

1967

Clyde Reaveley Dba Reaveley Trucking Company  
v. Public Service Commission Of Utah And Hal S.  
Bennett, Donald Hacking And Doanld T. Adams;  
Line Trucking, Inc., And Uintah Freightways : Brief  
of Plaintiff

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# IN THE SUPREME COURT OF THE STATE OF UTAH

RYDE REAVELEY d/b/a  
REAVELEY TRUCKING COMPANY,  
*Plaintiff,*

vs.

Case No.  
10000

PUBLIC SERVICE COMMISSION  
UTAH and HAL S. BENNETT,  
RALD HACKING, and DONALD  
ADAMS, Commissioners of the  
Public Service Commission of Utah;  
REAVELEY TRUCKING, INC., and UIN-  
TER FREIGHTWAYS,

*Defendants.*

## BRIEF OF PLAINTIFF

Review of the Order of the  
Public Service Commission of Utah

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Clerk, Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

CLYDE REAVELEY d/b/a  
REAVELEY TRUCKING COMPANY,  
*Plaintiff,*

vs.

PUBLIC SERVICE COMMISSION  
OF UTAH and HAL S. BENNETT,  
DONALD HACKING, and DONALD  
T. ADAMS, Commissioners of the  
Public Service Commission of Utah;  
LINK TRUCKING, INC., and UIN-  
TAH FREIGHTWAYS,

*Defendants.*

Case No.  
10909

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## BRIEF OF PLAINTIFF

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### STATEMENT OF THE KIND OF CASE

This is an appeal from an Order of the Public Service Commission of Utah entered in Investigation and Suspension Docket No. 136. This order held that the certificates of convenience and necessity held by defendants Uintah Freightways and Link Trucking, Inc. include authority to transport cement in bulk. (R. 507-516)

## DISPOSITION OF CASE

This is a direct appeal by writ of review to the Supreme Court, from an order of the Public Service Commission of Utah and is made subsequent to the denial of a Petition for Rehearing and Reconsideration filed with the Commission.

## RELIEF SOUGHT ON APPEAL

This appeal seeks to set aside the order of the Public Service Commission insofar as it holds that Uintah Freightways and Link Trucking, Inc. may transport cement in bulk.

## STATEMENT OF FACTS

This appeal is filed by Clyde Reaveley, an individual doing business as Reaveley Trucking Company (herein Reaveley). Reaveley is a common carrier by motor vehicle engaging in the transportation of cement in bulk between Devils Slide and Salt Lake City, Utah on the one hand, and all points and places within the State of Utah on the other. This right is in accord with Certificate of Convenience and Necessity No. 872 issued by the Public Service Commission of Utah (herein Commission). (Exhibit No. 2)

On August 3, 1965 Reaveley initiated this proceeding before the Public Service Commission of Utah by filing a Complaint with the Commission. (R. 491-494) Prior to the filing of the Complaint defendants Uintah

Freightways (herein Uintah) and Link Trucking, Inc. (herein Link) had filed a tariff providing a commodity rate for the transportation of cement in bulk between points in Utah. (R. 494a)

In the Complaint filed August 3, 1965 Reaveley contested the authority of Uintah and Link to transport cement in bulk upon the ground that their certificates do not include authority to transport cement in bulk, or if in the alternative the certificates do include such authority that said carriers had abandoned the right to transport such commodities and their certificates should be so restricted. (R. 492-493) Reaveley does not contest their authority to transport cement in bags. On August 10, 1965 the Commission entered into an investigation with respect to the authority of Link and Uintah regarding the transportation of cement, gilsonite and salt in bulk. (R. 495) The notice of hearing issued by the Commission ordered Link and Uintah to appear and show cause why the Commission should not make determination as to the extent of their authority to haul bulk shipments of cement, gilsonite and salt. (R. 496)

A hearing was held before the Commission at which testimony was adduced by Reaveley, Link, Uintah, and other interested parties. (Tr. 1-378)

On February 17, 1967 in the contested Report the Commission concluded that the terms "property" and "general commodities" as used in the certificates of convenience and necessity of Uintah and Link confer authority to transport all commodities in any type of

vehicle except where specifically restricted. (R. 511)

On March 9, 1967 Reaveley filed a Petition for Rehearing and Reconsideration with the Commission. (R. 517-522) On April 6, 1967 the Commission issued an Order denying Reaveley's Petition for Rehearing and Reconsideration. (R. 525)

## ARGUMENT

### POINT I.

#### THE COMMISSION'S DECISION IS INCONSISTENT WITH A PREVIOUS ADJUDICATION AFFIRMED ON JUDICIAL REVIEW.

In a Report and Order issued on May 3, 1961 the Public Service Commission of Utah held that Milne Truck Lines, Inc. did not have authority to transport "petroleum or petroleum products in bulk in tank vehicles" under its authority to transport "general commodities." (R. 759-767) In a Report and Order issued March 5, 1963 the Commission held that the term "property" as used in the Certificate of Convenience and Necessity of defendant Uintah did not include authority to transport "petroleum or petroleum products in bulk in tank vehicles." (R. 753-758)

Both of these decisions of the Public Service Commission of Utah were appealed to the Supreme Court of Utah and in each case the Supreme Court of Utah upheld the decision of the Commission. *Milne Truck Lines, Inc. v. Public Service Commission*, 13 Utah 2d 368 P. 2d 590 (1962) and *Uintah Freightways v. Public*



*Service Commission of Utah*, 15 Utah 2d 221, 390 P. 2d 38. In the Uintah Freightways case, the Supreme Court said:

"If the authority were given the interpretation urged by plaintiff, technically all articles of commerce would fall within the scope of their authority."

The Supreme Court of Utah upheld the Commission's determination that the word "property" as used in Uintah's certificate was not intended to include authority to transport all articles of commerce.

Less than four years later, in this decision, the Commission has concluded:

"1. That the terms 'property' and 'general commodities' as used in the certificates of convenience and necessity of Uintah Freightways and Link Trucking, Inc. are certain and unambiguous and said certificates, except where specifically restricted, confer upon Link and Uintah authority to transport *all commodities in any type of vehicle*." (italics supplied) (R. 514)

The administrative determination in this case is inconsistent with previous adjudications of the Commission which have been affirmed on judicial review. In the case of *Re Dresher*, 286 App. Div. 591, 146 N.Y.S. 2d 428 (1955) the Court held that after judicial review of an administrative decision that administrative agency is bound to follow the law as determined by the Court. When the Court of last resort has decided a question, that decision, when the question arises again, is binding on an administrative agency just as it is on inferior

courts in the state. *Stacey Mfg. Co. v. Commissioner*, (CA 6, 1956) 237 F. 2d 605.

In view of this legal principle it was error for the Commission to conclude that Defendant's certificates now include authority to transport all commodities in any type of vehicle.

## POINT II

### THE COMMISSION'S DECISION FAILS TO REGULATE COMMON MOTOR CARRIERS SO AS TO PREVENT UNNECESSARY DUPLICATION OF SERVICE AS REQUIRED BY LAW.

Sec. 54-6-4 of Utah Code Annotated 1953 provides that it shall be the duty of the Commission to regulate "so as to prevent unnecessary duplication of service between these common motor carriers."

In this proceeding the Commission concluded that the terms "property" and "general commodities" confer upon Link and Uintah authority to transport all commodities in any type of vehicle. (R. 514) In a similar proceeding decided on May 3, 1961 the Commission said:

*"Such a construction of the phrase 'general commodities' would produce havoc among other carriers and would work such an injustice as to shock the conscience."* (italics supplied) (R. 764) This decision affirmed on appeal by Supreme Court of Utah at *Milne Trucklines, Inc. v. Public Service Commission of Utah*. (supra)

The Commission had good reason for their findings made in 1961. Exhibit 10 shows 57 carriers authorized

to transport general commodities intrastate within Utah. (R. 390) Under the decision of the Commission in this case each one of these 57 carriers is now authorized to transport cement in bulk. Such duplication of service will not only "produce havoc" and will "work such an injustice as to shock the conscience" but it is also contrary to duties of the Commission as authorized by the Utah Legislature. Section 54-6-4 of Utah Code Annotated, 1953.

Putting it in the words of this same Commission:

"6. The Commission is confronted with a problem, the solution of which requires a construction or interpretation of phraseology, which at first glance seems to require no interpretation, but which in the conduct of the trucking business in this State has never been given the broad and all-embracing meaning claimed for it by Milne. Some carriers of 'general commodities' operated in Utah long before the Public Utilities Commission (now Public Service Commission) was created, or the Motor Carrier Act was passed, and they, like other carriers who later received 'general commodities' Certificates of Convenience and Necessity, have never assumed to transport many articles or products which other carriers later sought and received authority to transport. \* \* \* *bulk cement*, to give but a few illustrations. Furthermore, when many carriers received 'general commodities' authority there was little or no traffic in many of the commodities specified in later restrictive certificates, and *if carriers possessing 'general commodities' authority only*, and there are 15 or more in Utah, which have never assumed, or attempted to exercise, the right to transport

the aforesaid special articles of commerce, should now invade the area served by the carriers holding special authority, *there would be no end to the confusion and injustice thus produced.* (R. 763 and 764) (Report of Commission in the Matter of Milne Truck Lines, Inc.)

The Commission has now completely ignored their findings made in 1961. No adequate reasons have been given for reversal of this recent decision. The Commission has completely ignored the confusion and injustice this decision will produce.

Nor was the Milne decision the only case by the Commission recognizing the injustice of the decision in this proceeding. In a Report and Order issued March 5, 1963 the Commission said as to the certificate of defendant Uintah:

"The Commission in exercising its regulatory authority over public utilities *cannot give an interpretation of the word 'property' which would permit Freightways to invade the business of specially authorized carriers* where there was no intention that the word should include petroleum or petroleum products in bulk, in tank vehicles, and when the owner of the certificate and its predecessors never at any time claimed the right it now asserts or had equipment suitable to engage in such traffic." (R. 757)

This decision of the Commission was affirmed on appeal to the Utah Supreme Court in *Uintah Freightways v. Public Service Commission*, 15 Utah 2d 221, 390 P. 2d 238.

In the case of *Utah Light and Traction Company v. Public Service Commission*, 118 P. 2d 683, the Supreme

Court of Utah said:

"If the need for new or additional service exists, it is the duty of the Commission to grant certificates of convenience and necessity to qualified applicants but when a territory is satisfactorily serviced, and its transportation facilities are ample, a duplication of such service which unfairly interferes with the existing carriers may undermine and weaken the transportation set-up generally and thus deprive the public of efficient, permanent service. Too, existing carriers benefit from the restricted competition, but this is merely incidental to the solution of the problem of assuring adequate and permanent service. The public interest is paramount."

The Supreme Court, in the case of *Wycoff Company v. Public Service Commission*, 227 P. 2d 323, said:

"Competition is desirable if the volume of business will permit solvent operations but, if the field is not limited, insolvency and unsatisfactory service results."

It is not sane to say that the Commission meticulously took evidence and issued after sound deliberation a certificate of convenience and necessity to Reaveley in 1949 (R. 527-532) with the view that all "general commodity" or "property" carriers could duplicate the same service.

This principal is further exemplified in the Utah statutes in Section 54-4-25 of Utah Code Annotated 1953, which provides:

"(2) No public utility \* \* \* shall henceforth exercise any right or privilege under any franchise or permit \* \* \* heretofore granted *but not heretofore actually exercised* or the exercise of which has been suspended for more than one year, without first having obtained from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege \* \* \*."

Allowing Link and Uintah to transport cement in bulk permits the institution of a new and additional service without the required showing of convenience and necessity. There is no evidence in this proceeding whatsoever showing any need for such additional service.

The Supreme Court of Utah has consistently held that when a utility desires to enter a new field or render a new or different service, it must, as a condition to receiving a certificate to so perform, show that the service sought to be given is one of "public convenience and necessity." *Uintah Freightways v. Public Service Commission of Utah*, 15 Utah 2nd 221, 390 P. 2d 238. *Mulcahy v. Public Service Commission*, 100 Utah 245, 117 P. 2d 298; *Fuller-Toponce Truck Company v. Public Service Commission*, 99 Utah 28, 96 P. 2d 722 (1939).

In this case there was no evidence whatsoever submitted by either Link or Uintah which would support a finding of public convenience and necessity. The evidence conclusively shows that this is a new and different service which both of these carriers are attempting to render. The President of Link admitted they had never transported cement in bulk for hire (Tr. 254), and that they own no pneumatic or hopper type vehicles. (Tr. 273)

The President of Uintah admitted that they have only transported a couple of loads of cement in bulk. (Tr. 190) There is nothing in the record indicating that any evidence has ever been presented to the Commission concerning the need for the transportation of cement in bulk by either Link or Uintah. The only shipper witnesses introduced at the hearing testified that neither Link nor Uintah had ever solicited or handled their cement in bulk. (Tr. 164, 165, 201, 202, and 203) These witnesses from Portland Cement Company of Utah and Ideal Cement Company were produced by Reaveley.

Under the statutes cited and the law as stated in the cited cases it was error for the Commission to conclude that Link and Uintah can transport cement in bulk.

### POINT III

#### THE DECISION OF THE COMMISSION IS ARBITRARY.

As shown in the previous point there is no evidence whatsoever which would entitle either defendant to transport cement in bulk. The only basis for the decision is the Commission's interpretation of the authorities of defendants. This interpretation is contrary to prior pronouncements of the Commission. (*Milne* and *Uintah* cases, *supra*)

The only reason given by the Commission for such reversal of interpretation is found in their statement that unless their new interpretative rule is used confusion as to the meaning of certificates will lead to

instability and uncertainty in the motor carrier industry. (R. 511) No evidence supports such a finding. This is a finding contrary to the fact that the motor carrier industry has existed in relative stability since the enactment of the General Utility Law of Utah in 1917.

The confusion which will arise now come about by common carriers such as defendants proceeding to flag into a tariff to perform a service which has traditionally been recognized by all motor carriers, both general commodity and specialized alike, as a specialized service.

Added confusion arises when the Commission makes a decision such as the instant decision which is contrary to all prior pronouncements of the Commission. Now, all specialized carriers such as Reaveley must file expensive proceedings against all general commodity carriers seeking to have their certificates amended, because of abandonment, to exclude specialized commodities.

A decision of an administrative agency which unreasonably or arbitrarily or discriminatorily departs from earlier decisions of the agency should be reversed by the reviewing court. *Shawmut Ass'n. v. S. E. C.*, (C.A. 1, 1945) 146 F. 2d 791; *Weiss v. State Bd.*, 40 Cal. 2d 772; 256 P. 2d 1 (1953); *Butler Oak Tavern v. Division of Alcoholic Beverage Control* (1956) 20 N.J. 373, 120 A.2d 24; *Re Masiello* (1958) 25 N.J. 590, 138 A.2d 393; *Re Fitzgerald* (1941) 262 App. Div. 393, 20 N.Y.S. 2d 9.



## POINT IV.

THE COMMISSION SHOULD HAVE FOUND THAT THE DEFENDANTS DO NOT HOLD AUTHORITY TO TRANSPORT CEMENT IN BULK.

The Commission erred in not finding that the transportation of cement in bulk is a specialized service not contained within the general certificates of authority of defendants Link and Uintah. In the previously cited *Milne* and *Uintah* decisions the Report and Orders issued by the Commission look to several factors in concluding that *Milne* and *Uintah* do not have authority to transport the specialized commodity there involved. These factors were:

1. Any showing that they had ever transported the commodity. (R. 763)
2. Any showing that they have equipment or facilities necessary or useful for the transportation thereof. (R. 763)
3. Reports to the Commission listing vehicles suitable for such purpose. (R. 763)
4. Solicitation of the business. (R. 763)

Affirmative factors considered by the Commission in the *Milne* decision were:

1. The expense incurred by common carriers holding specific authority in equipping themselves to handle these commodities; and

2. That the carriers who initiated the proceeding are and at all times have been ready to handle more business than the public requirements demand.

Reaveley has specialized in the transportation of cement in bulk for twenty years. (Tr. 145 and 146) He was the first common carrier certificated by the Public Service Commission to haul cement in bulk within the state of Utah. (Tr. 94) He explained how the transportation of cement in bulk was inaugurated in Utah at the time he obtained his authority. (Tr. 89-90) Reaveley explained the seriousness of this proceeding to the Commission:

“Q. Have you considered, Mr. Reaveley, what effect the permitting of the publication of this tariff and the operation thereunder would have upon your business?

MR. WILLIAM RICHARDS: I object to that as being immaterial.

MR. WORSLEY: Join in the objection.

COM. WILKINS: You may answer.

The objection is overruled.

A. We are required to maintain a good fleet of equipment to handle cement in bulk for any and all purposes throughout the State of Utah, and we have done for a period in excess of 15 years. It has been rather difficult, because it is a seasonal business, to maintain modern and adequate equipment for all needs, and we have done this, but for any dilution of that fleet now that it is acquired, or service during the time when we so desperate need it, would probably — Reaveley Trucking Company would go into insolvency.” (Tr. 142 and 143)

Reaveley's equipment list contains forty-four pieces used in transporting cement in bulk. (Tr. 100) The specialized nature of this equipment was described by Reaveley. (Tr. 95)

Besides the statement in the Milne proceeding that the transportation of cement in bulk is a specialized service the Commission has recognized in other proceedings that this is a specialized service not open to general commodity carriers.

In the matter of the application of *Ashworth Transporter, Inc.* submitted August 18, 1958, Case No. 4414 (Sub No. 1), the Commission stated that the transportation of cement in bulk is a specialized service requiring special equipment. (Tr. 70) In Case No. 4627 in the matter of an application of *Whitfield Transportation Company, Inc.* submitted August 18, 1958, Whitfield applied for authority to transport cement in bulk. In that case the Commission denied the application and stated in the Report and Order as follows:

"That W. H. Link, dba Link Trucking Company, is a general commodity carrier which has not engaged in the transportation of cement in bulk and did not urge his protest to that application." (Tr. 70)

The Commission has never recognized Reaveley as an interested party whenever Link or Uintah has sought "general commodity" authority. This was shown at the hearing of this matter in the certificates of service of notice of hearings of applications of these two carriers. (Tr. 45, 47, 49, 53, 58, 59, 61)

The Commission took judicial notice at the hearing of this matter of the specialized equipment of Reaveley operated as early as 1949. (Tr. 72) The annual reports filed with this Commission by Reaveley show that under the description of commodities transported he has listed only bulk cement and pre-stressed concrete. (Tr. 73) These reports show Reaveley has described his motor vehicle equipment as bulk cement trailers. Link and Uintah show no equipment under the designation tank semi-trailers. (Tr. 77, 78, 79) Contrast this with Ashworth Transfer, Inc. (who holds specific authority to transport cement in bulk) whose annual reports show four cement semi-trailers. (Tr. 81)

Also relied upon by the Supreme Court in the Milne Case is the fact that there are six common carriers authorized to transport general commodities whose certificates contain other language which destroys the idea that general commodities includes all articles of commerce. These certificates are exhibits introduced at the hearing. (Exhibit 4, 5, 6, 7, 8, and 9)

In these certificates the Commission stated general commodities including other commodities. If "general commodities" includes all articles of commerce there is no reason for enumerating specific articles included within that term. It is obvious that the Commission has never treated general commodities as including all articles of commerce.

It is the law of this state that the meaning of the term "general commodities" must be ascertained from the particular facts of each case. *Milne Truck Lines v. Pugh*

*in Service Commission*, (supra) and *Uintah Freightways v. Public Service Commission*, (supra) In this case the evidence is overwhelming that neither the Commission nor defendants Link and Uintah ever assumed that their certificates authorized the transportation of cement in bulk. Neither have other carriers authorized by the Commission to transport "general commodities" or "property." To allow defendants to now enter this new field without a showing that their service is required by public convenience and necessity is contrary to Utah statutes and prior pronouncements of this Court. The facts in the proceeding indicate that defendants do not have authority to transport cement in bulk.

#### POINT V

THE COMMISSION SHOULD HAVE FOUND THAT DEFENDANTS HAVE ABANDONED ANY RIGHT TO TRANSPORT CEMENT IN BULK, IF THEY EVER POSSESSED SUCH AUTHORITY.

Sec. 54-6-20 of Utah Code Annotated, 1953 empowers the Commission to suspend, alter, amend or revoke any certificate after notice and hearing. Reaveley alleged in the Complaint filed herein that Link and Uintah have abandoned any right to transport cement in bulk if it should be held that at any time they held such authority. (R. 492)

Reaveley introduced evidence at the hearing indicating that neither Link nor Uintah have ever rendered continuous service in the transportation of cement in bulk. The witness representing defendant Link admitted

that the first time they had ever had a tariff filed to transport cement in bulk was in the latter part of 1961 or the first part of 1962. (Tr. 323) He admitted that he had never personally had a request to move cement in bulk and that this tariff was filed as an incidence to a bulk gilsonite movement which required filing of a tariff. (Tr. 323)

Section 54-3-6 of Utah Code Annotated, 1953, requires a common carrier to publish a Schedule of Rates and Charges before participating in transportation. Therefore, neither Link nor Uintah could operate in the transportation of cement in bulk until after January 3, 1962. (Exhibit 13)

Further evidence of abandonment was the admission by the Salt Lake Terminal Manager of defendant Link that they have never handled any transportation of bulk cement for hire. (Tr. 300) Defendant Uintah has never transported cement in bulk intrastate in Utah prior to April of 1965. (Tr. 195 and 196) After this date they have made only two movements. (Tr. 190 and 196).

At the hearing schedules of equipment owned by Link and Uintah contained in the files of the Commission show no owned equipment suitable for the transportation of cement in bulk. (Tr. 50, 51, 54, 55, 56, 61) Link does not presently own any trailers designed as bulk equipment. (Tr. 312 and Tr. 273)

The Public Service Commission of Utah has recognized the principal of abandonment of authority by failure to render a continuous and adequate service. In the case of *Uintah Freightways* (Investigation Docket No.

g; before the Public Service Commission of Utah, affirmed on appeal *Uintah Freightways v. Public Service Commission of Utah*, 15 Utah 2d 221, 390 P. 2d 238), the Commission said:

"The earliest of these was Sterling Transportation Company, which had authority to handle 'both freight and express,' and actually, during 1938 and 1939, transported 'crude oil and gasoline in bulk' and 'crude oil and gasoline' (presumably not in bulk) during 1940 to 1946 (Exhibit 2), but it transported none of these products after 1946, and *should be regarded as having abandoned* any claim to such transportation, if it ever possessed such authority." (R. 754 and R. 755) (Italics supplied)

The Commission's conclusion that defendant Uintah did not have authority to transport petroleum or petroleum products in bulk in tank vehicles was affirmed by the Supreme Court of Utah which said in the *Uintah* case (Supra).

"Also the Commission found that even though plaintiff's predecessor in interest had transported crude oil in bulk between 1938 and 1939, and crude oil and gasoline, presumable not in bulk, between 1940-1946, it had no specific authority to do so, and any right to transportation it may have claimed *should be regarded as having been abandoned*. (Italics supplied)

In the case of *Milne Truck Lines, Inc., Investigation and Suspension*, Docket No. 124 the Commission recognized that the right to transport a commodity carries with it a corresponding duty to transport the commodity. (R. 764) In this proceeding the Commission said:

"As to present outstanding certificates granting 'general commodities' authority, it may become necessary in cases which may be brought before the Commission from time to time by competing carriers, to modify such certificates so as to exclude commodities of a special character on the ground that the carrier, never having transported them, should be held to have abandoned its right to do so." (R. 765)

The Commission in this case said:

"9. The Commission under 56-6-20 *Utah Code Annotated*, 1953, as amended, for good cause after notice and hearing may suspend, alter, amend or revoke any certificate, permit or license. The Statute is invoked by the Commission in the event of violations, dormancy or abandonment. *These issues are not involved in this proceeding* and the evidence would not support an amendment or an alteration to the certificates of Link or Uintah on this basis." (R. 512) (Italics supplied)

Reaveley cannot understand the Commission saying that abandonment is not involved in this proceeding. Reaveleys' Complaint asked for a finding of abandonment. Link has never transported bulk cement. There is no evidence that Uintah and its predecessors ever transported bulk cement from the time of the issuance of its certificate in 1926 until early 1965 (Tr. 195 and 196) and up to the date of the hearing had only had two limited shipments. (Tr. 196) In view of this evidence it is arbitrary for the Commission to state "the evidence would not support an amendment or an alteration to the certificates" in this proceeding.



Under Federal cases evidence much less convincing than this has been held to warrant revocations under the Motor Carrier Act. In *R. D. Fowler Motor Lines v. Colonial Motor Freight*, MCC 382, decided Oct. 6, 1944, 4 Federal Carrier Cases 312, the Interstate Commerce Commission found a carrier who did not maintain reasonable and adequate service had abandoned the authority and the certificate was cancelled. In this case the Interstate Commerce Commission noted that it was not enough to publish rates and hold service out to the public without the accompaniment of actual operation to such extent as to constitute a bona fide, continuous and adequate service. The Commission relied upon the failure to introduce any shipping documents as evidence of a performance of reasonably continuous and adequate service.

In this case the Public Service Commission of Utah should have found that both defendants Link and Uintah have abandoned any right to transport cement in bulk and their certificates of convenience and necessity should both be amended to exclude such transportation.

## CONCLUSION

Reaveley has expended large sums of money and great effort in performing a specialized motor carrier service in the transportation of cement in bulk. His authority from the Commission is limited but he has rendered a service responsive to needs of the shippers of cement in bulk.

The Commission has made a decision which allows defendants Link and Uintah to take the cream of any of this traffic which Reaveley has spent eighteen years in developing. The Commission erred in so interpreting the certificates of Link and Uintah in the following particulars:

1. The decision is inconsistent with previous decisions which were affirmed by the Supreme Court of Utah.

2. In making this decision the Commission has failed to follow the Utah Statutes which require it to regulate carriers so as to avoid unnecessary duplication of service.

3. The decision is arbitrary in failing to give any reason supported by competent evidence for a reversal by the Commission, and

4. Under the evidence the Commission should have found that the transportation of cement in bulk is a specialized service not included within the general authorities of Link and Uintah.

Finally, if the Commission did not err in any of the above points, they then should have concluded under the overwhelming evidence that defendants have abandoned any right to transport cement in bulk.

Respectfully submitted,  
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