interpreted a certificate authorizing the transportation of general commodities as including authority to transport petroleum products in bulk. The Interstate Commerce Commission has, on many different occasions, construed the term "general commodities" in different ways. When this Court was considering the *Milne* case, *supra*, the interpretation claimed by appellant here was urged upon it, and it was referred to the *Coastal Tank Lines* case, *supra*. The Interstate Commerce Commission's interpretation was rejected by this Court.

Further evidence that neither the parties nor the Commission have ever considered appellant's authority to authorize the transportation of bulk petroleum products is found in the order of the Commission, dated September 22, 1958 in which appellant was issued the authority now under consideration. In paragraph 9 of that order, the Commission stated:

“That Uintah Freightways has filed a schedule of equipment that it proposes to use in the conduct of the transportation service described in this application, which equipment appears to be proper and adequate to perform the proposed transportation service.” (R. 109)

That schedule of equipment contained none suitable for the transportation of bulk petroleum products. Had either appellant or the Commission considered the authority transferred to include bulk petroleum products, such a statement would not have been made in the absence of such specialized equipment.

The following quotation from the *Milne* case, *supra*, is eloquent argument of its applicability to the case at hand:

“This court has repeatedly held that where the Commission has acted within the scope of its authority, its order will not be disturbed if it has any substantial foundation in the evidence and is not unreasonable or arbitrary. (*Mulcahy v. Public Service Commission*, 101 Utah 245, 117 P. 298; *Union Pacific R. Co. v. Public Service Commission*, 102 Utah 465, 132 P.2d 128.) In determining whether the Commission’s order is supported by the evidence, this court must consider the factors underlying such order. When, as in the case at hand, the Commission’s order is based upon the meaning of a term as it is used in the motor carrier industry, the court will take into account the special knowledge that the Public Service Commission has acquired through its continuous experience in the motor carrier field. (See *Landis, Administrative Process*, p. 152, 14 Miss.L.J. 321.)

Its superior understanding of the carrier industry, plus the fact that the legislature has delegated to the Commission the power to limit a carrier's authority, requires that considerable weight be given to its finding. (Utah Freightways, Inc. v. Public Service Commission, 9 Utah 2d 414, 346 P.2d 1079.) It must be conceded that this court, by merely reading the record, cannot be made fully aware of the meaning the motor carrier industry has given to the term, 'commodities generally.'

"The reasonableness of the Commission's order must be determined in light of the statutory setting in which it operates. The Commission is required by statute to regulate so as to prevent unnecessary duplication of services in areas where the existing transportation service adequately meets the needs of the public. (54-6-4, U.C.A. 1953.) Where there are two possible interpretations of the authority contained in a certificate, the interpretation which more fully conforms to the statutory purpose should be adopted. Recognizing that one purpose of this legislation was to prevent unfair and destructive service, this court has held that the Commission's assent was necessary before a carrier could increase its service, even though the scope of its service was not expressly limited in the carrier's certificate. (Gilmer v. Public Utilities Commission, 67 Utah 222, 247 P. 284.) The same principle is applicable to the case now before us. To allow Milne and other general commodity carriers to transport petroleum and petroleum products in tank vehicles without first determining that such service is necessary and in the public interest, would not only be contrary to our statutory purpose, but would substantially impede the

regulatory function of the Public Service Commission.”

The importance of this case can not be overestimated. To allow appellant, under the circumstances here prevailing, to invade the field of bulk petroleum transportation would result in chaos, not regulation. It would destroy the years of meticulous care given by the Commission in controlling the regulation of transportation in this as well as all other specialized fields and is obviously contrary to the interpretation placed upon the authority by the Commission, the appellant, and all carriers concerned.

Appellant’s certificate is certainly subject to interpretation by the Commission, and that interpretation being fully supported by the evidence should be affirmed by this Court.

Point II

THE FINDINGS AND ORDER OF THE COMMISSION ARE FULLY SUPPORTED BY COMPETENT EVIDENCE AND ARE NOT ARBITRARY OR CAPRICIOUS

Point II and Point III raised in appellant’s brief merely assert the conclusion that the order of the Commission and its suspension of the tariff were arbitrary, capricious, and unconstitutional. Points II and III will be treated herein jointly.

Appellant claims that the evidence is undisputed that it has continuously held itself out as ready, willing and

able to transport petroleum and petroleum products, in bulk, in tank vehicles. With this statement, we disagree. The Commission is certainly entitled to take into consideration the candor, or lack thereof, of the witnesses. Witness Smith testified on direct that he personally had solicited bulk petroleum transportation. (R. 16, 17) However, on cross-examination, he admitted, after some prodding, that he had not. This is what appellant designates as "undisputed evidence." The same is true of the testimony of Witness Grua. See the discussion under Point I.

Appellant's position seems to be that the active solicitation of petroleum products, in bulk, and a bona fide holding out as ready, willing and able to perform such transportation service can be satisfied by the mere state of mind of the carrier.

The record is replete with testimony and documentary evidence fully supporting the Commission's findings that there was no actual holding out, that neither the Commission nor the appellant nor any of the carriers involved ever considered the authority in question to include bulk petroleum products. There is a complete absence of credible evidence of any kind that appellant did hold itself out to perform such transportation. Certainly the Commission is entitled to consider the fact that the appellant had no equipment for this transportation and had no tariff on file which would permit it to be performed lawfully. The Commission has acted within the scope of its authority and there is substantial evidence to support its findings and order. See *Mulcahy vs. Public Service Commission*, 101 Utah 245, 117 P. 298; *Union Pacific R. Co. vs. Public Service Commission*, 102 Utah

465, 132 P.2d 128 and *Milne Truck Lines, Inc. vs. Public Service Commission*, supra.

Point III.

THE COMMISSION DID NOT ERR IN DENYING APPELLANT'S OFFER OF PROOF CONCERNING AUTHORITIES OF CERTAIN CARRIERS

Appellant made an offer of proof of the authorities of certain carriers not parties to this proceeding. The Commission properly denied such offer.

The authorities of other carriers in and of themselves would be of no aid whatever to the Commission in interpreting the meaning of appellant's certificate as was pointed out by this Court in the *Milne* case, supra:

“It is possible that authority to transport ‘commodities generally’ has a different meaning in one part of the country than it does in another. *The scope of such authority might also vary from carrier to carrier due to different conditions existing at the time the certificate was issued.*”
(Emphasis Added)

Respondents herein have spent considerable time outlining the history of the certificates of appellant as well as those of respondents in order to show the factual background under which the certificate in question was issued, as an aid in determining the intent of the Commission at the time of its issuance. Obviously, the naked certificates of other carriers without a historical background to explain or amplify their meaning would be of no value in this proceeding.

Appellant argues that the certificates offered were general in their terms with explicit exclusions as to certain commodities and from that concludes that they would control the interpretation of its certificate.

This argument is not convincing. Authorities may be issued, for example, to transport "chemicals" excluding certain items that may or may not normally be in the chemical field. The exclusion may be for the purpose of eliminating a protest of a carrier appearing at the hearing who contends its authority embraces a chemical and the applicant may agree to an amendment excluding such commodity without any binding effect whatever upon the Commission that the specific commodity is or is not a chemical. Furthermore, the fact that exclusions appear after a commodity description does not in any way indicate that the commodity description itself is all inclusive.

CONCLUSION

The interpretation placed upon appellant's certificate by the Commission is fully supported by the evidence, is a reasonable and necessary interpretation in light of the history of the transportation of petroleum products, in bulk, in this state and the same should be affirmed by this Court.

Respectfully submitted,

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